CITY of LAGUNA WOODS
CITY COUNCIL
AGENDA

Regular Meeting
Wednesday, April 19, 2017
2:00 p.m.

Laguna Woods City Hall
24264 El Toro Road
Laguna Woods, California 92637

Shari L. Horne
Mayor

Carol Moore
Mayor Pro Tem

Cynthia Conners
Councilmember

Bert Hack
Councilmember

Noel Hatch
Councilmember

Welcome to a meeting of the Laguna Woods City Council!

This meeting may be recorded, televised, and made publically available.

Public Comments: Persons wishing to address the City Council are requested to complete and submit a speaker card to City staff. Speaker cards are available near the entrance to the meeting location. Persons wishing to address the City Council on an item appearing on this agenda will be called upon at the appropriate time during the item's consideration. Persons wishing to address the City Council on an item *not* appearing on the agenda will be called upon during the "Public Comments" item. Persons who do not wish to submit a Speaker Card, or who wish to remain anonymous, may indicate their desire to speak from the floor. Speakers are requested, but not required, to identify themselves.

Americans with Disabilities Act (ADA): It is the intention of the City to comply with the ADA. If you need assistance to participate in this meeting, please contact either the City Clerk's Office at (949) 639-0500/TTY (949) 639-0535 or the California Relay Service at (800) 735-2929/TTY (800) 735-2922. The City requests at least two business days' notice in order to effectively facilitate the provision of reasonable accommodations.

REGULAR MEETING SCHEDULE

The Laguna Woods City Council regularly meets on the third Wednesday of each month at 2 p.m.

AGENDA POSTING AND AVAILABILITY

Regular and Adjourned Regular Meetings: Pursuant to California Government Code Section 54954.2 of the Ralph M. Brown Act, the City of Laguna Woods posts agendas at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, California 92637; on the City's website (www.cityoflagunawoods.org); and, at other locations designated by Resolution No. 02-33, at least 72 hours in advance of regular and adjourned regular meetings. Agendas and agenda materials are available at Laguna Woods City Hall during normal business hours and on the City's website. Printed copies of agendas and agenda materials are provided at no charge in advance of meetings. After meetings have occurred, a per page fee is charged for printed copies.

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FOR ADDITIONAL INFORMATION

For additional information, please contact the City Clerk's Office at (949) 639-0500/TTY (949) 639-0535, cityhall@cityoflagunawoods.org, or 24264 El Toro Road, Laguna Woods, California 92637.

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, Yolie Trippy, Deputy City Clerk, City of Laguna Woods, hereby certify under penalty of perjury that this agenda was posted at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, California 92637; on the City's website (www.cityoflagunawoods.org); and, at other locations designated by Resolution No. 02-33, pursuant to California Government Code Section 54954.2 of the Ralph M. Brown Act.

Yolie Trippy — 4-13-17

YOLIE TRIPPY, Deputy City Clerk — Date

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. PRESENTATIONS AND CEREMONIAL MATTERS

4.1 Moment of Silence – Holocaust Week of Remembrance – April 23-30, 2017

Recommendation: Observe a moment of silence.

4.2 National Donate Life Month – April 2017

Recommendation: Approve and present the proclamation.

4.3 Environmental Awareness Week – April 22-28, 2017

Recommendation: Approve and present the proclamation.

V. PUBLIC COMMENTS

About Public Comments: This is the time and place for members of the public to address the City Council on items *not* appearing on this agenda. Pursuant to State law, the City Council is unable to take action on such items, but may engage in brief discussion, provide direction to City staff, or schedule items for consideration at future meetings.

VI. CONSENT CALENDAR

About the Consent Calendar: All items listed on the Consent Calendar are considered routine and will be enacted by one vote. There will be no separate discussion of these items unless a member of the City Council, City staff, or the public requests that specific items be removed from the Consent Calendar for separate discussion and consideration of action.

6.1 City Council Minutes

Recommendation: Approve the City Council meeting minutes for the regular meeting on February 15, 2017.

6.2 City Treasurer's Report

Recommendation: Receive and file the City Treasurer's Report for the months of February and March 2017.

6.3 Warrant Register

Recommendation: Approve the warrant register dated April 19, 2017 in the amount of $1,157,869.68.

6.4 Network Server and Printers Replacement and Upgrade

Recommendation: Authorize the City Manager to transfer and expend up to $22,000 from the Fiscal Year 2016-17 General Fund City Council Contingency budget to offset costs associated with the replacement and upgrade of the network server and printers.

6.5 Investment of Financial Assets Policy

Recommendation: Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, REVIEWING AND ADOPTING A STATEMENT OF THE INVESTMENT POLICY AND ADOPTING AN INVESTMENT POLICY

6.6 Orange County Investment Pool

Recommendation: Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AUTHORIZING THE DEPOSIT AND INVESTMENT OF EXCESS FUNDS WITH THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ORANGE, CALIFORNIA

6.7 City Attorney Services

Recommendation: Approve a legal representation letter extending the agreement with Rutan & Tucker, LLP for legal services as City Attorney and authorize the Mayor to execute an acceptance of and agreement to the terms of the legal representation letter.

6.8 As Needed Planning Services

Recommendation: Approve an extension of the agreement with Michael Baker International, Inc. for as needed planning services and authorize the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.9 Water Quality Services

Recommendation: Approve an extension of the agreement with Charles Abbott Associates, Inc. for water quality services and authorize the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.10 Building Inspection, Permit Counter, and Building Official Services

Recommendation: Approve an extension of the agreement with CivilSource, Inc. for building inspection, permit counter, and building official services and authorize the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.11 City Engineering and Traffic Operations Services

Recommendation: Approve an extension of the agreement with CivilSource, Inc. for City engineering and traffic operations services and authorize the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.12 Building Official Services

Recommendation: Approve an extension of the agreement with Lilley Planning Group for building official services and authorize

the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.13 Certified Access Specialist (CASp) and Building Plan Review Services

Recommendation: Approve an extension of the agreement with CSG Consultants, Inc. for Certified Access Specialist (CASp) and building plan review services and authorize the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.14 Laguna Woods Civic Support Fund

Recommendation:

1. Approve a memorandum of understanding with the Laguna Woods Civic Support Fund related to fundraising and distribution of funds, and insurance, and authorize the Mayor to execute the memorandum of understanding, subject to approval as to form by the City Attorney.

AND

2. Appoint the following individuals to the Board of Directors for the Laguna Woods Civic Support Fund: Fran Williams as a resident member and Steve Carpenter as a business member.

6.15 Moulton Parkway Water Efficient Median Improvement Project

Recommendation: Reject the single bid received for the "Moulton Parkway Water Efficient Median Improvement Project".

6.16 Pavement Management Plan Project 1) Eastbound El Toro Road (Avenida Sevilla to Paseo de Valenica) 2) Pedestrian Accessibility

Recommendation:

1. Approve the "Pavement Management Plan Project 1) Eastbound El Toro Road (Avenida Sevilla to Paseo de Valenica) 2) Pedestrian Accessibility" design plans and specifications as recommended by the City Engineer.

AND

2. Award a contract agreement to El Camino Asphalt Paving Corp. for the construction of the "Pavement Management Plan Project 1) Eastbound El Toro Road (Avenida Sevilla to Paseo de Valenica) 2) Pedestrian Accessibility", in the amount of $55,000, plus authorized change orders not to exceed 10% of the base amount; and authorize the City Manager to execute a contract agreement and approve change orders, subject to approval of the contract agreement as to form by the City Attorney.

VII. PUBLIC HEARINGS

Note: The public hearing regarding "Conditional Use Permit CUP-1135 to allow for exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, along all perimeter fences and walls of Laguna Woods Village" has been cancelled.

7.1 Sign Program SP-1164 to allow for various signage at 24256-24290 El Toro Road and 24310-24380 Moulton Parkway, Laguna Woods, CA 92637

Recommendation:

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Approve a resolution entitled:

   A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING SIGN PROGRAM SP-1164 TO ALLOW FOR VARIOUS SIGNAGE AT 24256-24290 EL TORO ROAD AND 24310-24380 MOULTON PARKWAY, LAGUNA WOODS, CA 92637

7.2 State Video Franchise and Public, Educational, and Governmental ("PEG") Fees

Recommendation:

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Adopt an ordinance – read by title with further reading waived – entitled:

   AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF

CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

AND

6. Approve the introduction and first reading of an ordinance – read by title with further reading waived – entitled:

   AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

7.3 Building, Planning, and Encroachment Permit Fees

Recommendation:

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Approve a resolution entitled:

   A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING NEW AND INCREASED OR MODIFIED BUILDING AND PLANNING SERVICES FEES, AND ENCROACHMENT PERMIT FEES

7.4 Medical and Non-Medical Marijuana Dispensary Regulations

Recommendation:

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Approve the introduction and first reading of an ordinance – read by title with further reading waived – entitled:

   AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING

SECTIONS 13.08.010, 13.10.020, 13.12.020, 13.13.020, AND 13.26.025 AND ADDING A NEW SECTION 13.26.027 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARIES AND DELIVERY SERVICES

OR

6. Provide direction to staff regarding the preparation of regulations permitting the establishment, location, and operation of medical and/or non-medical marijuana dispensaries, and/or the need for further study and analysis.

VIII. CITY COUNCIL BUSINESS

8.1 Wireless Facilities Regulations

Recommendation: Approve second reading and adopt an ordinance – read by title with further reading waived – entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.06.010, 13.08.010, 13.10.020, 13.12.020, 13.13.020, 13.24.020, AND 13.26.210 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO THE INSTALLATION AND MODIFICATION OF WIRELESS FACILITIES

IX. CITY COUNCIL REPORTS AND COMMENTS

About City Council Comments and Reports: This is the time and place for members of the City Council to provide reports on meetings attended including, but not limited to, meetings of regional boards and entities to which they have been appointed to represent the City and meetings attended at the expense of the City pursuant to California Government Code Section 53232.3. Members of the City Council may also make other comments and announcements.

9.1 Coastal Greenbelt Authority
Councilmember Conners; Alternate: Mayor Horne

9.2 Orange County Fire Authority
Councilmember Hatch

9.3 Orange County Library Advisory Board
Mayor Pro Tem Moore; Alternate: Mayor Horne

9.4 Orange County Mosquito and Vector Control District
Mayor Horne

9.5 San Joaquin Hills Transportation Corridor Agency
Councilmember Hack; Alternate: Councilmember Conners

9.6 South Orange County Watershed Management Area
Mayor Pro Tem Moore; Alternate: Councilmember Hatch

9.7 Other Comments and Reports

X. CLOSED SESSION

XI. CLOSED SESSION REPORT

XII. ADJOURNMENT

Next Adjourned Regular Meeting:	Wednesday, April 26, 2017 at 2 p.m. Laguna Woods City Hall 24264 El Toro Road, Laguna Woods, California 92637
Next Regular Meeting:	Wednesday, May 17, 2017 at 2 p.m. Laguna Woods City Hall 24264 El Toro Road, Laguna Woods, California 92637

4.1
MOMENT OF SILENCE – HOLOCAUST WEEK OF REMEMBRANCE – APRIL 23-30, 2017
(NO REPORT)

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4.2
PROCLAMATION – NATIONAL DONATE LIFE MONTH – APRIL 2017

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Proclamation
City of Laguna Woods
National Donate Life Month
April 2017

WHEREAS, organ, tissue, marrow, and blood donations are life-giving acts recognized worldwide as expressions of compassion to those in need; and

WHEREAS, more than 120,000 people, nationwide, and more than 21,000 in California are currently on the national organ transplant waiting list, and nearly 1,100 Californians lost their lives waiting in 2016; and

WHEREAS, more than 600,000 units of blood per year are required to meet the need in California and, at any given time, 6,000 people are in need of marrow donations; and

WHEREAS, a person's donation of a heart, lungs, liver, kidney, pancreas, eyes, and small intestine can save up to eight lives; and the donation of tissue can save and enhance the lives of up to 50 others; and a single blood donation can help up to three others; and

WHEREAS, millions of lives are saved, healed, and enhanced each year by a diverse group of organ, tissue, marrow, and blood donors, including older adults.

NOW, THEREFORE, BE IT RESOLVED that the Laguna Woods City Council does hereby proclaim April 2017 as "National Donate Life Month" in the City of Laguna Woods and encourages its residents to consider donating blood and marrow, and signing up as donors with the state-authorized Donate Life California Registry.

Dated this 19th day of April, 2017

_____
Shari L. Horne
Mayor

_____
Attest: Yolie Trippy
Deputy City Clerk

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4.3
PROCLAMATION – ENVIRONMENTAL AWARENESS WEEK – APRIL 22-28, 2017

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Proclamation
City of Laguna Woods
Environmental Awareness Week
April 22-28, 2017

WHEREAS, the global community now faces extraordinary challenges, such as health issues, food and water shortages, and economic struggles; and

WHEREAS, all people, regardless of race, gender, age, income, or geography, have a right to a healthy, sustainable environment; and

WHEREAS, two important and nationally recognized environmental days of observance occur in the month of April – Earth Day, which will be observed on April 22, 2017, and Arbor Day, which will be observed on April 28, 2017; and

WHEREAS, individuals, businesses, and local governments can help to improve the environment, reverse environmental degradation, and contribute to a healthy society by conserving scarce resources and undertaking sustainability-minded projects; and

WHEREAS, in furtherance of its commitment to environmental stewardship, the City of Laguna Woods is pleased to offer numerous green building and recycling services.

NOW, THEREFORE, BE IT RESOLVED that the Laguna Woods City Council does hereby proclaim April 22-28, 2017 as "Environmental Awareness Week" in the City of Laguna Woods and encourages its residents and businesses to support efforts to improve, preserve, and protect the environment, and to encourage others to do the same.

Dated this 19th day of April, 2017

_____
Shari L. Horne
Mayor

_____
Attest: Yolie Trippy
Deputy City Clerk

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6.1-6.16
CONSENT CALENDAR SUMMARY

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: April 19, 2017 Regular Meeting

SUBJECT: Consent Calendar Summary

Recommendation

Approve all proposed actions on the April 19, 2017 Consent Calendar by single motion and City Council action.

Background

All items listed on the Consent Calendar are considered routine and will be enacted by one vote. There will be no separate discussion of these items unless a member of the City Council, staff, or the public requests that specific items be removed from the Consent Calendar for separate discussion and consideration of action.

Summary

The April 19, 2017 Consent Calendar contains the following items:

6.1 Approval of the City Council meeting minutes for the regular meeting on February 15, 2017.

6.2 Approval of a motion to receive and file the City Treasurer's Report for the months of February and March 2017.

6.3 Approval of the warrant register dated April 19, 2017 in the amount of $1,157,869.68. A list of warrants is included in the agenda packet; detailed information about individual warrants is available at City Hall.

6.4 Authorization for the City Manager to transfer and expend up to $22,000 from the Fiscal Year 2016-17 General Fund City Council Contingency budget to offset costs associated with the replacement and upgrade of the network server and printers. The network server improvements are necessary in order to facilitate the implementation of new financial software and to ensure security. The printer improvements are necessary due to equipment being at the end of its useful life and increasing reliability problems. The City Council Contingency currently has a balance of $28,300.

6.5 Approval of a resolution reviewing and adopting a statement of the investment policy and adopting an investment policy. An agenda report is included.

6.6 Approval of a resolution authorizing the deposit and investment of excess funds with the Treasurer-Tax Collector of the County of Orange, California. An agenda report is included.

6.7 Approval of a legal representation letter extending the agreement with Rutan & Tucker, LLP for legal services as City Attorney and authorization for the Mayor to execute an acceptance of and agreement to the terms of the legal representation letter. The agreement is for a two-year period through June 30, 2019 and contains no change to existing rates, but does require the parties to meet and confer in 2018 regarding potential adjustments to rates to be in effect from July 1, 2018 through June 30, 2019. In the absence of agreed upon adjustments, rates would remain unchanged. The agreement calls for David B. Cosgrove to continue to serve as City Attorney and Alisha Patterson to continue to serve as Assistant City Attorney.

6.8 Approval of an extension of the agreement with Michael Baker International, Inc. for as needed planning services and authorization for the City Manager to execute the extension, subject to approval as to form by the City Attorney. The proposed extension is for a one-year period through June 30, 2018, as allowed for in the existing agreement.

6.9 Approval of an extension of the agreement with Charles Abbott Associates, Inc. for water quality services and authorization for the City Manager to execute the extension, subject to approval as to form by the City Attorney. The proposed extension is for a one-year period through June 30, 2018, as allowed for in the existing agreement.

6.10 Approval of an extension of the agreement with CivilSource, Inc. for building inspection, permit counter, and building official services and authorization for the City Manager to execute the extension, subject to approval as to form by the City Attorney. The proposed extension is for a one-year period through June 30, 2018, as allowed for in the existing agreement.

6.11 Approval of an extension of the agreement with CivilSource, Inc. for City engineering and traffic operations services and authorization for the City Manager to execute the extension, subject to approval as to form by the City Attorney. The proposed extension is for a one-year period through June 30, 2018, as allowed for in the existing agreement.

6.12 Approval of an extension of the agreement with Lilley Planning Group for building official services and authorization for the City Manager to execute the extension, subject to approval as to form by the City Attorney. The proposed extension is for a one-year period through June 30, 2018, as allowed for in the existing agreement.

6.13 Approval of an extension of the agreement with CSG Consultants, Inc. for Certified Access Specialist (CASp) and building plan review services and authorization for the City Manager to execute the extension, subject to approval as to form by the City Attorney. The proposed extension is for a one-year period through June 30, 2018, as allowed for in the existing agreement.

6.14 [1] Approval of a memorandum of understanding with the Laguna Woods Civic Support Fund related to fundraising and distribution of funds, and insurance, and authorization for the Mayor to execute the memorandum of understanding, subject to approval as to form by the City Attorney. The memorandum of understanding would authorize the Laguna Woods Civic Support Fund to fundraise and distribute funds for certain library, business, and capital improvement project purposes. It would also extend the City's liability protection to the Laguna Woods Civic Support Fund. This action is recommended by the Laguna Woods Civic Support Fund Board of Directors.

[2] Appointment of the following individuals to the Board of Directors for the Laguna Woods Civic Support Fund: Fran Williams as a resident member and Steve Carpenter as a business member. Both proposed members have

experience working with non-profit and service organizations, as well as relevant professional experience. Mr. Carpenter works as a Certified Aging-in-Place Specialist for local business Adapt2It. This action is recommended by the Laguna Woods Civic Support Fund Board of Directors.

6.15 Rejection of the single bid received for the "Moulton Parkway Water Efficient Median Improvement Project". Bids were invited for the project from February 16 through March 16, 2017. One bids was received from Kasa Construction; however, due to cost, staff is recommending that the bid be rejected. If rejected, staff would review the plans and specifications for the Project and issue a new solicitation for bids.

6.16 [1] Approval of the "Pavement Management Plan Project 1) Eastbound El Toro Road (Avenida Sevilla to Paseo de Valenica) 2) Pedestrian Accessibility" design plans and specifications as recommended by the City Engineer (available at City Hall); and, [2] Award of a contract agreement to El Camino Asphalt Paving Corp. for the construction of the "Pavement Management Plan Project 1) Eastbound El Toro Road (Avenida Sevilla to Paseo de Valenica) 2) Pedestrian Accessibility", in the amount of $55,000, plus authorized change orders not to exceed 10% of the base amount; and authorization for the City Manager to execute a contract agreement and approve change orders, subject to approval of the contract agreement as to form by the City Attorney. This project is included in the City's Capital Improvement Program. Bids were invited from February 23 to March 23, 2017. Two bids were received (All American Asphalt and El Camino Asphalt Paving Corp.) with El Camino Asphalt Paving Corp. bidding the lowest cost.

6.1
CITY COUNCIL MINUTES

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CITY OF LAGUNA WOODS CALIFORNIA
CITY COUNCIL MINUTES
REGULAR MEETING
February 15, 2017
2:00 P.M.
Laguna Woods City Hall
24264 El Toro Road
Laguna Woods, California 92637

I. CALL TO ORDER

Mayor Horne called the Regular Meeting of the City Council of the City of Laguna Woods to order at 2:00 p.m.

II. ROLL CALL

COUNCILMEMBER:	PRESENT:	Conners, Hatch, Moore, Horne
	ABSENT:	Hack
STAFF PRESENT:		City Manager Macon, City Attorney Cosgrove, Administrative Services Director/City Treasurer Cady, Deputy City Clerk Trippy, Development Programs Analyst Pennington

III. PLEDGE OF ALLEGIANCE

Dr. Fran Williams, resident, led the flag salute.

IV. PRESENTATIONS AND CEREMONIAL MATTERS

4.1 Black History Month – February 2017

Dr. Fran Williams, Laguna Woods African American Heritage Club, made comments.

Councilmembers made comments.

Moved by Councilmember Conners, seconded by Mayor Pro Tem Moore, and carried on a 4-0 vote, with Councilmember Hack absent, to approve and present the proclamation.

V. PUBLIC COMMENT

Matt Eseltine, Orange County Mosquito and Vector Control District, discussed the potential hazard of standing water in potted plant dishes.

Councilmembers briefly responded to Mr. Eseltine's comments.

Barbara Daly, on behalf of the South Orange County Economic Coalition, provided an overview of the upcoming 3rd Annual South Orange County Economic Report.

Karalee Darnell, Southern California Edison, introduced herself as the new Government Affairs Representative for the City of Laguna Woods.

VI. CONSENT CALENDAR

Moved by Mayor Pro Tem Moore, seconded by Councilmember Hatch, and carried on a 4-0 vote, with Councilmember Hack absent, to approve Consent Calendar items 6.1 – 6.9.

6.1 City Council Minutes

Approved the City Council meeting minutes for the regular meeting on January 18, 2017.

6.2 City Treasurer's Report

Received and filed the City Treasurer's Report for the month of January 2017.

6.3 Warrant Register

Approved the warrant register dated February 15, 2017 in the amount of $542,019.60.

6.4 Employee Compensation and Benefits

Approved a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ESTABLISHING A COMPENSATION SCHEDULE AND BENEFITS FOR CITY EMPLOYEES

6.5 Law Enforcement Service Costs

Authorized the City Manager to expend up to $20,700 from the Fiscal Year 2016-17 General Fund City Council Contingency to support the analysis of potential strategies and actions to address increasing law enforcement service costs.

6.6 Street Sweeping Services

Approved an agreement with Sunset Property Services for street sweeping services and authorized the City Manager to execute the agreement, subject to approval as to form by the City Attorney.

6.7 Tree Pruning and Removal Services

Approved an agreement with West Coast Arborists, Inc. for tree pruning and removal

services and authorized the City Manager to execute the agreement, subject to approval as to form by the City Attorney.

6.8 General Plan Annual Report

Received and filed the General Plan Annual Report for the 2016 calendar year.

6.9 Laguna Woods Civic Support Fund

Ratified the bylaws for the Laguna Woods Civic Support Fund, as adopted and recommended by the Laguna Woods Civic Support Fund Board of Directors.

VII. PUBLIC HEARINGS

7.1 Conditional Use Permit CUP-1162 to allow for the establishment of an indoor archery range at 24232 Calle Aragon, Laguna Woods, CA 92637

City Manager Macon made a presentation and proposed the following modifications to the conditions of approval that were included with the agenda report:

- Deletion of Condition of Approval number 17, related to graffiti; and
- Addition of "City staff or their authorized representatives shall provide advance notice to the property owner prior to conducting any inspection." to Condition of Approval number 18.

Mayor Horne opened the public hearing.

Kathryn Freshley, resident, expressed her support for the proposed conditional use permit with the modifications proposed by the City Manager.

With no other requests to speak, the public hearing was closed.

Councilmembers discussed the item and staff answered related questions.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Conners, and carried on a 4-0 vote, with Councilmember Hack absent, to approve a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT CUP-1162 TO ALLOW FOR THE ESTABLISHMENT OF AN INDOOR ARCHERY RANGE AT 24232 CALLE ARAGON, LAGUNA WOODS, CA 92637

with the deletion of Condition of Approval number 17, related to graffiti, and

the addition of "City staff or their authorized representatives shall provide advance

notice to the property owner prior to conducting any inspection." to Condition of Approval number 18.

7.2 Building, Planning, and Encroachment Permit Fees

City Manager Macon and Terry Madsen, ClearSource Financial, made a presentation.

Mayor Horne opened the public hearing.

With no requests to speak, the public hearing was closed.

Councilmembers discussed the item and staff answered related questions.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Conners, and carried on a 4-0 vote, with Councilmember Hack absent, to approve a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING NEW AND INCREASED OR MODIFIED BUILDING AND PLANNING SERVICES FEES, AND ENCROACHMENT PERMIT FEES

7.3 Wireless Facilities Regulations

City Manager Macon made a presentation.

Councilmembers discussed the item and staff answered related questions.

Mayor Horne opened the public hearing.

With no requests to speak, the public hearing was closed.

Councilmembers discussed the item and staff answered related questions.

Moved by Councilmember Hatch, seconded by Mayor Pro Tem Moore, and carried on a 4-0 vote, with Councilmember Hack absent, to approve the introduction and first reading of an ordinance – read by title with further reading waived – entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.06.101, 13.08.010, 13.10.020, 13.12.020, 13.13.020, 13.24.020, AND 13.26.210 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO THE INSTALLATION AND MODIFICATION OF WIRELESS FACILITIES

VIII. CITY COUNCIL BUSINESS

8.1 Appointment of Southern California Association of Governments' 2017 General

Assembly Delegate and Alternate Delegate

Mayor Horne introduced the item.

Councilmember discussed the item.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Hatch, and carried on a 4-0 vote, with Councilmember Hack absent, to appoint Mayor Horne as the delegate and Mayor Pro Tem Moore as the alternate at the Southern California Association of Governments' 2017 General Assembly.

8.2 Support for Golf Cart Crossing-related State Legislation
(agendized by Mayor Horne)

Mayor Horne summarized the agenda report.

Councilmembers discussed the item and staff answered related questions.

Kathryn Freshley, resident, discussed challenges related to the proposed legislation.

Moved by Councilmember Conners, seconded by Mayor Pro Tem Moore, and carried on a 3-0 vote, with Councilmember Hack absent and Councilmember Hatch abstaining because he would like to see the proposed legislation before the City takes a position, to authorize the Mayor to cause to be prepared, prepare, and submit correspondence stating the City's support for state legislation that would provide cities with additional flexibility to allow combined regular vehicular and golf cart traffic to cross public roadways that are designed and constructed in a manner that would safely permit such combined traffic.

IX. CITY COUNCIL REPORTS AND COMMENTS

9.1 Coastal Greenbelt Authority

Councilmember Conners provided a report.

9.2 Orange County Fire Authority

Councilmember Hatch provided a report.

Division Chief Jeff Adams, Orange County Fire Authority, provided an update on the Oroville Dam situation and discussed the impact that recent rains have had.

Councilmembers and staff briefly responded to Division Chief Adams' comments.

9.3 Orange County Library Advisory Board

Mayor Pro Tem Moore stated that there had been no meeting since the last meeting.

9.4 Orange County Mosquito and Vector Control District

Mayor Horne stated that Mr. Eseltine provided the report earlier in the meeting.

9.5 San Joaquin Hills Transportation Corridor Agency

No report was given due to Councilmember Hack's absence.

9.6 South Orange County Watershed Management Area

Mayor Pro Tem Moore stated that there had been no meeting since the last meeting.

9.7 Other Comments and Reports

Mayor Pro Tem Moore discussed a recent autonomous vehicle presentation at the Southern California Association of Governments.

Kathryn Freshley, resident, stated that the Golden Rain Foundation and the community are currently looking at alternatives to their diesel-powered buses.

Mayor Horne discussed her recent visit to the new Heroes Hall Veterans Museum at the OC Fair & Event Center.

The City Council shared memories of Milt Robbins, former Laguna Woods Councilmember, who passed away on February 9, 2017 at the age of 96. Mayor Horne stated that the meeting will be adjourned in Mr. Robbins' memory.

X. CLOSED SESSION – None

XI. CLOSED SESSION REPORT – None

XII. ADJOURNMENT

The meeting was adjourned in memory of former Laguna Woods Councilmember Milt Robbins at 4:24 p.m. The next regular meeting will be at 2:00 p.m. on Wednesday, April 19, 2017, at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637.

_____

YOLIE TRIPPY, Deputy City Clerk

Adopted: April 19, 2017

_____

SHARI L. HORNE, Mayor

6.2
CITY TREASURER'S REPORT

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City of Laguna Woods
City Treasurer's Report
For the Two Month Period of February and March 2017

CASH AND INVESTMENTS

	Beginning Balances As of 1/31/17	Earnings & Receipts	Disbursements	Other Adjustments	Ending Balances As of 3/31/17	% of Total Cash & Investment Balances	Maximum % Allowed per Investment Policy
Cash and Cash Equivalents							
Analyzed Checking Account (Note 3)	$ 858,197	$ 3,912,508	$ (4,001,560)	$ (246,000)	$ 523,145		
Petty Cash (Note 4)	580	-	(59)	1,000	1,521		
Total Cash and Cash Equivalents	$ 858,776	$ 3,912,508	$ (4,001,619)	$ (245,000)	$ 524,665	4.96%	100.00%
Investments - Interest and Income Bearing							
Local Agency Investment Fund (LAIF) (Notes 1 and 2)	$ 8,829,065	$ -	$ (245,000)	$ -	$ 8,584,065	81.13%	90.00%
Certificates of Deposit	1,227,837	(981)	-	245,000	1,471,855	13.91%	20.00%
Total Investments	$ 10,056,901	$ (981)	$ (245,000)	$ 245,000	$ 10,055,920		
TOTAL CASH, CASH EQUIVALENTS, AND INVESTMENTS	$ 10,915,678	$ 3,911,527	$ (4,246,619)	$ -	$ 10,580,585		

Summary of Total Cash, Cash Equivalents, and Investments:

	General Fund	Special Revenue Funds	Totals
Analyzed Checking	$ (413,018)	$ 936,163	$ 523,145
Petty Cash	$ 1,521	$ -	$ 1,521
LAIF	$ 8,034,551	$ 549,513	$ 8,584,065
Certificates of Deposit	$ 1,471,855	$ -	$ 1,471,855
Totals	$ 9,094,909	$ 1,485,676	$ 10,580,585

Notes:

Note 1 - LAIF / During this period there were transfers totaling $245,000 from the LAIF account to the City's checking account to accommodate the purchase of the Lake City Bank certificate of deposit.

Note 2 - LAIF / LAIF reports interest earnings quarterly. Interest earnings for the quarter ended March 31, 2017 are not yet available and will be paid in April 2017.

Note 3 - Analyzed Checking Account / Monthly activity reported does not reflect March vendor invoicing processed after the date of this report.

Note 4 - Petty cash was increased by $1,000 in March 2017 to allow for cash refunds related to the senior mobility program previously refunded by check.

City of Laguna Woods
City Treasurer's Report
For the Two Month Period of February and March 2017

INVESTMENT PORTFOLIO DETAIL

CUSIP	Investment #	Issuer	Term	Purchase Date	Settlement Date	Par Value	Market Value	Book Value	Stated Rate (Note 1)	Coupon Type	1st Coupon Date	Rating or Rank (Note 2)	Yield to Maturity 365 Days	Maturity Date
Certificate of Deposits (CDs, Federal Deposit Insurance Corporation [FDIC] Insured)														
02006LM59	2016-1	ALLY BK MIDVALE UTAH	24 months	09/12/16	09/15/16	245,000	243,604	245,000	1.150	Semi-Annual	03/15/17	300	1.150	09/17/18
2366+LAM8	2016-2	CITY BANK	12 months	09/12/16	09/20/16	245,000	244,900	245,000	0.800	Annual	09/20/17	247	0.800	09/20/17
949763BJ4	2016-3	WELLS FARGO BANK	18 months	09/13/16	09/28/16	245,000	244,265	245,000	1.000	Monthly	10/28/16	295	1.000	03/28/18
140420F47	2016-4	CAPITAL ONE BANK USA	18 months	09/13/16	09/21/16	245,000	244,309	245,000	1.000	Semi-Annual	03/21/17	300	1.000	03/21/18
57116ANC8	2017-1	MARLIN BUSINESS BK SALT LAKE	18 months	01/13/17	01/13/17	245,000	244,973	245,000	1.250	Monthly	02/13/17	300	1.250	07/13/18
508176CH5	2017-2	LAKE CITY BANK	24 months		03/22/17	245,000	245,368	245,000	1.600	Monthly	04/22/17	300	1.600	03/22/19
		Accrued Interest - Month End				1,856	1,856	1,856						
		Total CDs				**1,471,856**	**1,469,274**	**1,471,856**						
Pooled Money Investment Accounts (PIMA)														
N/A	N/A	Local Agency Investment Fund (LAIF)	N/A	Various	Various	8,584,065	8,584,065	8,584,065	0.634	N/A	N/A	N/A	N/A	N/A
		Total PIMA				**8,584,065**	**8,584,065**	**8,584,065**						

Notes:

Note 1 - The stated earnings rate for CDs is a fixed rate for the full term.

The stated earnings rate for LAIF balances is an average monthly yield applied to the City's weighted average balance within the total pool. Earnings are paid the month after the end of each quarter.

LAIF average monthly investment yield rates over the last six months were:

2016: Sept. 0.634%, Oct. 0.654%, Nov. 0.678%, and Dec. 0.719% / **2017:** Jan. 0.751%, and Feb. 0.777% (March not yet reported)

Note 2 - CDs rank is an IDC Financial Publishing, Inc. compiled ranking, and includes a one-number summary rank of quality comprised of 35 key financial ratios. Ranks range from 1 (the lowest) to 300 (the highest) and fall into one of the following six groups:

Rank	Group
200-300	Superior
165-199	Excellent
125-164	Average
75-124	Below Average
2-74	Lowest Ratios
1	Highest Probability of Failure

Note 3 - Interest received on certificates of deposits for the months of February and March 2017 was $3,503.

City of Laguna Woods
City Treasurer's Report
For the Two Month Period of February and March 2017

OTHER FUNDS - HELD IN TRUST

	Beginning Balances As of 1/31/17	Contributions / (Withdrawals)	Administrative Fees & Investment Expense	Unrealized Gain / (Loss)	Ending Balances As of 3/31/17
Other Post-Employment Benefits (OPEB) Trust					
CalPERS California Employers' Retiree Benefit Trust (CERBT)	$ 65,183	$ -	$ (9)	$ 1,029	$ 66,203
(CERBT holds all assets and administers the OPEB Trust)					
Total Other Funds - Held in Trust	$ 65,183	$ -	$ (9)	$ 1,029	$ 66,203

City Treasurer's Certification

I, Margaret A. Cady, City Treasurer, do hereby certify:

- That all investment actions executed since the last report have been made in full compliance with the City's Investment of Financial Assets Policy; and
- That the City is able to meet all cash flow needs which might reasonably be anticipated for the next 12 months.

Margaret A Cady
Margaret A. Cady, City Treasurer

4/6/17
Dated

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6.3
WARRANT REGISTER

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CITY OF LAGUNA WOODS
WARRANT REGISTER
4/19/2017

Check	Check	Vendor Name	Description	Amount
		Automatic Bank Debits		
Debit	2/22/2017	ADP PAYROLL SERVICES	Payroll / Pay Period Ended 2/17/2017	$35,298.60
Debit	2/22/2017	CALPERS - RETIREMENT	Retirement Contributions / Pay Period Ended 2/17/2017	2,444.49
Debit	3/3/2017	ADP PAYROLL SERVICES	Payroll Processing Fees / Pay Period Ended 2/17/2017	158.58
Debit	3/2/2017	ADP PAYROLL SERVICES	Payroll Year End W-2 Processing Fees	111.35
Debit	3/8/2017	ADP PAYROLL SERVICES	Payroll / Pay Period Ended 3/3/2017	31,676.26
Debit	3/8/2017	CALPERS - RETIREMENT	Retirement Contributions / Pay Period Ended 3/3/2017	2,444.49
Debit	3/17/2017	ADP PAYROLL SERVICES	Payroll Processing Fees / Pay Period Ended 3/3/2017	158.58
Debit	3/22/2017	ADP PAYROLL SERVICES	Payroll / Pay Period Ended 3/17/2017	35,068.41
Debit	3/22/2017	CALPERS - RETIREMENT	Retirement Contributions / Pay Period Ended 3/17/2017	2,444.49
Debit	3/31/2017	ADP PAYROLL SERVICES	Payroll Processing Fees / Pay Period Ended 3/17/2017	290.42
Debit	2/28/2017	BANK OF AMERICA	Bank Fees - February 2017	18.00
Debit	2/28/2017	US BANK	Bank Supplies and Fees - February 2017	241.62
Debit	3/31/2017	BANK OF AMERICA	Bank Fees - March 2017	150.60
Debit	3/1/2017	CALPERS - HEALTH	Employee Benefit Program / March 2017	4,244.52
Debit	4/1/2017	CALPERS - HEALTH	Employee Benefit Program / April 2017	4,244.52
Debit	3/1/2017	COUNTY OF ORANGE	Law Enforcement Services / March 2017	223,770.35
		Warrants:		
118981	02/06/2017	CITY OF LAGUNA WOODS	Transfer of Funds to New Checking Account	350,000.00
118982	02/08/2017	360 BUSINESS CONSULTING	Website Hosting Services / January 2017	200.00
118983	02/08/2017	ALLIANCE ENVIRONMENTAL GROUP	Waste Diversion Deposit Refund	250.00
118984	02/08/2017	AMERICAL CONSTRUCTION	Waste Diversion Deposit Refund	250.00
118985	02/08/2017	ANAHEIM COMMUNITY PUBLISHING	Graphic Design & Printing Services	229.50
118986	02/08/2017	AT&T	Telephone / 458-3487 / January 2017	37.37
118987	02/08/2017	AT&T	Telephone / 452-0600 / January 2017	909.57
118988	02/08/2017	AT&T	Telephone / 639-0500 / January 2017	205.05
118989	02/08/2017	AT&T	Telephone / 770-9359 / January 2017	20.18
118990	02/08/2017	ROBERT M BARRY	Financial Consulting Services / January 2017	280.00
118991	02/08/2017	CEP AMERICA AUC PC	Pre-Employment Physical Examination	50.00
118992	02/08/2017	CYNTHIA CONNERS	Auto Allowance / February 2017	300.00
118993	02/08/2017	COPYFORCE	Printing Services - Business Cards	118.80
118994	02/08/2017	COUNTY OF ORANGE	Automated Fingerprint ID System / February 2017	455.67
118995	02/08/2017	DELTA DENTAL OF CALIFORNIA	Employee Benefits Program / February 2017	430.06
118996	02/08/2017	FISHER PROPERTIES, INC.	Waste Diversion Deposit Refund	250.00
118997	02/08/2017	HACK, BERT	Auto Allowance / February 2017	300.00
118998	02/08/2017	ROBERT NOEL HATCH	Auto Allowance / February 2017	300.00
118999	02/08/2017	SHARI HORNE	Auto Allowance / February 2017	300.00
119000	02/08/2017	KONICA MINOLTA	Copier Lease / February 2017	482.72
119001	02/08/2017	LILLEY PLANNING GROUP	Building Official Services / January 2017	1,638.00
119002	02/08/2017	MACEACHERN COMPANY	Waste Diversion Deposit Refund	250.00
119003	02/08/2017	MBT RESTAURANT VENTURES	South Orange County Mayors Association Breakfast	336.00
119004	02/08/2017	NIEVES LANDSCAPE, INC.	Landscape Maintenance Services / January 2017	360.00

CITY OF LAGUNA WOODS
WARRANT REGISTER
4/19/2017

Check	Check	Vendor Name	Description	Amount
119005	02/08/2017	OBR ARCHITECTURE, INC.	Design Services, City Hall Restroom Repair and Improvement Project	2,405.09
119006	02/08/2017	LOIS PORTNOY	Taxi Voucher Refund	50.00
119007	02/08/2017	RUTAN & TUCKER, LLP	Legal Services / December 2016	2,137.50
119008	02/08/2017	VIVIENNE SOLOMON	Taxi Voucher Refund	50.00
119009	02/08/2017	SONITROL	City Hall Fire Monitoring / February 2017	64.38
119010	02/08/2017	SOUTH COAST RESTORATION	City Hall Repair Services	2,425.00
119011	02/08/2017	SOUTHERN CALIFORNIA EDISON	Traffic Signal Control / January 2017	972.91
119012	02/08/2017	THE GAS COMPANY	City Hall Utilities / January 2017	173.74
119013	02/08/2017	TYLER TECHNOLOGIES, INC.	Financial Software License Fees	20,066.40
119014	02/08/2017	WAGE WORKS	125 Cafeteria Plan / December 2016	100.00
119015	02/15/2017	ANAHEIM COMMUNITY PUBLISHING	Printing Services	161.96
119016	02/15/2017	AT&T	White Pages / February 2017	4.48
119017	02/15/2017	BALLIET, MICHAEL	Waste & Recycling Consulting Services / January 2017	3,085.00
119018	02/15/2017	CALIFORNIA BLDG STANDARDS COMM	Building Permit Fee Assessment / July - December 2016	509.35
119019	02/15/2017	CITY OF LAGUNA BEACH	Animal Control & Shelter Services / February 2017	8,043.00
119020	02/15/2017	DEPARTMENT OF CONSERVATION	Strong Motion Instrumentation & Seismic Hazard Mapping Fee / July - September 2016	1,302.33
119021	02/15/2017	DICKINSON ELECTRIC	City Hall Electrician Services	478.22
119022	02/15/2017	MARC DONOHUE	Administrative Services / January 2017	200.00
119023	02/15/2017	EL TORO WATER DISTRICT	Landscape Irrigation / January 2017	2,544.81
119024	02/15/2017	KONE, INC.	City Hall Elevator Maintenance / February 2017	246.98
119025	02/15/2017	ORANGE COUNTY REGISTER-NOTICES	Public Notices / January 2017	717.00
119026	02/15/2017	PRINTING SYSTEMS, INC.	Printing Services - Checks	117.81
119027	02/15/2017	PV MAINTENANCE, INC.	Street, City Hall & Park Maintenance Services / January 2017	21,764.63
119028	02/15/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controller / January 2017	24.04
119029	02/15/2017	SOUTHERN CALIFORNIA EDISON	Right of Way / January 2017	1,864.47
119030	02/15/2017	SOUTHERN CALIFORNIA EDISON	Traffic Signal Control / January 2017	240.50
119031	02/15/2017	SOUTHERN CALIFORNIA EDISON	Encroachment Permit Balance Refunds	838.75
119032	02/15/2017	WM CURBSIDE, LLC	HHW, Medicine and Sharps Collection Program / January 2017	2,683.60
119033	02/22/2017	AT&T	Telephone / 581-3974 / February 2017	94.29
119034	02/22/2017	AT&T	Telephone / 583-1105 / January 2017	19.62
119035	02/22/2017	CAA	Water Quality Consulting Services / January 2017	2,274.00
119036	02/22/2017	CAPTIONING UNLIMITED	Closed Captioning / City Council Meetings	500.00
119037	02/22/2017	YUWEI CHEN	Taxi Voucher Refund	25.00
119038	02/22/2017	CSG CONSULTANTS, INC.	Plan Check Services / January 2017	170.00
119039	02/22/2017	DICKINSON ELECTRIC	City Hall Electrician Services	88.00
119040	02/22/2017	CHARLOTTE GIULIANO	Taxi Voucher Refund	60.00
119041	02/22/2017	HINDERLITER DELLAMAS	Sales and Use Tax Consulting Services / 1st Quarter 2017	1,156.97
119042	02/22/2017	MIE Y KAO	Taxi Voucher Refund	75.00
119043	02/22/2017	MICHAEL BAKER INTERNATIONAL	General Plan Comprehensive Update Project / January 2017	4,711.25
119044	02/22/2017	NIEVES LANDSCAPE, INC.	Right of Way Landscape Maintenance / February 2017	11,800.00
119044	02/22/2017	NIEVES LANDSCAPE, INC.	City Hall Landscape Maintenance / February 2017	406.25
119045	02/22/2017	NUVIS	Landscape Architecture Services / January 2017	1,442.50
119046	02/22/2017	PEAK LIGHTING & ELECTRIC, INC	Residential Streetlight Maintenance / February 2017	682.89

CITY OF LAGUNA WOODS
WARRANT REGISTER
4/19/2017

Check	Check	Vendor Name	Description	Amount
119047	02/22/2017	PRINCIPAL FINANCIAL GROUP	Long-Term Disability Insurance / March 2017	430.68
119048	02/22/2017	QUIKSHIP	Office Supplies	200.64
119049	02/22/2017	SIEMENS INDUSTRY, INC.	Traffic Signal Maintenance / January 2017	1,873.50
119050	02/22/2017	STAPLES	Office Supplies	337.85
119051	02/22/2017	THALES CONSULTING INC.	Annual Cities Financial Transactions Report / FY 2015-16	1,000.00
119052	03/01/2017	ANDERSONPENNA PARTNERS, INC.	Code Enforcement Services / January 2017	2,784.00
119052	03/01/2017	ANDERSONPENNA PARTNERS, INC.	Landscape Inspection Services / January 2017	3,383.50
119053	03/01/2017	ARC DOCUMENT SOLUTIONS, LLC	Printing Services - Moulton Parkway Water Efficient Median Improvement	301.83
119054	03/01/2017	BUSINESS PLANS, INCORPORATED	125 Cafeteria Plan / February 2017	100.00
119055	03/01/2017	CYNTHIA CONNERS	Auto Allowance / March 2017	300.00
119056	03/01/2017	COPYFORCE	Printing Services - Building Services	177.79
119057	03/01/2017	COX COMMUNICATIONS	Encroachment Permit Refund Duplicate Payment	841.35
119058	03/01/2017	DELTA DENTAL OF CALIFORNIA	Employee Benefits Program / March 2017	430.06
119059	03/01/2017	EL TORO WATER DISTRICT	Landscape Irrigation / February 2017	1,986.99
119060	03/01/2017	EL TORO WATER DISTRICT	Fire Code Requirement - Backflow - City Hall / February 2017	30.68
119061	03/01/2017	EL TORO WATER DISTRICT	City Hall Water & Sewer Services / February 2017	122.89
119062	03/01/2017	GENERAL DATA CO	Office Printer Maintenance	168.61
119063	03/01/2017	HACK, BERT	Auto Allowance / March 2017	300.00
119064	03/01/2017	ROBERT NOEL HATCH	Auto Allowance / March 2017	300.00
119065	03/01/2017	SHARI HORNE	Auto Allowance / March 2017	300.00
119066	03/01/2017	JEANNE PETERS	Taxi Voucher Refund - Replace Check 118004	19.50
119067	03/01/2017	RUTAN & TUCKER, LLP	Legal Services / December 2016 - January 2017	10,879.75
119068	03/01/2017	CAROL SKYDELL	Taxi Voucher Refund	50.00
119069	03/01/2017	SOUTHERN CALIFORNIA EDISON	City Hall / February 2017	1,111.06
119070	03/01/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controllers / February 2017	92.73
119071	03/01/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controller / February 2017	25.63
119072	03/01/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controller / February 2017	24.40
119073	03/01/2017	STAPLES	Office & Janitorial Supplies	179.38
119074	03/01/2017	TYLER TECHNOLOGIES, INC.	Financial Software License and Conversion Fees	31.25
119075	03/01/2017	VECTUS	City Hall Internet Service / March 2017	381.14
119076	03/01/2017	VISION SERVICE PLAN OF AMERICA	Employee Benefits Program / March 2017	120.18
119077	03/03/2017	LAGUNA WOODS CIVIC SUPPORT FUND	Start Up Capital Contribution	3,737.86
1000-1006		VOID	Voided Checks	0.00
1007	03/08/2017	360 BUSINESS CONSULTING	Website Hosting / February 2017	200.00
1008	03/08/2017	ROBERT M BARRY	Financial Consulting Services / February 2017	70.00
1009	03/08/2017	CLEARSOURCE FINANCIAL	Building, Planning, and Encroachment Permit Fee Study	5,550.00
1010	03/08/2017	KONICA MINOLTA	Copier Lease / March 2017	482.72
1011	03/08/2017	MANAGED HEALTH NETWORK	Employee Benefits Program / March 2017	16.72
1012	03/08/2017	MICHAEL BAKER INTERNATIONAL	Planning Services / March 2017	50.00
1013	03/08/2017	MR. VIDEO	Supplies / Senior Mobility Program	88.50
1014	03/08/2017	NIEVES LANDSCAPE, INC.	City Hall Landscape Maintenance / November 2016 & March 2017	812.50
1014	03/08/2017	NIEVES LANDSCAPE, INC.	Right of Way Landscape / November 2016 & March 2017	23,600.00
1015	03/08/2017	JOAN SAXTON	Taxi Voucher Refund	24.50

CITY OF LAGUNA WOODS
WARRANT REGISTER
4/19/2017

Check	Check	Vendor Name	Description	Amount
1016	03/08/2017	SONITROL	City Hall Fire Monitoring / March 2017	64.38
1017	03/08/2017	SOUTHERN CALIFORNIA EDISON	Residential Streetlights / February 2017	1,875.94
1018	03/08/2017	SOUTHERN CALIFORNIA EDISON	Traffic Signal Control / February 2017	1,009.88
1019	03/08/2017	SOUTHERN CALIFORNIA EDISON	Ridge Route Dog Park / February 2017	24.28
1020	03/08/2017	TEAM ONE MANAGEMENT	Janitorial Services and Shredding Event Support / January - February 2017	2,131.00
1021		VOID	Voided Check	0.00
1022	03/13/2017	CALIFORNIA YELLOW CAB	NEMT Taxi Voucher Services / January 2017	11,752.00
1022	03/13/2017	CALIFORNIA YELLOW CAB	Taxi Voucher Services / December 2016 - January 2017	22,302.00
1023-1025		VOID	Voided Checks	0.00
1026	03/22/2017	AT&T	Telephone / 458-3487 / February 2017	37.41
1027	03/22/2017	AT&T	Telephone / 452-0600 / February 2017	1,073.16
1028	03/22/2017	AT&T	Telephone / 639-0500 / February 2017	205.17
1029	03/22/2017	AT&T	Telephone / 770-9359 / February 2017	20.20
1030	03/22/2017	AT&T	Telephone / 581-3974 / March 2017	255.13
1031	03/22/2017	AT&T	Telephone / 583-1105 / February 2017	19.66
1032	03/22/2017	AT&T	White Pages / March 2017	4.48
1033	03/22/2017	ZACHI BIGLEIZN	Waste Diversion Deposit Refund	900.00
1034	03/22/2017	BUSINESS PLANS, INCORPORATED	125 Cafeteria Plan Administration Fee / March 2017	100.00
1035	03/22/2017	CAA	Water Quality Consulting Services / February 2017	2,766.00
1036	03/22/2017	CALIFORNIA YELLOW CAB	Taxi Voucher Services / February 2017	10,425.00
1036	03/22/2017	CALIFORNIA YELLOW CAB	NEMT Taxi Voucher Services / February 2017	12,815.00
1037	03/22/2017	ANNA CHATTLER	Taxi Voucher Refund	54.00
1038	03/22/2017	ANTHONY CHIARILLI	Taxi Voucher Refund	50.00
1039	03/22/2017	JOSEPH CHIRILLO	Waste Diversion Deposit Refund	250.00
1040	03/22/2017	CITY OF LAGUNA BEACH	Animal Control & Shelter Services / March 2017	8,043.00
1041	03/22/2017	CITY OF LAGUNA WOODS	Petty Cash Fund / Increase Balance	650.00
1042	03/22/2017	CIVIL SOURCE	Traffic & Engineering Services / January 2017	9,215.00
1042	03/22/2017	CIVIL SOURCE	Building Inspection and Counter Services / January 2017	36,062.50
1043	03/22/2017	ELIZABETH COE	Cancelled Permit Refund	162.00
1044	03/22/2017	COUNTY OF ORANGE	Automated Fingerprint ID System / March 2017	455.67
1045	03/22/2017	COUNTY OF ORANGE	800MHz Communication Charges / January - March 2017	190.00
1045	03/22/2017	COUNTY OF ORANGE	Communication Charges 800 MHz Flat Rate / October - December 2016	1,235.41
1046	03/22/2017	MARC DONOHUE	Administrative Services / February 2017	225.00
1047	03/22/2017	HANDY EDDY CONSTRUCTION	Waste Diversion Deposit Refund	250.00
1048	03/22/2017	J G CONSTRUCTION	Cancelled Permit Refund	2,827.60
1049	03/22/2017	J. LIN REMODELING SERVICES, INC.	Waste Diversion Deposit Refund	250.00
1050	03/22/2017	KONE, INC.	City Hall Elevator Maintenance / March 2017	246.98
1051	03/22/2017	LILLEY PLANNING GROUP	Building Official Services / February 2017	2,223.00
1052	03/22/2017	MACEACHERN COMPANY	Waste Diversion Deposit Refund	250.00

CITY OF LAGUNA WOODS
WARRANT REGISTER
4/19/2017

Check	Check	Vendor Name	Description	Amount
1053	03/22/2017	MICHAEL BAKER INTERNATIONAL	Planning Services / January 2017	3,581.08
1053	03/22/2017	MICHAEL BAKER INTERNATIONAL	General Plan Comprehensive Update Project / February 2017	4,066.25
1053	03/22/2017	MICHAEL BAKER INTERNATIONAL	Planning Services / February 2017	1,910.00
1054	03/22/2017	NIEVES LANDSCAPE, INC.	Landscape Maintenance Services	734.70
1055	03/22/2017	PRINCIPAL FINANCIAL GROUP	Long-Term Disability Insurance / April 2017	430.68
1056	03/22/2017	PV MAINTENANCE, INC.	Catch Basin Maintenance / February 2017	2,244.00
1056	03/22/2017	PV MAINTENANCE, INC.	Street, City Hall & Park Maintenance Services / February 2017	17,924.80
1057	03/22/2017	RED HAWK FIRE & SECURITY, LLC	Annual Fire Extinguisher Inspection / FY 2016-17	122.00
1058	03/22/2017	SADDLEBACK WINDOWS AND DOORS	CDBG Energy Efficiency Improvement Program / FY 2016-17	15,501.00
1059	03/22/2017	DAVID SCOTT	Waste Diversion Deposit Refund	250.00
1060	03/22/2017	PAUL SCOTTSBERG	Waste Diversion Deposit Refund	250.00
1061	03/22/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controller / February 2017	26.51
1062	03/22/2017	SOUTHERN CALIFORNIA EDISON	Traffic Signal Control / February 2017	240.50
1063	03/22/2017	STAPLES	Office Supplies	112.82
1064	03/22/2017	THE GAS COMPANY	City Hall Utilities / February 2017	109.36
1065	03/22/2017	YOLIE TRIPPY	Reimbursement - Payroll Reconciliation Project, Amended Tax Preparation Fees	1,200.00
1066	03/22/2017	UNIVERSAL ABATEMENT	Waste Diversion Deposit Refund	250.00
1067	03/22/2017	WM CURBSIDE, LLC	HHW, Medicine, and Sharps Collection Program / February 2017	2,527.75
1068	03/29/2017	ANDERSONPENNA PARTNERS, INC.	Code Enforcement Services / February 2017	2,784.00
1069	03/29/2017	AUTOMATED GATE SERVICES, INC.	Gate Repair Services - Santa Maria Avenue	235.00
1070	03/29/2017	COASTAL CURRENT ELECTRIC	Cancelled Permit Refund	122.00
1071	03/29/2017	PHILIP COPELAND	Taxi Voucher Refund	34.50
1072	03/29/2017	CSG CONSULTANTS, INC.	Plan Check Services / February 2017	340.00
1073	03/29/2017	DELTA DENTAL OF CALIFORNIA	Employee Benefits Program / April 2017	430.06
1074	03/29/2017	EL TORO WATER DISTRICT	Backflow Fire Code Requirement - City Hall / March 2017	30.68
1075	03/29/2017	EL TORO WATER DISTRICT	City Hall Water & Sewer Services / March 2017	120.10
1076	03/29/2017	DAWN FROESCHNER	Waste Diversion Deposit Refund	250.00
1077	03/29/2017	GEOGRAPHICS	Graphic Design Services	785.23
1078	03/29/2017	LINDA GREENBLATT	Taxi Voucher Refund	58.00
1079	03/29/2017	NIEVES LANDSCAPE, INC.	Annual Backflow Testing	800.00
1080	03/29/2017	OFFICE DEPOT	Office Supplies	242.43
1081	03/29/2017	PRINTING SYSTEMS, INC.	Printing Services - Checks	282.54
1082	03/29/2017	PROTEL COMMUNICATIONS, INC	Telephone System Maintenance	179.00
1083	03/29/2017	RED HAWK FIRE & SECURITY, LLC	Fire Alarm Services	299.00
1084	03/29/2017	RUTAN & TUCKER, LLP	Legal Services / February 2017	5,025.00
1085	03/29/2017	SIEMENS INDUSTRY, INC.	Traffic Signal Maintenance / March 2017	1,723.00
1086	03/29/2017	SIGNS BY CREATIONS UNLIMITED	Signs for Dog Park	328.64

CITY OF LAGUNA WOODS
WARRANT REGISTER
4/19/2017

Check	Check	Vendor Name	Description	Amount
1087	03/29/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controllers / March 2017	96.11
1088	03/29/2017	STAPLES	Office Supplies	139.26
1089	03/29/2017	TYLER TECHNOLOGIES, INC.	Financial Software License and Conversion Fees	250.00
1090	03/29/2017	VISION SERVICE PLAN OF AMERICA	Employee Benefits Program / April 2017	120.18
1091	03/29/2017	WL MCFADDEN CONSTRUCTION, INC	Waste Diversion Deposit Refund	250.00
119078	04/03/2017	CITY OF LAGUNA WOODS	Transfer of Funds to New Checking Account	100,000.00
			Total Bank Debits and Warrants:	**$1,157,241.14**

Credit Card Statement Detail / February 6 - March 5, 2017

FedEx Office	Courier Services	69.30
GoDaddy.com	Domain Registration	130.08
Government Finance Officers Association	Application Fee - Comprehensive Annual Financial Report Review Program	370.00
	Total Credit Cards:	**569.38**

Petty Cash Expenditure Detail

FedEx Office	Courier Services	59.16
	Total Petty Cash:	**59.16**

TOTAL **$1,157,869.68**

6.4
NETWORK SERVER AND PRINTERS REPLACEMENT AND UPGRADE
(NO REPORT)

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6.5
INVESTMENT OF FINANCIAL ASSETS POLICY

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: April 19, 2017 Regular Meeting

SUBJECT: Investment of Financial Assets Policy

Recommendation

Approve a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, REVIEWING AND ADOPTING A STATEMENT OF THE INVESTMENT POLICY AND ADOPTING AN INVESTMENT POLICY

Background

Local government investment policies and activities are subject to standards and limitations set forth in California Government Code, including Section 53601 et seq., which describes permissible investment types and maximum investments.

The existing investment policy is set forth in Administrative Policy 2.2 (Investment of Financial Assets) and was last reviewed and adopted by the City Council at the regular meeting on November 16, 2016. At that time, no changes were made from the policy adopted the year prior. The Investment Policy Review Committee had reviewed and recommended adoption of the same to the City Council at the special meeting on October 4, 2016.

At the regular meeting on December 21, 2016, the City Council appointed Mayor Horne and Mayor Pro Tem Moore to serve on the Investment Policy Review Committee for the 2017 calendar year.

Discussion

In January 2017, the existing investment policy was certified by the California Municipal Treasurers Association (CMTA). CMTA's certification is a reflection of the City's due diligence in adopting an investment policy that conforms to standards developed by CMTA and the State of California's Debt and Investment Advisory Commission. To receive certification, the City was required to demonstrate the implementation of best practices in 18 different content areas.

After considering feedback provided by CMTA, as well as the City's experience implementing the investment policy since its initial adoption in November 2015, staff is proposing several modifications to the investment policy (attachments A and B). The Investment Policy Review Committee has reviewed staff's proposal, with the exception of one additional modification that was identified by the City Treasurer thereafter, and recommends that the City Council adopt the same.

The additional modification identified by the City Treasurer would move "local government investment pools and other pooled investment funds such as money market mutual funds" to subsection (B), instead of subsection (A), in Section 2.2.10. Such a modification would be consistent with the approach taken in the existing investment policy and better align the description of those investments with Government Code.

Fiscal Impact

Funds to support this project are included in the City's budget.

Report Prepared With: Margaret Cady, CPA, Administrative Services Director/City Treasurer

Attachments: A – Proposed Resolution
Exhibit A – Proposed Investment Policy
B – Proposed Investment of Financial Assets Policy (redline from existing)

RESOLUTION NO. 17-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, REVIEWING AND ADOPTING A STATEMENT OF THE INVESTMENT POLICY AND ADOPTING AN INVESTMENT POLICY

WHEREAS, the legislature of the State of California has declared that the deposit and investment of public funds by local officials and agencies is an issue of statewide concern (Government Code sections 53600.6 and 53630.1); and

WHEREAS, the City Council is able to invest surplus monies not required for the immediate necessities of the City in accordance with Government Code sections 5921 and 53601 *et seq*.; and

WHEREAS, the City's investment policy is contained in Administrative Policy 2.2 and was last adopted by the City Council on November 16, 2016; and

WHEREAS, on December 21, 2016, the City Council appointed Mayor Horne and Mayor Pro Tem Moore to a standing Investment Policy Review Committee in accordance with the City's investment policy; and

WHEREAS, the Investment Policy Review Committee has worked with the City Treasurer and staff to review the adequacy and effectiveness of the City's investment policy as adopted on November 16, 2016, and recommended on April 4, 2017 that the City Council adopt a modified investment policy; and

WHEREAS, the City Treasurer recommends one additional modification to the City's investment policy that was identified after the Investment Policy Review Committee's review. The modification would move "local government investment pools and other pooled investment funds such as money market mutual funds" to subsection (B), instead of subsection (A), in Section 2.2.10. Such a modification is consistent with the approach taken in the existing investment policy and better aligns the description of those investments with Government Code; and

WHEREAS, Exhibit A (attached hereto) contains the modified investment policy recommended by the Investment Policy Review Committee, as well as the additional modification recommended by the City Treasurer.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the administrative policy attached hereto as Exhibit A is approved and is a statement of the City's investment policy. The City Council receives and files said statement in accordance with the City's investment policy and applicable Government Code and Laguna Woods Municipal Code provisions. The administrative policy attached hereto as Exhibit A replaces and supersedes all previous City investment policies.

SECTION 2. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED on this XX day of XX 2017.

_____
SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 17-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the XX day of XX 2017, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

CITY OF LAGUNA WOODS
ADMINISTRATIVE POLICY 2.2

INVESTMENT OF FINANCIAL ASSETS

2.2.01. Statement of Purpose.

This Administrative Policy is intended to assist the City of Laguna Woods with the investment of the City's financial assets in a manner that ensures adequate safety and liquidity, while maximizing yield (return) and complying with the requirements of California Government Code sections 5921 and 53600 et seq.

2.2.02. Scope.

This Administrative Policy generally applies to all financial assets of the City. Such funds are accounted for, or disclosed, in annual audited financial statements and include the General Fund, Special Revenue Funds, and the Capital Projects Fund. Funds invested separately with independent fiduciaries, including funds held and managed by the California Public Employees' Retirement System (CalPERS) for the purpose of funding employee retirement obligations and other post-employment benefits (OPEB) are exempt from this Administrative Policy.

2.2.03. Objectives.

The objectives of the City's investment activities, in priority order, shall be:

1. Safety – Safety of principal shall be the foremost objective. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall investment portfolio and the mitigation of credit risk and interest rate risk. This Administrative Policy recognizes that market conditions may warrant the sale of individual securities that would incur market losses in order to protect from further capital losses. The intent of this Administrative Policy is to ensure that capital losses are minimized on a portfolio level rather than on each transaction. To attain the safety objective, diversification of investments among a variety of securities with independent returns and institutions is required.

2. Liquidity – The investment portfolio shall remain sufficiently liquid (i.e., capable of being converted to cash quickly) in order to enable the City to meet all reasonably anticipated cash demands and operational requirements and to maintain compliance with all applicable indenture agreements. Since unusual

or unanticipated cash demands and operational requirements may occur from time-to-time, the portfolio shall primarily consist of investments in securities with active secondary and resale markets.

3. Yield (Return) – The investment portfolio shall be designed in a manner that seeks to attain the highest rate of return, consistent with established safety and liquidity objectives. While it is acknowledged and understood that occasional measurement losses may occur, the overall portfolio should generally earn at least market interest rates (market-average rates of return throughout budgetary and economic cycles for similar investments).

2.2.04. Delegation of Authority.

City Treasurer

No person other than the City Treasurer or Acting City Treasurer (hereafter referred to jointly as the "City Treasurer") shall engage in an investment transaction using the City's financial assets. The City Treasurer shall additionally be responsible for all transactions undertaken and shall establish and maintain a system of internal controls to regulate all investing activities.

In accordance with Government Code Section 53607, the City Council delegates investment authority for a one-year period to the City Treasurer. Such delegation of authority is subject to annual review and renewal by the City Council, as well as revocation at the City Council's discretion. Adoption of this Administrative Policy shall constitute renewal of such delegation for an additional one-year period.

Pursuant to Laguna Woods Municipal Code Section 2.10.010, the City Treasurer is appointed by, and reports to, the City Manager. The City Manager may serve as, or appoint, an Acting City Treasurer at any time during the absence of a permanent City Treasurer. During his or her appointment, the Acting City Treasurer shall have all of the powers and duties of the City Treasurer.

The City Treasurer and City Manager (with respect to his or her role appointing and supervising the City Treasurer, and participating in investment decisions) shall be relieved of personal responsibility for an individual investment's performance or losses, market price changes, and the performance of or losses incurred by the overall portfolio provided that (1) actions were undertaken in accordance with this Administrative Policy and applicable federal and state law, (2) significant deviations

from expectations were reported to the City Council in a timely manner, and (3) appropriate action was taken to mitigate future adverse developments.

Investment Policy Review Committee of the City Council

The City Council shall appoint two of its members to serve on an Investment Policy Review Committee for calendar year terms commencing on January 1 of each year. The Investment Policy Review Committee shall be responsible for conducting at least biannual reviews of the adequacy and effectiveness of this Administrative Policy and preparing related recommendations for City Council consideration.

The Investment Policy Review Committee shall be considered a standing committee, subject to all applicable provisions of the Ralph M. Brown Act.

2.2.05. Public Trust.

The City Council, City Manager, City Treasurer, and all individuals authorized to participate in investment decisions on behalf of the City shall act as custodians of the public trust and recognize that the investment portfolio is subject to public review and evaluation. The City's overall approach to investment shall be designed and managed with a degree of professionalism that is worthy of the public trust.

2.2.06. Prudence.

The City Council, City Manager, City Treasurer, and all individuals authorized to participate in investment decisions on behalf of the City, are considered to be trustees and, therefore, fiduciaries subject to the prudent investor standard. The prudent investor standard is summarized in Government Code Section 53600.3, as follows:

> *All governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs*

of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.

2.2.07. Ethics and Conflicts of Interest.

As set forth in the City's Conflict of Interest Policy, and as otherwise required by the Political Reform Act and Fair Political Practices Commission, public officials who manage public investments are required to file economic interest disclosures.

In addition to federal, state and local statutes relating to conflicts of interest, the City Council, City Manager, City Treasurer, and all individuals authorized to participate in investment decisions on behalf of the City shall refrain from personal business association or activity that conflicts with proper execution of this Administrative Policy, or which could impair their ability to make impartial investment decisions.

2.2.08. Internal Controls and Routine External Review.

The City Treasurer shall develop, implement, and maintain a system of internal controls designed to ensure the effectiveness and efficiency of investment activities, compliance with applicable laws and regulations, and the reliability of financial reporting. Such internal controls shall seek to prevent the loss of public funds due to fraud, error, misrepresentation, and unanticipated market changes.

As a part of their annual review of internal controls, the City's independent, external auditors shall review internal controls related to investment activities.

2.2.09. Authorized Financial Dealers, Depositories, and Institutions.

In accordance with Government Code Section 53601.5, investments shall either be purchased (1) directly from the issuer, (2) from an institution licensed by the State of California as a Broker-Dealer, as defined in Corporations Code Section 25004, provided that the institution is a primary or regional dealer qualified under federal Securities and Exchange Commission Rule 15C3-1 (Uniform Net Capitol Rule), (3) from a member of a federally regulated securities exchange, (4) from a national or state-chartered bank, from a savings association or federal association, as defined by Financial Code Section 5102, or (5) from a brokerage firm designated as a primary government dealer by the Federal Reserve bank. In addition, investments shall only be purchased from entities or deposits made in qualified public depositories, as

established by State law, with full knowledge of applicable California law and at least five years' experience providing similar services to California municipalities.

The selection of financial dealers, depositories, and institutions shall follow a periodic competitive procurement process (e.g., requests for proposals or requests for qualifications) and be subject to ultimate approval of the City Council or City Manager in accordance with established purchasing regulations and policies. The nature of the competitive procurement process, frequency thereof, and submittals required, shall be designed and determined by the City Treasurer.

On an annual basis, the City Treasurer shall send a copy of the current version of this Administrative Policy to all financial dealers, depositories, and institutions approved to do business with the City. Receipt of this Administrative Policy shall be considered confirmation that the parties to whom they were distributed understand the City's authorized investment types and requirements thereof.

2.2.10. Authorized Investments.

In accordance with the requirements set forth in this Administrative Policy and in Government Code sections 53601, 53601.6, 53601.8, 53635, 53635.2, 53638, and 53684, the following types of investment are authorized:

A. Monies required to meet immediate cash flow needs:

- *Federal Deposit Insurance Corporation (FDIC) Insured Accounts*
  Fully insured under $250,000 or collateralized at 110% of principal and accrued interest in accordance with California Government Code

B. Monies not required to meet immediate cash flow needs, but which can be reasonably anticipated to be required over the following 12 months:

- *Bankers' Acceptances*
  Minimum Standard & Poor's Rating: A-1, Minimum Moody's Rating: P-1
- *Commercial Paper*
  Minimum Standard & Poor's Rating: A-1, Minimum Moody's Rating: P-1
- *Local Government Investment Pools and other pooled investment funds such as money market mutual funds*
  Minimum Standard & Poor's Rating (Money Market Mutual Funds): AAA, Minimum Moody's Rating: Aaa, or other rating service equivalent

- *Non-Negotiable Certificates of Deposit*
  Issued by a nationally or state-chartered bank, or state or federal savings and loan association, as defined by Financial Code Section 5102; and (1) with an "A" or better rating on its long-term debt as provided by Standard & Poor's or Moody's or (2) with minimum short-term ratings by two rating services. For (2), the minimum Standard & Poor's rating shall be A-1 and the minimum Moody's rating shall be P-1.
- *Passbook Savings Demand Deposits*
  Fully insured by FDIC or collateralized
- *Repurchase Agreements*
  Minimum Standard & Poor's Rating: AA, Minimum Moody's Rating: Aa
- *All investments authorized under Section 2.2.10(A).*

C. Monies not required to meet immediate cash flow needs, and which cannot be reasonably anticipated to be required over the following 12 months:

- *United States Treasury Obligations (notes, bonds, bills, or other certificates or coupons)*
  Explicit full faith and credit guarantee of the United States Government.
  Minimum Standard & Poor's Rating for Bonds: AA or A-1+, Minimum Moody's Rating for Bonds: Aa3 or P-1
- *United States Agency Obligations*
  Implied full faith and credit guarantee of the United States Government.
  Minimum Standard & Poor's Rating for Bonds: AA or A-1+, Minimum Moody's Rating for Bonds: Aa3 or P-1
- *State of California and Others States-issued Obligations (notes, bonds, or warrants)*
  Minimum Standard & Poor's Rating for Bonds: AA or A-1+, Minimum Moody's Rating for Bonds: Aa or P-1
- *California Local Government-issued Municipal Obligations (notes, bonds, warrants, or other indebtedness issued by a California county, city, or local district/agency)*
  Minimum Standard & Poor's Rating: AA or A-1+, Minimum Moody's Rating: Aa or P-1
- *Negotiable Certificates of Deposit*
  Issued by a nationally or state-chartered bank, or state or federal savings and loan association, as defined by California Financial Code Section 5102.

Collateral shall comply with Chapter 4, Bank Deposit Law, Section 16500 et seq., and Chapter 4.5, Savings and Loan Association and Credit Union Deposit Law, Section 16600 et seq., of California Government Code.

- *All investments authorized under sections 2.2.10(A) and (B).*

2.2.11. Local Government Investment Pools and Other Pooled Investment Funds.

While local government investment pools generally provide significant safety and liquidity, the City Treasurer shall complete a thorough investigation prior to making any such investment and consider the same during the monthly compliance review required by Section 2.2.13. Due diligence in investigations shall generally include a review of written statements of investment policies, objectives, fees schedules, and reporting schedules, as well as issues related to (1) eligible investors and securities, (2) the permitted frequencies and sizes of deposits and withdrawals, (3) security safeguards, including settlement processes, (4) the frequency with which securities are priced and the program audited, (5) the treatment of gains and losses, including interest calculations and distribution, (6) whether and, if so, how reserves, retained earnings, and similar funds are utilized by the investment pool, and (7) whether the investment pool is eligible for and, if so, accepts bond proceeds. In addition, only local government investment pools with at least five years' experience providing similar services to other California municipalities may be utilized. Similar due diligence and investigative procedures shall be performed prior to investing in any other pooled investment funds, such as money market mutual funds.

2.2.12. Prohibited Investments.

Notwithstanding those types of investments that are otherwise prohibited by law or this Administrative Policy, financial derivatives (e.g., futures, options, and interest rate swaps) and foreign investments (e.g., indices and currencies) are prohibited.

2.2.13. Monthly Internal Compliance Review of Investment Portfolio.

Investments shall be in compliance with the ratings and other requirements set forth in this Administrative Policy at the time of purchase. It is acknowledged and understood that some investments may not fully comply with the same following purchase. The City Treasurer shall review the overall investment portfolio on a monthly basis and identify any investments that no longer comply. Non-compliant investments shall be reported to the City Council, City Manager, and City Attorney within 10 business days of discovery and corrected as soon as practical.

2.2.14. Safekeeping and Custody.

All investments shall be registered in the name of the City and all interest, principal payments, and withdrawals shall indicate the City as the sole payee.

All investments, with the exception of Federal Deposit Insurance Corporation (FDIC) Insured Accounts, Local Government Investment Pools, and Money Market Funds shall be held by a third party custodian designated by the City Treasurer and evidenced by custodial agreements or safekeeping receipts. Third-party custodians shall comply with the requirements set forth in Section 2.2.09.

All security transactions, where applicable, shall use a Delivery-versus-Payment (DVP) settlement procedure with the City's payment due at the time of delivery.

2.2.15. Collateralization.

Collateral for non-negotiable certificates of deposit and negotiable certificates of deposit shall comply with Government Code, Chapter 4, Bank Deposit Law Section 16500 et seq. and the Savings and Loan and Credit Union Deposit Law Government Code Section 16600 et seq. In addition, if the Non-Negotiable Certificate of Deposit is not Federal Deposit Insurance Corporation (FDIC) insured or exceeds the FDIC insured limit, collateral is required equal to 100% of the principal.

Collateral for repurchase agreements shall be 110% of the market value of principal and accrued interest. Collateral can be either United States Treasury securities or United States Agency securities. The City Treasurer is authorized to grant the right of collateral substitution for repurchase agreements.

All collateral shall be held by an independent third party with whom the City has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City and retained.

2.2.16. Diversification and Maximum Maturities.

The overall investment portfolio shall be diversified to avoid incurring unreasonable and avoidable risks associated with concentrating investments in specific investment types, maturity segments, or individual financial institutions. In a diversified portfolio, it is acknowledged and understood that occasional measurement losses may occur. Such losses shall be considered within the overall portfolio's investment

return. Diversification also requires investments to be spread among varying security types and institutions.

Authorized investments shall be invested subject to the following:

Table 2.2-1: Diversification and Maximum Maturities Table

Type of Investment	Maximum Amount of Portfolio Investment	Maximum Maturity
Federal Deposit Insurance Corporation (FDIC) Insured Accounts	100%	N/A
Bankers' Acceptances	20% (no more than 5% with one bank)	180 days
Commercial Paper	15% (no more than 10% of a single issuer)	270 days
Local Government Investment Pools	90%	N/A
Money Market Mutual Funds	10%	N/A
Non-Negotiable Certificates of Deposit	20% (no more than 5% with one bank or issuer) and no more than 30% of the overall portfolio when combined with Negotiable Certificates of Deposit	3 years
Negotiable Certificates of Deposit	30% (no more than 5% with one bank or single issuer) and no more than 30% of the overall portfolio when combined with Non-Negotiable Certificates of Deposit	3 years
Passbook Savings Demand Deposits	100%	3 years
Repurchase Agreements	10% (no more than 20% of a single issuer)	30 days

Type of Investment	Maximum Amount of Portfolio Investment	Maximum Maturity
United States Treasury Obligations	90% of overall portfolio for any one investment type (no more than 20% of a single issuer)	3 years
United States Agency Obligations		3 years
State of California and Other States-issued Obligations	20% of overall portfolio for any one investment type (no more than 5% of a single issuer)	3 years
California Local Government-issued Municipal Obligations		3 years

2.2.17. Reporting.

The City Treasurer shall prepare and submit a monthly investment report to the City Council. The report shall include a summary of all investment transactions for the reporting period, as required by Government Code Section 53607, as well as similar information required for optional quarterly investment reports by Government Code Section 53646(b), to the extent that such information is available. The report shall also comply with Government Accounting Standard Board (GASB) Statement No. 40 and include the following:

A. Certification that all investment actions executed since the last report have been made in full compliance with this Administrative Policy; and

B. Certification that the City is able to meet all cash flow needs which might reasonably be anticipated for the next 12 months.

2.2.18. Annual City Council Review and Adoption of this Administrative Policy.

This Administrative Policy shall be reviewed, modified as necessary, and adopted, at least annually, by resolution of the City Council at a duly noticed public meeting. Such annual review shall be in addition to the reviews conducted by the Investment Policy Review Committee as described in Section 2.2.04.

2.2.19. Relationship to Federal and State Laws.

Where federal or state laws are more restrictive than or contradict this Administrative Policy, such laws shall take precedence. Where this Administrative Policy is more restrictive than federal or state laws, this Administrative Policy shall take precedence.

The City Treasurer shall advise the Investment Policy Review Committee of any contradictions of federal or state law for consideration during its reviews conducted as described in Section 2.2.04.

2.2.20. Attachments.

Attachment A, "Glossary of Terms and Acronyms," is incorporated by reference.

Attachment B, "California Municipal Treasurers Association Investment Policy Certification"

City Council Adoption: April XX, 2017

Attachment A, "Glossary of Terms and Acronyms"

This Glossary of Terms and Acronyms contains common investment terminology to provide users with a better understanding of basic investment terms. It is intended to be used as a basic reference only, is not intended to be all inclusive, and should not be treated as a substitute for professional counsel or analysis.

ACCRUED INTEREST: Coupon interest accumulated on a bond or note since the last interest payment or, for a new issue, from the dated date to the date of delivery.

ASSET-BACKED SECURITIES: Securities that are supported by pools of assets, such as installment loans or leases, or by pools of revolving lines of credits. Asset-backed securities are structured as trusts in order to perfect a security interest in the underlying assets.

AVERAGE: An arithmetic mean of selected stocks intended to represent the behavior of the market or some component of it.

BANK DEPOSITS: Deposits in banks or other depository institutions that may be in the form of demand accounts (checking) or investments in accounts that have a fixed term and negotiated rate of interest.

BANK NOTES: A senior, unsecured, direct obligation of a bank or United States branch of a foreign bank.

BANKERS' ACCEPTANCE: A draft or bill or exchange accepted by a bank or trust company. The accepting institution, as well as the issuer, guarantees payment of the bill.

BASIS POINTS: Refers to the yield on bonds. Each percentage point of yield in bonds equals 100 basis points (1/100% or 0.01%). If a bond yield changes from 7.25% to 7.39% that is a rate of 14 basis points.

BENCHMARK: A passive index used to compare the performance, relative to risk and return, of an investor's portfolio.

BOND PROCEEDS: The money paid to the issuer by the purchaser or underwriter of a new issue of municipal securities. These moneys are used to finance the project or purpose for which the securities were issued and to pay certain costs of issuance as may be provided in the bond contract.

BONDS: A debt obligation of a firm or public entity. A bond represents the agreement to repay the debt in principal and, typically, in interest on the principal.

BOOK VALUE: The value at which an asset is carried on a balance sheet.

BROKER: A person or firm that acts as an intermediary by purchasing and selling securities for others rather than for its own account.

CALL OPTION: The terms of the bond contract giving the issuer the right to redeem or call an outstanding issue of bonds prior to its stated date of maturity.

CASH FLOW: A comparison of cash receipts (revenues) to required payments (debt service, operating expenses, etc.).

CERTIFICATE OF DEPOSIT: A short-term, secured deposit in a financial institution that usually returns principal and interest to the lender at the end of the loan period. Certificates of Deposit (CDs) differ in terms of collateralization and marketability. CDs appropriate to public agency investing include:

Negotiable Certificates of Deposit – Generally, short-term debt instruments that pay interest and re issued by a bank, savings or federal association, state or federal credit union, or state-licensed branch of a foreign bank. The majority of negotiable CDs mature within six months while the average maturity is two weeks. Negotiable CDs are traded in a secondary market and are payable upon order to the bearer or initial depositor (investor). Negotiable CDs are insured by the FDIC up to $250,000, but they are not collateralized beyond that amount.

Non-Negotiable Certificates of Deposit – CDs that carry a penalty if redeemed prior to maturity. A secondary market does exist for non-negotiable CDs, but redemption includes a transaction cost that reduces returns to the investor. Non-negotiable CDs issued by banks and savings and loans are insured by the FDIC up to the amount of $250,000, including principal and interest. Amounts deposited above this amount may be secured with other forms of collateral through an agreement between the investor and the issuer. Collateral may include other securities, including treasuries or agency securities (e.g., issued by the Federal National Mortgage Association).

CERTIFICATE OF DEPOSIT ACCOUNT REGISTRY SYSTEM (CDARS): A private CD placement service that allows local agencies to purchase more than $250,000 in CDs from a single financial institution (must be a participating institution of CDARS) while still maintaining FDIC insurance coverage. CDARS is

currently the only entity providing this service. CDARS facilitates the trading of deposits between the California institution and other participating institutions in amounts that are less than $250,000 each, so that FDIC coverage is maintained.

CD PLACEMENT SERVICE: A service that allows local agencies to purchase more than $250,000 in CDs from a single financial institution while still maintaining FDIC insurance coverage. See "CDARS".

COLLATERALIZATION OF DEPOSITS: A process by which a bank or other financial institution pledges securities or other deposits for the purpose of securing the repayment of deposited funds.

COMMERCIAL PAPER: An unsecured short-term promissory note issued by corporations or municipalities, with maturities ranging from two to 270 days.

CORPORATE NOTES AND BONDS: Debt instruments, typically unsecured, issued by corporations, with original maturities in most cases greater than one year and less than ten years.

COUNTY POOLED INVESTMENT FUNDS: The aggregate of all funds from public agencies placed in the custody of the county treasurer or chief finance officer for investment and reinvestment.

COUPON: The annual rate of interest that a bond's issuer promises to pay the bondholder in the bond's face value; a certificate attached to a bond evidencing interest due on a payment date.

CREDIT RATING: The credit worthiness of an investment. Credit ratings are issued by nationally recognized statistical rating organizations (NRSROs) registered with the Securities and Exchange Commission. Three highly recognized organizations are Standard and Poor's, Moody's, and Fitch. The organizations use a primary letter designation (numbers or symbols may follow the letter designation) to indicate the quality of an investment. As an example, short-term ratings by Standard and Poor's of A-1+ and Moody's of P-1 indicate a prime or high grade quality investment. Long-term prime or high grade quality investments would be rated AAA or Aaa by Standard and Poor's and Moody's, respectively. Rates beginning with letters B or C would typically indicate an investment of speculative and higher risk quality.

CREDIT RISK: The chance that an issuer will be unable to make scheduled payments of interest and principal on an outstanding obligation. Another concern for

investors is that the market's perception of an issuer/borrower's credit will cause the market value of a security to fall, even if default is not expected.

CUSTODIAN: A bank or other financial institution that keeps custody of stock certificates and other assets.

DEALER: Someone who acts as a principal in all transactions, including underwriting, buying, and selling securities, including from his or her own account.

DEFAULT RISK: The risk that issuers or borrowers will be unable to make the required payments on their debt obligations.

DEFEASED BOND ISSUES: Issues that have sufficient money to retire outstanding debt when due, so that the agency is released from the contracts and covenants in the bond document.

DELIVERY-VERSUS-PAYMENT (DVP): The payment of cash for securities as they are delivered and accepted for settlement.

DERIVATIVE: Securities that are based on, or derived from, some underlying asset, reference date, or index.

DISCOUNT: The difference between the par value of a security and the cost of the security, when the cost is below par. Investors purchase securities at a discount when return to the investor (yield) is higher than the stated coupon (interest rate) on the investment.

DISCOUNT RATE: The interest rate used in discounted cash flow analysis to determine the present value of future cash flows. The discount rate in discounted cash flow analysis takes into account not just the time value of money, but also the risk or uncertainty of future cash flows; the greater the uncertainty of future cash flows, the higher the discount rate.

DIVERSIFICATION: The allocation of different types of assets in a portfolio to mitigate risks and improve overall portfolio performance.

DURATION: A measure of the timing of the cash flows to be received from a security that provides the foundation for a measure of the interest rate sensitivity of a bond. Duration is a volatility measure and represents the percentage change in price divided by the percentage change in interest rates. A high duration measure indicates

that for a given level of movement in interest rates, prices of securities will vary considerably.

EFFECTIVE DURATION: A measurement of the weighted average of the present value of the cash flows of a fixed-income investment. Effective duration measures the price sensitivity of fixed-income investments, especially for those with embedded option features such as call options. As yields rise, the effective duration of a callable investment rises to reflect the fact that it has become less likely to be called. The more rates rise, the longer the effective duration will become, approaching the duration to maturity. The converse is true in a declining interest rate environment (that is, the more rates fall, the shorter the effective duration will become, approaching the duration to call). For securities without an embedded option, the duration to call, maturity, and effective duration are all the same. The calculation for effective duration is complicated and involves averaging the duration under a simulation of many possible interest rate scenarios in the future.

EVENT RISK: The risk associated with a changing portfolio value due to a market event causing swings in market prices and/or spreads.

EXTENDABLE NOTES: Securities with maturity dates that can be extended by mutual agreement between the issuer and investor. When investing in these types of securities, the maturity date plus the stated extendable option must not exceed the time frames that are allowed in California Government Code or the investment policy for the investment type.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to $250,000 per entity.

FIDUCIARY: An individual who holds something in trust for another and bears liability for its safekeeping.

FIRST TIER SECURITIES: Securities that have received short term debt ratings in the highest category from the requisite nationally recognized statistical-rating organizations (NRSROs), or are comparable unrated securities, or are issued by money market funds, or government securities. [See SEC Rules: Paragraph (A) (12) of rule 2A-7.]

FLOATING RATE SECURITY: A security that has a variable or “floating” interest rate.

GOVERNMENT ACCOUNTING STANDARDS BOARD (GASB): A standard-setting body, associated with the Financial Accounting Foundation, which prescribes standard accounting practices for governmental units.

GOVERNMENT SPONSORED ENTERPRISES (GSE): Privately held corporations with public purposes created by the United States Congress to reduce the cost of capital for certain borrowing sectors of the economy. Securities issued by GSEs carry the implicit backing of the United States Government, but they are not direct obligations of the United States Government. For this reason, these securities will offer a yield premium over Treasuries.

GUARANTEED INVESTMENT CONTRACT (GIC): An agreement acknowledging receipt of funds for deposit, specifying terms for withdrawal, and guaranteeing a rate of interest to be paid.

INDEX: An indicator that is published on a periodic basis that shows the estimated price and/or yield levels for various groups of securities.

INTEREST: The amount a borrower pays to a lender for the use of his or her money.

INTEREST RATE RISK: The risk that an investment's value will change due to a change in the absolute level of interest rates, spread between two rates, shape of the yield curve, or any other interest rate relationship.

INVESTMENT AGREEMENTS: Contracts with respect to funds deposited by an investor. Investment agreements are often separated into those offered by banks and those offered by insurance companies. In the former case, they are sometimes referred to as “bank investment contracts.”

LONDOR INTERBANK OFFERED RATE (LIBOR): The average rate at which a leading bank can obtain unsecured funding in the London interbank market. LIBOR serves as a benchmark for various interest rates. Obligations of parties to such transactions are typically expressed as a spread to LIBOR.

LIQUIDITY: The measure of the ability to convert an instrument to cash on a given date at full face or par value.

LIQUIDITY RISK: The risk that a security, sold prior to maturity, will be sold at a loss of value. For a local agency, the liquidity risk of an individual investment may

not be as critical as how the overall liquidity of the portfolio allows the agency to meet its cash needs.

LOCAL AGENCY INVESTMENT FUND (LAIF): A voluntary investment fund open to government entities and certain non-profit organizations in California that is managed by the State Treasurer's Office.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP): Investment pools that range from the State Treasurer's Office Local Agency Investment Fund (LAIF) to county pools to Joint Powers Authorities (JPAs). These funds are not subject to the same SEC rules applicable to money market mutual funds.

MARKET RISK: The chance that the value of a security will decline as interest rates rise. In general, as interest rates fall, prices of fixed income securities rise. Similarly, as interest rates rise, prices fall. Market risk also is referred to as systematic risk or risk that affects all securities within an asset class similarly.

MARKET VALUE: The price at which a security is trading and presumably could be purchased or sold at a particular point in time.

MATURITY: The date on which the principal or stated value of an investment becomes due and payable.

MEDIUM-TERM NOTE: Corporate or depository institution debt securities meeting certain minimum quality standards (as specified in California Government Code) with a remaining maturity of five years or less.

MONEY MARKET MUTUAL FUNDS (MMFs): Mutual funds that invest exclusively in short-term money market instruments. MMFs seek the preservation of capital as a primary goal while maintaining a high degree of liquidity and providing income representative of the market for short term investments.

MORTGAGE-BACKED SECURITIES (MBS): Securities created when a mortgagee or a purchaser of residential real estate mortgages creates a pool of mortgages and markets undivided interests or participations in the pool. MBS owners receive a pro-rata share of the interest and principal cash flows (net of fees) that are "passed through" from the pool of mortgages. MBS are complex securities whose cash flow is determined by the characteristics of the mortgages that are pooled together. Investors in MBS face prepayment risk associated with the option of the underlying mortgagors to pre-pay or payoff their mortgage. Most MBS are issued

and/or guaranteed by federal agencies and instrumentalities (e.g., Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), and Federal Home Loan Mortgage Corporation (FHLMC)).

MORTGAGE PASS-THROUGH OBLIGATIONS: Securities that are created when residential mortgages (or other mortgages) are pooled together and undivided interests or participations in the stream of revenues associated with the mortgages are sold.

MUNICIPAL ADVISOR RULE: Regulations for non-dealer "municipal advisors" such as financial advisors, swap advisors, GIC brokers, etc. In addition, the rule pertains to banks and broker dealers acting as municipal advisors. Municipal advisors have a fiduciary responsibility to the government agency receiving their services and they must register with the Securities Exchange Commission (SEC). Municipal finance professionals that do not have a fiduciary duty to issuers cannot provide advice to governments unless certain exemptions are met. The SEC has published a list of frequently asked questions: www.sec.gov/info/municipal/mun-advisors-faqs.pdf.

MUNICIPAL NOTES, BONDS, AND OTHER OBLIGATIONS: Obligations issued by state and local governments to finance capital and operating expenses.

MUTUAL FUNDS: An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments.

NEW ISSUE: Securities sold during the initial distribution of an issue in a primary offering by the underwriter or underwriting syndicate.

NET ASSET VALUE (NAV): A determination of the average price per share of a pool or mutual fund. How this measure varies over time provides information on whether the pool is stable or variable. NAV is the market value of all securities in a mutual fund, less the value of the fund’s liabilities, divided by the number of shares in the fund outstanding. Shares of mutual funds are purchased at the fund’s NAV.

NET PRESENT VALUE: An amount that equates future cash flows with their value in present terms.

NOTE: A written promise to pay a specified amount to a certain entity on demand or on a specified date. Usually bearing a short-term maturity of a year or less (though longer maturities are issued—see "Medium-Term Note").

OPTIONS: A contract that gives the buyer the right to buy or sell an obligation at a specified price for a specified time. Exchange Traded Options are standardized option contracts that are actively traded on the Chicago Board of Exchange on a daily basis whereas Over-the-Counter Options are traded directly between the buyer and seller at agreed upon prices and conditions (the former type of option is therefore more liquid than the latter).

PAR AMOUNT OR PAR VALUE: The principal amount of a note or bond which must be paid at maturity. Par, also referred to as the "face amount" of a security, is the principal value stated on the face of the security. A par bond is one sold at a price of 100 percent of its principal amount.

PASSBOOK SAVINGS DEMAND DEPOSITS: An interest-bearing bank deposit that unlike time deposits which have a specified term, is typically considered readily available funds and can be withdrawn without advance notice.

PLACEMENT SERVICE DEPOSIT: Deposits at depository institutions placed by a private sector placement service entity.

PLACEMENT SERVICE CERTIFICATES OF DEPOSIT: Certificates of deposit placed with a private sector entity that assists in the placement of certificates of deposit with eligible financial institutions located in the United States.

PORTFOLIO: Combined holding of more than one stock, bond, commodity, real estate investment, cash equivalent, or other asset. The purpose of a portfolio is to reduce risk by diversification.

PREMIUM: The difference between the par value of a security and the cost of the security, when the cost is above par. Investors pay a premium to purchase a security when the return to the investor (yield) is lower than the stated coupon (interest rate) on the investment.

PRICE: The amount of monetary consideration required by a willing seller and a willing buyer to sell an investment on a particular date.

PRINCIPAL: The face value or par value of a debt instrument, or the amount of capital invested in a given security.

PROSPECTUS: A disclosure document that must be provided to any prospective purchaser of a new securities offering registered with the SEC that typically includes information on the issuer, the issuer's business, the proposed use of proceeds, the experience of the issuer's management, and certain certified financial statements (also known as an "official statement").

PRUDENT INVESTOR STANDARD: A standard of conduct where a person acts with care, skill, prudence, and diligence when investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing funds. The test of whether the standard is being met is if a prudent person acting in such a situation would engage in similar conduct to ensure that investments safeguard principal and maintain liquidity.

REINVESTMENT RISK: The risk that interest rates may be lower than the yield on a fixed income security when the investor seeks to reinvest interest income or repaid principal from the security.

REPURCHASE AGREEMENTS: An agreement of one party (for example, a financial institution) to sell securities to a second party (such as a local agency) and simultaneous agreement by the first party to repurchase the securities at a specified price from the second party on demand or at a specified date.

RISK: The uncertainty of maintaining the principal or interest associated with an investment due to a variety of factors.

RULE G-37 OF THE MUNICIPAL SECURITIES RULEMAKING BOARD: Federal regulations to sever any connection between the making of political contributions and the awarding of municipal securities business.

SAFEKEEPING SERVICE: Offers storage and protection of assets provided by an institution serving as an agent.

SAFETY: In the context of investing public funds, safety relates to preserving the principal of an investment in an investment portfolio; local agencies address the concerns of safety by controlling exposure to risks.

SECURITIES AND EXCHANGE COMMISSION (SEC): The federal agency responsible for supervising and regulating the securities industry.

SECURITIES LENDING AGREEMENT: An agreement of one party (for example, a local agency) to borrow securities at a specified price from a second party (for example, another local agency) with a simultaneous agreement by the first party to return the security at a specified price to the second party on demand or at a specified date. These agreements generally are collateralized and involve a third party custodian to hold the securities and collateral. Economically similar to reverse repurchase agreement.

TAX AND REVENUE ANTICIPATION NOTES (TRANS): Notes issued in anticipation of receiving tax proceeds or other revenues at a future date.

TOTAL RETURN: Interest, realized gains and losses, and unrealized gains and losses over a given period of time.

TRUSTEE, TRUST COMPANY OR TRUST DEPARTMENT OF A BANK: A financial institution with powers to act in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.

UNDERWRITER: A dealer that purchases a new issue of municipal securities for resale.

UNITED STATES AGENCY OBLIGATIONS: Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises, including federal agency mortgage-backed securities. Types of instruments may include mortgage-backed securities from the Federal National Mortgage Association (FNMA) including Fannie Mae and Freddie Mac securities.

UNITED STATES TREASURY OBLIGATIONS: Debt obligations of the United States government sold by the Treasury Department in the forms of bills, notes, and bonds. Bills are short-term obligations that mature in one year or less and are sold at a discount. Notes are obligations that mature between one year and ten years. Bonds are long-term obligations that generally mature in 10 years or more.

WEIGHTED AVERAGE MATURITY (WAM): The average maturity of all the securities that comprise a portfolio, typically expressed in days or years.

YIELD: The current rate of return on an investment security generally expressed as a percentage of the securities current price.

YIELD CURVE: A graphic representation that shows the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity.

YIELD-TO-CALL: The rate of return to the investor earned from payments of principal and interest, with interest compounded semi-annually at the stated yield when the security is redeemed on a specified call date. In addition, if the security is redeemed at a premium call price, the amount of the premium is also reflected in the yield.

YIELD-TO-MATURITY: The rate of return to the investor earned from payments of principal and interest, with interest compounded semi-annually at the stated yield as long as the security remains outstanding until the maturity date.

YIELD-TO-WORST: For a given dollar price on a municipal security, the lowest of the yield calculated to the pricing call, par option or maturity.

ZERO-COUPON BOND: A bond on which interest is not payable until maturity (or earlier redemption), but compounds periodically to accumulate to a stated maturity amount. Zero-interest bonds are typically issued at a discount and repaid at par upon maturity.

Attachment B, "California Municipal Treasurers Association Investment Policy Certification"

The City's Investment of Financial Assets policy, as adopted by the City Council on November 16, 2016, received certification from the California Municipal Treasurers Association (CMTA) on January 17, 2017. Since receiving certification, the City's modifications of the Investment of Financial Assets policy have been limited to addressing recommendations made by CMTA evaluators.

CALIFORNIA MUNICIPAL TREASURERS ASSOCIATION

Investment Policy Certification

CALIFORNIA REPUBLIC

Issued on 1/17/2017

City of Laguna Woods

The California Municipal Treasurers Association certifies that the investment policy of the City of Laguna Woods complies with the current State statutes governing the investment practices of local government entities located within the State of California.

CMTA Over 50 Years of Excellence

Margaret Moggia
President

February 13, 2017
Date

CITY OF LAGUNA WOODS
ADMINISTRATIVE POLICY 2.2

INVESTMENT OF FINANCIAL ASSETS

2.2.01. Statement of Purpose.

This Administrative Policy is intended to assist the City of Laguna Woods with the investment of the City's financial assets in a manner that ensures adequate safety and liquidity, while maximizing yield (return) and complying with the requirements of California Government Code sections 5921 and 53600 et seq.

2.2.02. Scope.

This Administrative Policy generally applies to all financial assets of the City. Such funds are accounted for, or disclosed, in annual audited financial statements and include the General Fund, Special Revenue Funds, and the Capital Projects Fund. Funds invested separately with independent fiduciaries, including funds held and managed by the California Public Employees' Retirement System (CalPERS) for the purpose of funding employee retirement obligations and other post-employment benefits (OPEB) are exempt from this Administrative Policy.

2.2.03. Objectives.

The objectives of the City's investment activities, in priority order, shall be:

1. Safety – Safety of principal shall be the foremost objective. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall investment portfolio and the mitigation of credit risk and interest rate risk. This Administrative Policy recognizes that market conditions may warrant the sale of individual securities that would incur market losses in order to protect from further capital losses. The intent of this Administrative Policy is to ensure that capital losses are minimized on a portfolio level rather than on each transaction. To attain the safety objective, diversification of investments among a variety of securities with independent returns and institutions is required.~~Diversification is required with the goal of ensuring that potential losses on individual investments do not exceed the overall income generated from the balance of the portfolio. In a diversified portfolio, it is acknowledged and understood that occasional measurement losses may occur. Such losses shall be considered within the overall portfolio's investment return.~~

2. Liquidity – The investment portfolio shall remain sufficiently liquid (i.e., capable of being converted to cash quickly) in order to enable the City to meet all reasonably anticipated cash demands and operational requirements and to maintain compliance with all applicable indenture agreements. Since unusual or unanticipated cash demands and operational requirements may occur from time-to-time, the portfolio shall primarily consist of investments in securities with active secondary and resale markets.

3. Yield (Return) – The investment portfolio shall be designed in a manner that seeks to attain the highest rate of return, consistent with established safety and liquidity objectives. While it is acknowledged and understood that occasional measurement losses may occur, the overall portfolio should generally earn at least market interest rates (market-average rates of return throughout budgetary and economic cycles for similar investments).

2.2.04. Delegation of Authority.

City Treasurer

No person other than the City Treasurer or Acting City Treasurer (hereafter referred to jointly as the "City Treasurer") shall engage in an investment transaction using the City's financial assets. The City Treasurer shall additionally be responsible for all transactions undertaken and shall establish and maintain a system of internal controls to regulate all investing activities.

In accordance with Government Code Section 53607, the City Council delegates investment authority for a one-year period to the City Treasurer. Such delegation of authority is subject to annual review and renewal by the City Council, as well as revocation at the City Council's discretion. Adoption of this Administrative Policy shall constitute renewal of such delegation for an additional one-year period.

Pursuant to Laguna Woods Municipal Code Section 2.10.010, the City Treasurer is appointed by, and reports to, the City Manager. The City Manager may serve as, or appoint, an Acting City Treasurer at any time during the absence of a permanent City Treasurer. During his or her appointment, the Acting City Treasurer shall have all of the powers and duties of the City Treasurer.

The City Treasurer and City Manager (with respect to his or her role appointing and supervising the City Treasurer, and participating in investment decisions) shall be

relieved of personal responsibility for an individual investment's performance or losses, market price changes, and the performance of or losses incurred by the overall portfolio provided that (1) actions were undertaken in accordance with this Administrative Policy and applicable federal and state law, (2) significant deviations from expectations were reported to the City Council in a timely manner, and (3) appropriate action was taken to mitigate future adverse developments.

Investment Policy Review Committee of the City Council

The City Council shall appoint two of its members to serve on an Investment Policy Review Committee for calendar year terms commencing on January 1 of each year. The Investment Policy Review Committee shall be responsible for conducting at least biannual reviews of the adequacy and effectiveness of this Administrative Policy and preparing related recommendations for City Council consideration.

The Investment Policy Review Committee shall be considered a standing committee, subject to all applicable provisions of the Ralph M. Brown Act.

2.2.05. Public Trust.

The City Council, City Manager, City Treasurer, and all individuals authorized to participate in investment decisions on behalf of the City shall act as custodians of the public trust and recognize that the investment portfolio is subject to public review and evaluation. The City's overall approach to investment shall be designed and managed with a degree of professionalism that is worthy of the public trust.

2.2.06. Prudence.

The City Council, City Manager, City Treasurer, and all individuals authorized to participate in investment decisions on behalf of the City, are considered to be trustees and, therefore, fiduciaries subject to the prudent investor standard. The prudent investor standard is summarized in Government Code Section 53600.3, as follows:

> *All governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general*

economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.

2.2.07. Ethics and Conflicts of Interest.

As set forth in the City's Conflict of Interest Policy, and as otherwise required by the Political Reform Act and Fair Political Practices Commission, public officials who manage public investments are required to file economic interest disclosures.

In addition to federal, state and local statutes relating to conflicts of interest, the City Council, City Manager, City Treasurer, and all individuals authorized to participate in investment decisions on behalf of the City shall refrain from personal business association or activity that conflicts with proper execution of this Administrative Policy, or which could impair their ability to make impartial investment decisions.

2.2.08. Internal Controls and Routine External Review.

The City Treasurer shall develop, implement, and maintain a system of internal controls designed to ensure the effectiveness and efficiency of investment activities, compliance with applicable laws and regulations, and the reliability of financial reporting. Such internal controls shall seek to prevent the loss of public funds due to fraud, error, misrepresentation, and unanticipated market changes.

As a part of their annual review of internal controls, the City's independent, external auditors shall review internal controls related to investment activities.

2.2.09. Authorized Financial Dealers, Depositories, and Institutions.

In accordance with Government Code Section 53601.5, investments shall either be purchased (1) directly from the issuer, (2) from an institution licensed by the State of California as a Broker-Dealer, as defined in Corporations Code Section 25004, provided that the institution is a primary or regional dealer qualified under federal Securities and Exchange Commission Rule 15C3-1 (Uniform Net Capitol Rule), (3) from a member of a federally regulated securities exchange, (4) from a national or state-chartered bank, from a savings association or federal association, as defined by

Financial Code Section 5102, or (5) from a brokerage firm designated as a primary government dealer by the Federal Reserve bank. In addition, investments shall only be purchased from entities or deposits made in qualified public depositories, as established by State law, with ~~a physical presence in~~full knowledge of applicable California law and at least five years' experience providing similar services ~~to other~~ to California municipalities.

The selection of financial dealers, depositories, and institutions shall follow a periodic competitive procurement process (e.g., requests for proposals or requests for qualifications) and be subject to ultimate approval of the City Council or City Manager in accordance with established purchasing regulations and policies. The nature of the competitive procurement process, frequency thereof, and submittals required, shall be designed and determined by the City Treasurer.

On an annual basis, the City Treasurer shall send a copy of the current version of this Administrative Policy to all financial dealers, depositories, and institutions approved to do business with the City. Receipt of this Administrative Policy shall be considered confirmation that the parties to whom they were distributed understand the City's authorized investment types and requirements thereof.

2.2.10. Authorized Investments.

In accordance with the requirements set forth in this Administrative Policy and in ~~California~~ Government Code sections 53601, 53601.6, 53601.8, 53635, 53635.2, 53638, and 53684, the following types of investment are authorized:

A. Monies required to meet immediate cash flow needs:

- *Federal Deposit Insurance Corporation (FDIC) Insured Accounts*
  Fully insured under $250,000 or collateralized

B. Monies not required to meet immediate cash flow needs, but which can be reasonably anticipated to be required over the following 12 months:

- *Bankers' Acceptances*
  Minimum Standard & Poor's Rating: A-1, Minimum Moody's Rating: P-1
- *Commercial Paper*
  Minimum Standard & Poor's Rating: A-1, Minimum Moody's Rating: P-1
- *Local Government Investment Pools and other pooled investment funds such as money market mutual funds*

Minimum Standard & Poor's Rating (Money Market Mutual Funds): AAA, Minimum Moody's Rating: Aaa, or other rating service equivalent

- ~~*Money Market Mutual Funds*~~
  ~~Minimum Standard & Poor's Rating: AAA, Minimum Moody's Rating: Aaa~~
- *Non-Negotiable Certificates of Deposit*
  ~~Fully insured by FDIC or collateralized with a minimum Standard & Poor's Rating: AA, Minimum Moody's Rating: Aa~~Issued by a nationally or state-chartered bank, or state or federal savings and loan association, as defined by Financial Code Section 5102; and (1) with an "A" or better rating on its long-term debt as provided by Standard & Poor's or Moody's or (2) with minimum short-term ratings by two rating services. For (2), the minimum Standard & Poor's rating shall be A-1 and the minimum Moody's rating shall be P-1.
- *Passbook Savings Demand Deposits*
  Fully insured by FDIC or collateralized
- *Repurchase Agreements*
  Minimum Standard & Poor's Rating: AA, Minimum Moody's Rating: Aa
- *All investments authorized under Section 2.2.10(A).*

C. Monies not required to meet immediate cash flow needs, and which cannot be reasonably anticipated to be required over the following 12 months:

- *United States Treasury Obligations (notes, bonds, bills, or other certificates or coupons)*
  Explicit full faith and credit guarantee of the United States Government.
  ~~with a m~~Minimum Standard & Poor's Rating for Bonds: AA or A-1+, Minimum Moody's Rating for Bonds: Aa3 or P-1
- *United States Agency Obligations*
  Implied full faith and credit guarantee of the United States Government.
  Minimum Standard & Poor's Rating for Bonds: AA or A-1+, Minimum Moody's Rating for Bonds: Aa3 or P-1 ~~with a minimum Standard & Poor's Rating: A1, Minimum Moody's Rating: P1~~
- *State of California and Others States-issued Obligations (notes, bonds, or warrants)*
  Minimum Standard & Poor's Rating for Bonds: AA or A-1+, Minimum Moody's Rating for Bonds: Aa or P-1
- *California Local Government-issued Municipal Obligations (notes, bonds, warrants, or other indebtedness issued by a California county, city, or local district/agency)*

Minimum Standard & Poor's Rating: AA or A-1+, Minimum Moody's Rating: Aa or P-1

- *Negotiable Certificates of Deposit*
  ~~Minimum Standard & Poor's Rating: A1, Minimum Moody's Rating: P1~~
  Issued by a nationally or state-chartered bank, or state or federal savings and loan association, as defined by California Financial Code Section 5102.
  Collateral shall comply with Chapter 4, Bank Deposit Law, Section 16500 et seq., and Chapter 4.5, Savings and Loan Association and Credit Union Deposit Law, Section 16600 et seq., of California Government Code.
- *All investments authorized under sections 2.2.10(A) and (B).*

2.2.11. Local Government Investment Pools and Other Pooled Investment Funds.

:

While local government investment pools generally provide significant safety and liquidity, the City Treasurer shall complete a thorough investigation prior to making any such investment and consider the same during the monthly compliance review required by Section 2.2.13. Due diligence in investigations shall generally include a review of written statements of investment policies, objectives, fees schedules, and reporting schedules, as well as issues related to (1) eligible investors and securities, (2) the permitted frequencies and sizes of deposits and withdrawals, (3) security safeguards, including settlement processes, (4) the frequency with which securities are priced and the program audited, (5) the treatment of gains and losses, including interest calculations and distribution, (6) whether and, if so, how reserves, retained earnings, and similar funds are utilized by the investment pool, and (7) whether the investment pool is eligible for and, if so, accepts bond proceeds. In addition, only local government investment pools with at least five years' experience providing similar services to other California municipalities may be utilized. Similar due diligence and investigative procedures shall be performed prior to investing in any other pooled investment funds, such as money market mutual funds.

2.2.12. Prohibited Investments.

Notwithstanding those types of investments that are otherwise prohibited by law or this Administrative Policy, financial derivatives (e.g., futures, options, and interest rate swaps) and foreign investments (e.g., indices and currencies) are prohibited.

2.2.13. Monthly Internal Compliance Review of Investment Portfolio.

Investments shall be in compliance with the ratings and other requirements set forth in this Administrative Policy at the time of purchase. It is acknowledged and understood that some investments may not fully comply with the same following purchase. The City Treasurer shall review the overall investment portfolio on a monthly basis and identify any investments that no longer comply. Non-compliant investments shall be reported to the City Council, City Manager, and City Attorney within 10 business days of discovery and corrected as soon as practical.

2.2.14. Safekeeping and Custody.

All investments shall be registered in the name of the City and all interest, principal payments, and withdrawals shall indicate the City as the sole payee.

All investments, with the exception of Federal Deposit Insurance Corporation (FDIC) Insured Accounts, Local Government Investment Pools, and Money Market Funds shall be held by a third party custodian designated by the City Treasurer and evidenced by custodial agreements or safekeeping receipts. Third-party custodians shall comply with the requirements set forth in Section 2.2.09.

All security transactions, where applicable, shall use a Delivery-versus-Payment (DVP) settlement procedure with the City's payment due at the time of delivery.

2.2.15. Collateralization.

Collateral for non-negotiable certificates of deposit and negotiable certificates of deposit shall comply with Government Code, Chapter 4, Bank Deposit Law Section 16500 et seq. and the Savings and Loan and Credit Union Deposit Law Government Code Section 16600 et seq. In addition, if the Non-Negotiable Certificate of Deposit is not Federal Deposit Insurance Corporation (FDIC) insured or exceeds the FDIC insured limit, collateral is required equal to 100% of the principal.

Collateral for repurchase agreements shall be 110% of the market value of principal and accrued interest. Collateral can be either United States Treasury securities or United States Agency securities. The City Treasurer is authorized to grant the right of collateral substitution for repurchase agreements.

All collateral shall be held by an independent third party with whom the City has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City and retained.

2.2.16. Diversification and Maximum Maturities.

The overall investment portfolio shall be diversified to avoid incurring unreasonable and avoidable risks associated with concentrating investments in specific investment types, maturity segments, –or individual financial institutions. In a diversified portfolio, it is acknowledged and understood that occasional measurement losses may occur. Such losses shall be considered within the overall portfolio's investment return. Diversification also requires investments to be spread among varying security types and institutions.

Authorized investments shall be invested subject to the following:

Table 2.2-1: Diversification and Maximum Maturities Table

Type of Investment	Maximum Amount of Portfolio Investment	Maximum Maturity
Federal Deposit Insurance Corporation (FDIC) Insured Accounts	100%	N/A
Bankers' Acceptances	20% (no more than 5% with one bank)	180 days
Commercial Paper	15% (no more than 10% of a single issuer)	270 days
Local Government Investment Pools	90%	N/A
Money Market Mutual Funds	10%	N/A
Non-Negotiable Certificates of Deposit	20% (no more than 5% with one bank or issuer) and no more than 30% of the overall portfolio when combined with Negotiable Certificates of Deposit	3 years
Negotiable Certificates of Deposit	30% (no more than 5% with one bank or single issuer) and no more than 30% of the overall portfolio when	3 years

Type of Investment	Maximum Amount of Portfolio Investment	Maximum Maturity
	combined with Non-Negotiable Certificates of Deposit	
Passbook Savings Demand Deposits	100%	3 years
Repurchase Agreements	10% (no more than 20% of a single issuer)	30 days
United States Treasury Obligations	~~30~~90% of overall portfolio for any one investment type (no more than 20% of a single issuer)	3 years
United States Agency Obligations		3 years
State of California and Other States-issued Obligations	20% of overall portfolio for any one investment type (no more than ~~20~~5% of a single issuer)	3 years
California Local Government-issued Municipal Obligations		3 years
~~Negotiable Certificates of Deposit~~	~~30% (no more than 5% with one bank or single issuer)~~	~~3 years~~

2.2.17. Reporting.

The City Treasurer shall prepare and submit a monthly investment report to the City Council. The report shall include a summary of all investment transactions for the reporting period, as required by Government Code Section 53607, as well as similar information required for optional quarterly investment reports by Government Code Section 53646(b), to the extent that such information is available. The report shall also comply with Government Accounting Standard Board (GASB) Statement No. 40 and include the following:

A. Certification that all investment actions executed since the last report have been made in full compliance with this Administrative Policy; and

B. Certification that the City is able to meet all cash flow needs which might reasonably be anticipated for the next 12 months.

2.2.18. Annual City Council Review and Adoption of this Administrative Policy.

This Administrative Policy shall be reviewed, modified as necessary, and adopted, at least annually, by resolution of the City Council at a duly noticed public meeting. Such annual review shall be in addition to the reviews conducted by the Investment Policy Review Committee as described in Section 2.2.04.

2.2.19. Relationship to Federal and State Laws.

Where federal or state laws are more restrictive than or contradict this Administrative Policy, such laws shall take precedence. Where this Administrative Policy is more restrictive than federal or state laws, this Administrative Policy shall take precedence. The City Treasurer shall advise the Investment Policy Review Committee of any contradictions of federal or state law for consideration during its reviews conducted as described in Section 2.2.04.

2.2.20. Attachments.

Attachment A, "Glossary of Terms and Acronyms," is incorporated by reference.

Attachment B, "California Municipal Treasurers Association Investment Policy Certification"

City Council Adoption: ~~November 16, 2016~~April XX, 2017

Attachment A, "Glossary of Terms and Acronyms"

This Glossary of Terms and Acronyms contains common investment terminology to provide users with a better understanding of basic investment terms. It is intended to be used as a basic reference only, is not intended to be all inclusive, and should not be treated as a substitute for professional counsel or analysis.

ACCRUED INTEREST: Coupon interest accumulated on a bond or note since the last interest payment or, for a new issue, from the dated date to the date of delivery.

ASSET-BACKED SECURITIES: Securities that are supported by pools of assets, such as installment loans or leases, or by pools of revolving lines of credits. Asset-backed securities are structured as trusts in order to perfect a security interest in the underlying assets.

AVERAGE: An arithmetic mean of selected stocks intended to represent the behavior of the market or some component of it.

BANK DEPOSITS: Deposits in banks or other depository institutions that may be in the form of demand accounts (checking) or investments in accounts that have a fixed term and negotiated rate of interest.

BANK NOTES: A senior, unsecured, direct obligation of a bank or United States branch of a foreign bank.

BANKERS' ACCEPTANCE: A draft or bill or exchange accepted by a bank or trust company. The accepting institution, as well as the issuer, guarantees payment of the bill.

BASIS POINTS: Refers to the yield on bonds. Each percentage point of yield in bonds equals 100 basis points (1/100% or 0.01%). If a bond yield changes from 7.25% to 7.39% that is a rate of 14 basis points.

BENCHMARK: A passive index used to compare the performance, relative to risk and return, of an investor's portfolio.

BOND PROCEEDS: The money paid to the issuer by the purchaser or underwriter of a new issue of municipal securities. These moneys are used to finance the project or purpose for which the securities were issued and to pay certain costs of issuance as may be provided in the bond contract.

BONDS: A debt obligation of a firm or public entity. A bond represents the agreement to repay the debt in principal and, typically, in interest on the principal.

BOOK VALUE: The value at which an asset is carried on a balance sheet.

BROKER: A person or firm that acts as an intermediary by purchasing and selling securities for others rather than for its own account.

CALL OPTION: The terms of the bond contract giving the issuer the right to redeem or call an outstanding issue of bonds prior to its stated date of maturity.

CASH FLOW: A comparison of cash receipts (revenues) to required payments (debt service, operating expenses, etc.).

CERTIFICATE OF DEPOSIT: A short-term, secured deposit in a financial institution that usually returns principal and interest to the lender at the end of the loan period. Certificates of Deposit (CDs) differ in terms of collateralization and marketability. CDs appropriate to public agency investing include:

Negotiable Certificates of Deposit – Generally, short-term debt instruments that pay interest and re issued by a bank, savings or federal association, state or federal credit union, or state-licensed branch of a foreign bank. The majority of negotiable CDs mature within six months while the average maturity is two weeks. Negotiable CDs are traded in a secondary market and are payable upon order to the bearer or initial depositor (investor). Negotiable CDs are insured by the FDIC up to $250,000, but they are not collateralized beyond that amount.

Non-Negotiable Certificates of Deposit – CDs that carry a penalty if redeemed prior to maturity. A secondary market does exist for non-negotiable CDs, but redemption includes a transaction cost that reduces returns to the investor. Non-negotiable CDs issued by banks and savings and loans are insured by the FDIC up to the amount of $250,000, including principal and interest. Amounts deposited above this amount may be secured with other forms of collateral through an agreement between the investor and the issuer. Collateral may include other securities, including treasuries or agency securities (e.g., issued by the Federal National Mortgage Association).

CERTIFICATE OF DEPOSIT ACCOUNT REGISTRY SYSTEM (CDARS): A private CD placement service that allows local agencies to purchase more than $250,000 in CDs from a single financial institution (must be a participating institution of CDARS) while still maintaining FDIC insurance coverage. CDARS is

currently the only entity providing this service. CDARS facilitates the trading of deposits between the California institution and other participating institutions in amounts that are less than $250,000 each, so that FDIC coverage is maintained.

CD PLACEMENT SERVICE: A service that allows local agencies to purchase more than $250,000 in CDs from a single financial institution while still maintaining FDIC insurance coverage. See "CDARS".

COLLATERALIZATION OF DEPOSITS: A process by which a bank or other financial institution pledges securities or other deposits for the purpose of securing the repayment of deposited funds.

COMMERCIAL PAPER: An unsecured short-term promissory note issued by corporations or municipalities, with maturities ranging from two to 270 days.

CORPORATE NOTES AND BONDS: Debt instruments, typically unsecured, issued by corporations, with original maturities in most cases greater than one year and less than ten years.

COUNTY POOLED INVESTMENT FUNDS: The aggregate of all funds from public agencies placed in the custody of the county treasurer or chief finance officer for investment and reinvestment.

COUPON: The annual rate of interest that a bond's issuer promises to pay the bondholder in the bond's face value; a certificate attached to a bond evidencing interest due on a payment date.

CREDIT RATING: The credit worthiness of an investment. Credit ratings are issued by nationally recognized statistical rating organizations (NRSROs) registered with the Securities and Exchange Commission. Three highly recognized organizations are Standard and Poor's, Moody's, and Fitch. The organizations use a primary letter designation (numbers or symbols may follow the letter designation) to indicate the quality of an investment. As an example, short-term ratings by Standard and Poor's of A-1+ and Moody's of P-1 indicate a prime or high grade quality investment. Long-term prime or high grade quality investments would be rated AAA or Aaa by Standard and Poor's and Moody's, respectively. Rates beginning with letters B or C would typically indicate an investment of speculative and higher risk quality.
~~CREDIT RATING: Various alphabetical and numerical designations used by institutional investors, Wall Street underwriters, and commercial rating companies to give relative indications of bond and note creditworthiness. Standard & Poor's~~

~~and Fitch Ratings use the same system, starting with their highest rating, of AAA, AA, A, BBB, BB, B, CCC, CC, C, and D for default. Moody's Investors Service uses AAA, AA, A, BAA, BA, B, CAA, CA, and D. Each of the services use pluses (+), minuses (-), or numerical modifiers to indicate steps within each category. The top four letter categories are considered investment grade ratings.~~

CREDIT RISK: The chance that an issuer will be unable to make scheduled payments of interest and principal on an outstanding obligation. Another concern for investors is that the market's perception of an issuer/borrower's credit will cause the market value of a security to fall, even if default is not expected.

CUSTODIAN: A bank or other financial institution that keeps custody of stock certificates and other assets.

DEALER: Someone who acts as a principal in all transactions, including underwriting, buying, and selling securities, including from his or her own account.

DEFAULT RISK: The risk that issuers or borrowers will be unable to make the required payments on their debt obligations.

DEFEASED BOND ISSUES: Issues that have sufficient money to retire outstanding debt when due, so that the agency is released from the contracts and covenants in the bond document.

DELIVERY-VERSUS-PAYMENT (DVP): The payment of cash for securities as they are delivered and accepted for settlement.

DERIVATIVE: Securities that are based on, or derived from, some underlying asset, reference date, or index.

DISCOUNT: The difference between the par value of a security and the cost of the security, when the cost is below par. Investors purchase securities at a discount when return to the investor (yield) is higher than the stated coupon (interest rate) on the investment.

DISCOUNT RATE: The interest rate used in discounted cash flow analysis to determine the present value of future cash flows. The discount rate in discounted cash flow analysis takes into account not just the time value of money, but also the risk or uncertainty of future cash flows; the greater the uncertainty of future cash flows, the higher the discount rate.

DIVERSIFICATION: The allocation of different types of assets in a portfolio to mitigate risks and improve overall portfolio performance.

DURATION: A measure of the timing of the cash flows to be received from a security that provides the foundation for a measure of the interest rate sensitivity of a bond. Duration is a volatility measure and represents the percentage change in price divided by the percentage change in interest rates. A high duration measure indicates that for a given level of movement in interest rates, prices of securities will vary considerably.

EFFECTIVE DURATION: A measurement of the weighted average of the present value of the cash flows of a fixed-income investment. Effective duration measures the price sensitivity of fixed-income investments, especially for those with embedded option features such as call options. As yields rise, the effective duration of a callable investment rises to reflect the fact that it has become less likely to be called. The more rates rise, the longer the effective duration will become, approaching the duration to maturity. The converse is true in a declining interest rate environment (that is, the more rates fall, the shorter the effective duration will become, approaching the duration to call). For securities without an embedded option, the duration to call, maturity, and effective duration are all the same. The calculation for effective duration is complicated and involves averaging the duration under a simulation of many possible interest rate scenarios in the future.

EVENT RISK: The risk associated with a changing portfolio value due to a market event causing swings in market prices and/or spreads.

EXTENDABLE NOTES: Securities with maturity dates that can be extended by mutual agreement between the issuer and investor. When investing in these types of securities, the maturity date plus the stated extendable option must not exceed the time frames that are allowed in California Government Code or the investment policy for the investment type.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to $250,000 per entity.

FIDUCIARY: An individual who holds something in trust for another and bears liability for its safekeeping.

FIRST TIER SECURITIES: Securities that have received short term debt ratings in the highest category from the requisite nationally recognized statistical-rating organizations (NRSROs), or are comparable unrated securities, or are issued by money market funds, or government securities. [See SEC Rules: Paragraph (A) (12) of rule 2A-7.]

FLOATING RATE SECURITY: A security that has a variable or "floating" interest rate.

GOVERNMENT ACCOUNTING STANDARDS BOARD (GASB): A standard-setting body, associated with the Financial Accounting Foundation, which prescribes standard accounting practices for governmental units.

GOVERNMENT SPONSORED ENTERPRISES (GSE): Privately held corporations with public purposes created by the United States Congress to reduce the cost of capital for certain borrowing sectors of the economy. Securities issued by GSEs carry the implicit backing of the United States Government, but they are not direct obligations of the United States Government. For this reason, these securities will offer a yield premium over Treasuries.

GUARANTEED INVESTMENT CONTRACT (GIC): An agreement acknowledging receipt of funds for deposit, specifying terms for withdrawal, and guaranteeing a rate of interest to be paid.

INDEX: An indicator that is published on a periodic basis that shows the estimated price and/or yield levels for various groups of securities.

INTEREST: The amount a borrower pays to a lender for the use of his or her money.

INTEREST RATE RISK: The risk that an investment's value will change due to a change in the absolute level of interest rates, spread between two rates, shape of the yield curve, or any other interest rate relationship.

INVESTMENT AGREEMENTS: Contracts with respect to funds deposited by an investor. Investment agreements are often separated into those offered by banks and those offered by insurance companies. In the former case, they are sometimes referred to as "bank investment contracts."

LONDOR INTERBANK OFFERED RATE (LIBOR): The average rate at which a leading bank can obtain unsecured funding in the London interbank market. LIBOR

serves as a benchmark for various interest rates. Obligations of parties to such transactions are typically expressed as a spread to LIBOR.

LIQUIDITY: The measure of the ability to convert an instrument to cash on a given date at full face or par value.

LIQUIDITY RISK: The risk that a security, sold prior to maturity, will be sold at a loss of value. For a local agency, the liquidity risk of an individual investment may not be as critical as how the overall liquidity of the portfolio allows the agency to meet its cash needs.

LOCAL AGENCY INVESTMENT FUND (LAIF): A voluntary investment fund open to government entities and certain non-profit organizations in California that is managed by the State Treasurer's Office.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP): Investment pools that range from the State Treasurer's Office Local Agency Investment Fund (LAIF) to county pools to Joint Powers Authorities (JPAs). These funds are not subject to the same SEC rules applicable to money market mutual funds.

MARKET RISK: The chance that the value of a security will decline as interest rates rise. In general, as interest rates fall, prices of fixed income securities rise. Similarly, as interest rates rise, prices fall. Market risk also is referred to as systematic risk or risk that affects all securities within an asset class similarly.

MARKET VALUE: The price at which a security is trading and presumably could be purchased or sold at a particular point in time.

MATURITY: The date on which the principal or stated value of an investment becomes due and payable.

MEDIUM-TERM NOTE: Corporate or depository institution debt securities meeting certain minimum quality standards (as specified in California Government Code) with a remaining maturity of five years or less.

MONEY MARKET MUTUAL FUNDS (MMFs): Mutual funds that invest exclusively in short-term money market instruments. MMFs seek the preservation of capital as a primary goal while maintaining a high degree of liquidity and providing income representative of the market for short term investments.

MORTGAGE-BACKED SECURITIES (MBS): Securities created when a mortgagee or a purchaser of residential real estate mortgages creates a pool of mortgages and markets undivided interests or participations in the pool. MBS owners receive a pro-rata share of the interest and principal cash flows (net of fees) that are "passed through" from the pool of mortgages. MBS are complex securities whose cash flow is determined by the characteristics of the mortgages that are pooled together. Investors in MBS face prepayment risk associated with the option of the underlying mortgagors to pre-pay or payoff their mortgage. Most MBS are issued and/or guaranteed by federal agencies and instrumentalities (e.g., Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), and Federal Home Loan Mortgage Corporation (FHLMC)).

MORTGAGE PASS-THROUGH OBLIGATIONS: Securities that are created when residential mortgages (or other mortgages) are pooled together and undivided interests or participations in the stream of revenues associated with the mortgages are sold.

MUNICIPAL ADVISOR RULE: Regulations for non-dealer "municipal advisors" such as financial advisors, swap advisors, GIC brokers, etc. In addition, the rule pertains to banks and broker dealers acting as municipal advisors. Municipal advisors have a fiduciary responsibility to the government agency receiving their services and they must register with the Securities Exchange Commission (SEC). Municipal finance professionals that do not have a fiduciary duty to issuers cannot provide advice to governments unless certain exemptions are met. The SEC has published a list of frequently asked questions: www.sec.gov/info/municipal/mun-advisors-faqs.pdf.

MUNICIPAL NOTES, BONDS, AND OTHER OBLIGATIONS: Obligations issued by state and local governments to finance capital and operating expenses.

MUTUAL FUNDS: An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments.

NEW ISSUE: Securities sold during the initial distribution of an issue in a primary offering by the underwriter or underwriting syndicate.

NET ASSET VALUE (NAV): A determination of the average price per share of a pool or mutual fund. How this measure varies over time provides information on whether the pool is stable or variable. NAV is the market value of all securities in a

mutual fund, less the value of the fund's liabilities, divided by the number of shares in the fund outstanding. Shares of mutual funds are purchased at the fund's NAV.

NET PRESENT VALUE: An amount that equates future cash flows with their value in present terms.

NOTE: A written promise to pay a specified amount to a certain entity on demand or on a specified date. Usually bearing a short-term maturity of a year or less (though longer maturities are issued—see "Medium-Term Note").

OPTIONS: A contract that gives the buyer the right to buy or sell an obligation at a specified price for a specified time. Exchange Traded Options are standardized option contracts that are actively traded on the Chicago Board of Exchange on a daily basis whereas Over-the-Counter Options are traded directly between the buyer and seller at agreed upon prices and conditions (the former type of option is therefore more liquid than the latter).

PAR AMOUNT OR PAR VALUE: The principal amount of a note or bond which must be paid at maturity. Par, also referred to as the "face amount" of a security, is the principal value stated on the face of the security. A par bond is one sold at a price of 100 percent of its principal amount.

PASSBOOK SAVINGS DEMAND DEPOSITS: An interest-bearing bank deposit that unlike time deposits which have a specified term, is typically considered readily available funds and can be withdrawn without advance notice.

PLACEMENT SERVICE DEPOSIT: Deposits at depository institutions placed by a private sector placement service entity.

PLACEMENT SERVICE CERTIFICATES OF DEPOSIT: Certificates of deposit placed with a private sector entity that assists in the placement of certificates of deposit with eligible financial institutions located in the United States.

PORTFOLIO: Combined holding of more than one stock, bond, commodity, real estate investment, cash equivalent, or other asset. The purpose of a portfolio is to reduce risk by diversification.

PREMIUM: The difference between the par value of a security and the cost of the security, when the cost is above par. Investors pay a premium to purchase a security

when the return to the investor (yield) is lower than the stated coupon (interest rate) on the investment.

PRICE: The amount of monetary consideration required by a willing seller and a willing buyer to sell an investment on a particular date.

PRINCIPAL: The face value or par value of a debt instrument, or the amount of capital invested in a given security.

PROSPECTUS: A disclosure document that must be provided to any prospective purchaser of a new securities offering registered with the SEC that typically includes information on the issuer, the issuer's business, the proposed use of proceeds, the experience of the issuer's management, and certain certified financial statements (also known as an "official statement").

PRUDENT INVESTOR STANDARD: A standard of conduct where a person acts with care, skill, prudence, and diligence when investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing funds. The test of whether the standard is being met is if a prudent person acting in such a situation would engage in similar conduct to ensure that investments safeguard principal and maintain liquidity.

REINVESTMENT RISK: The risk that interest rates may be lower than the yield on a fixed income security when the investor seeks to reinvest interest income or repaid principal from the security.

REPURCHASE AGREEMENTS: An agreement of one party (for example, a financial institution) to sell securities to a second party (such as a local agency) and simultaneous agreement by the first party to repurchase the securities at a specified price from the second party on demand or at a specified date.

RISK: The uncertainty of maintaining the principal or interest associated with an investment due to a variety of factors.

RULE G-37 OF THE MUNICIPAL SECURITIES RULEMAKING BOARD: Federal regulations to sever any connection between the making of political contributions and the awarding of municipal securities business.

SAFEKEEPING SERVICE: Offers storage and protection of assets provided by an institution serving as an agent.

SAFETY: In the context of investing public funds, safety relates to preserving the principal of an investment in an investment portfolio; local agencies address the concerns of safety by controlling exposure to risks.

SECURITIES AND EXCHANGE COMMISSION (SEC): The federal agency responsible for supervising and regulating the securities industry.

SECURITIES LENDING AGREEMENT: An agreement of one party (for example, a local agency) to borrow securities at a specified price from a second party (for example, another local agency) with a simultaneous agreement by the first party to return the security at a specified price to the second party on demand or at a specified date. These agreements generally are collateralized and involve a third party custodian to hold the securities and collateral. Economically similar to reverse repurchase agreement.

TAX AND REVENUE ANTICIPATION NOTES (TRANS): Notes issued in anticipation of receiving tax proceeds or other revenues at a future date.

TOTAL RETURN: Interest, realized gains and losses, and unrealized gains and losses over a given period of time.

TRUSTEE, TRUST COMPANY OR TRUST DEPARTMENT OF A BANK: A financial institution with powers to act in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.

UNDERWRITER: A dealer that purchases a new issue of municipal securities for resale.

UNITED STATES AGENCY OBLIGATIONS: Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises, including federal agency mortgage-backed securities. Types of instruments may include mortgage-backed securities from the Federal National Mortgage Association (FNMA) including Fannie Mae and Freddie Mac securities.

UNITED STATES TREASURY OBLIGATIONS: Debt obligations of the United States government sold by the Treasury Department in the forms of bills, notes, and bonds. Bills are short-term obligations that mature in one year or less and are sold at

a discount. Notes are obligations that mature between one year and ten years. Bonds are long-term obligations that generally mature in 10 years or more.

WEIGHTED AVERAGE MATURITY (WAM): The average maturity of all the securities that comprise a portfolio, typically expressed in days or years.

YIELD: The current rate of return on an investment security generally expressed as a percentage of the securities current price.

YIELD CURVE: A graphic representation that shows the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity.

YIELD-TO-CALL: The rate of return to the investor earned from payments of principal and interest, with interest compounded semi-annually at the stated yield when the security is redeemed on a specified call date. In addition, if the security is redeemed at a premium call price, the amount of the premium is also reflected in the yield.

YIELD-TO-MATURITY: The rate of return to the investor earned from payments of principal and interest, with interest compounded semi-annually at the stated yield as long as the security remains outstanding until the maturity date.

YIELD-TO-WORST: For a given dollar price on a municipal security, the lowest of the yield calculated to the pricing call, par option or maturity.

ZERO-COUPON BOND: A bond on which interest is not payable until maturity (or earlier redemption), but compounds periodically to accumulate to a stated maturity amount. Zero-interest bonds are typically issued at a discount and repaid at par upon maturity.

Attachment B, "California Municipal Treasurers Association Investment Policy Certification"

The City's Investment of Financial Assets policy, as adopted by the City Council on November 16, 2016, received certification from the California Municipal Treasurers Association (CMTA) on January 17, 2017. Since receiving certification, the City's modifications of the Investment of Financial Assets policy have been limited to addressing recommendations made by CMTA evaluators.

CALIFORNIA MUNICIPAL
TREASURERS ASSOCIATION

Investment Policy Certification

CALIFORNIA REPUBLIC

Issued on 1/17/2017

City of Laguna Woods

The California Municipal Treasurers Association certifies that the investment policy of the City of Laguna Woods complies with the current State statutes governing the investment practices of local government entities located within the State of California.

CMTA Over 50 Years of Excellence

Margaret Moggia
President

February 13, 2017
Date

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6.6
ORANGE COUNTY INVESTMENT POOL

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: April 19, 2017 Regular Meeting

SUBJECT: Orange County Investment Pool

Recommendation

Approve a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AUTHORIZING THE DEPOSIT AND INVESTMENT OF EXCESS FUNDS WITH THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ORANGE, CALIFORNIA

Background

The City's investment policy authorizes the investment of up to 90% of the overall investment portfolio in local government investment pools. Historically, the City has invested in the State of California's Local Agency Investment Fund (LAIF), which is one such local government investment pool. Local government investment pools allow the City to maintain high levels of liquidity and safety for monies that are not required to meet immediate cash flow needs.

The Orange County Investment Pool (OCIP) is managed by the County of Orange Treasurer's Office with oversight by the County of Orange Auditor-Controller's Office and a Treasury Oversight Committee consisting of the Auditor-Controller, County Executive Officer, County Superintendent of Schools, and four members of the public appointed by the Orange County Board of Supervisors. Current voluntary pool participants in OCIP include the cities of Laguna Niguel, Lake Forest, Tustin and Villa Park, as well as the Local Agency Formation Commission

(LAFCO), Municipal Water District of Orange County (MWDOC), Orange County Mosquito and Vector Control District, and Foothill/Eastern and San Joaquin Hills transportation corridor agencies (The Toll Roads).

Discussion

The City Treasurer has performed her required due diligence, including a thorough investigation consistent with all applicable requirements of the City's investment policy, regarding the potential investment of City monies in OCIP. The proposed resolution (Attachment A) would authorize the City Treasurer to make such investments in accordance with the City's investment policy. The OCIP Investment Policy Statement referred to in Attachment A is included as Attachment B.

At a meeting on April 4, 2017, the Investment Policy Review Committee received a presentation from the Orange County Treasurer-Tax Collector on OCIP and expressed no concern or reservation regarding the potential future investment of City monies therein. That presentation occurred as part of the City Treasurer's due diligence in considering this recommendation.

Participation in OCIP would provide an additional local government investment pool option and would not preclude continued or future investments in LAIF.

Fiscal Impact

Funds to support this project are included in the City's budget.

Report Prepared With: Margaret Cady, CPA, Administrative Services Director/City Treasurer

Attachments: A – Proposed Resolution
Exhibit A – Proposed OCIP Agreement
B – OCIP Investment Policy Statement (November 22, 2016)

RESOLUTION NO. 17-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AUTHORIZING THE DEPOSIT AND INVESTMENT OF EXCESS FUNDS WITH THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ORANGE, CALIFORNIA

WHEREAS, Government Code Section 53684 allows the City of Laguna Woods, California ("City") to deposit excess funds into the Orange County Treasury for purposes of investment by the Orange County Treasurer-Tax Collector; and

WHEREAS, the City's investment policy authorizes the City Treasurer to invest financial assets in local government investment pools; and

WHEREAS, the Orange County Investment Pool is a local government investment pool managed by the Orange County Treasurer's Office; and

WHEREAS, at a duly noticed public meeting on April 4, 2017, the Investment Policy Review Committee (Mayor Horne and Mayor Pro Tem Moore) received a presentation from the Orange County Treasurer-Tax Collector on the Orange County Investment Pool and expressed no concern or reservation regarding the potential future investment of City monies therein; and

WHEREAS, the City Treasurer has performed her required due diligence, including a thorough investigation consistent with all applicable requirements of the City's investment policy, prior to recommending that the City Council approve this resolution authorizing investment in the Orange County Investment Pool.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby finds that it may, from time to time, be advantageous to make deposits for purposes of investment in the Orange County Investment Pool.

SECTION 2. The City Council has received and carefully reviewed the Orange County Treasurer-Tax Collector's Investment Policy Statement ("IPS"), and understands its contents, including the Net Asset Value ("NAV") risk that is

described in Section V of the IPS. Having considered and weighed the risks of investing (including, but not limited to, the risks of loss of interest and principal), the City Council finds and determines that it is appropriate and legal to invest monies of the City in the Orange County Investment Pool as permitted by the City's investment policy. The City Council understands and agrees that the IPS may be amended at any time by the Orange County Board of Supervisors.

SECTION 3. The City Council hereby finds and determines that excess funds of the City are not required for immediate use and that the investment of such funds in the Orange County Investment Pool is an appropriate investment of its monies.

SECTION 4. The City Council hereby authorizes the deposit of monies of the City into the Orange County Investment Pool for purposes of investment by the Orange County Treasurer-Tax Collector in accordance with the provisions of Government Code Section 53684 and the "Agreement for the Deposit and Investment of Excess Funds into the County Treasury" ("Agreement") attached hereto as Exhibit A. The City Council approves the Agreement and authorizes the Mayor to execute the Agreement on behalf of the City, subject to approval as to form by the City Attorney**.**

SECTION 5. The City Council hereby authorizes the City Manager and the Administrative Services Director/City Treasurer to make deposits or request withdrawals of monies for the City from the Orange County Investment Pool.

SECTION 6. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED on this XX day of XX 2017.

_____

SHARI L. HORNE, Mayor

ATTEST:

_____

YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 17-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the XX day of XX 2017, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

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AGREEMENT
FOR
THE DEPOSIT AND INVESTMENT OF EXCESS FUNDS
INTO THE COUNTY TREASURY

THIS AGREEMENT is made and entered into as of the date fully executed by and between the City of Laguna Woods hereinafter referred to as "Local Agency," and the County of Orange, California a political subdivision of the State of California, hereinafter referred to as "County."

RECITALS

WHEREAS, Section 53684 of the California Government Code allows local agencies to deposit excess funds into the County Treasury for purposes of investment by the County Treasurer-Tax Collector ("Treasurer"); and

WHEREAS, the Local Agency has found that it may, from time to time, be advantageous to make such deposits for purposes of investment with the Treasurer; and

WHEREAS, the Local Agency has added the Orange County Investment Pool in its Investment Policy Statement; and

WHEREAS, the treasurer or other official responsible for the funds of the Local Agency has determined, and may determine from time to time, that excess funds of the Local Agency exist which are not required for immediate use; and

WHEREAS, the governing body of Local Agency has authorized the deposit of moneys of Local Agency for purposes of investment with the County Treasury in accordance with the provisions of Section 53684 of the California Government Code; and

WHEREAS, with the consent of the Treasurer, the Treasurer may accept for investment deposits of Local Agency, provided that Local Agency is located within Orange County , or a Joint Powers Authority ("JPA") consisting of at least one public agency from within Orange County.

NOW, THEREFORE, in consideration of the mutual promise herein, the parties agree as follows:

ARTICLES

1. ACKNOWLEDGMENT

The parties acknowledge that the Recitals are true and correct.

SCOPE OF AGREEMENT

This Agreement specifies the contractual terms and conditions by which County will manage and invest Local Agency's excess funds which have been deposited for investment with the

Treasurer. Pursuant to various provisions of the Government Code and Revenue and Taxation Code, the Treasurer shall provide central depository and investment services for Local Agency.

3. COMMINGLED INVESTMENT POOL/INVESTMENT POLICY STATEMENT

Local Agency understands that the funds it deposits for investment will be held in the Orange County Investment Pool ("OCIP") and shall be invested by the Treasurer in accordance with the policies contained in the Orange County Treasurer Investment Policy Statement ("IPS"), as now in effect and as may be revised from time to time.

4. LOCAL AGENCY ACKNOWLEDGMENTS

Local Agency acknowledges that it has received and carefully reviewed the IPS, and, is familiar with its contents. Having considered and weighed the risks of investing (including, but not limited to, the risks of loss of interest and principal) the Local Agency has determined that it is appropriate and legal to invest its moneys in the Orange County Treasury as permitted by the Local Agency's Investment Policy Statement. The Local Agency has been advised by the Treasurer and understands that the IPS may be amended by the Treasurer without the review or consent of Local Agency.

The Local Agency further acknowledges that it has reviewed and understands Net Asset Value ("NAV") risk that is discussed in Section V of the IPS. The Local Agency finds and determines that investment of any of its moneys in the OCIP is an appropriate investment of its moneys.

5. TERM OF AGREEMENT

This Agreement shall become effective on the date fully executed and shall continue indefinitely, unless this Agreement is terminated earlier by either party in accordance with Article 8.

6. DEDUCTION OF ADMINISTRATIVE FEES

Local Agency agrees that the Treasurer shall deduct administrative charges from its gross interest income pursuant to California Government Code Sections 53684(b) and 27013.

7. AMENDMENT

Neither party shall make any change to this Agreement without the others written consent. Such changes shall be incorporated into an Agreement Amendment, which shall not become effective until signed by the parties. The Treasurer may make amendments if the changes are ministerial.

8. TERMINATION

Either party in accordance with this Article may terminate the provision of services under this Agreement, in whole or in part, whenever either party shall determine that such termination is its best interest. Any such termination shall be effected by delivery to the other party of a Notice of Termination specifying the extent to which services under the Agreement are terminated, and the date upon which such termination will become effective.

After receipt of a Notice of Termination, and except as otherwise agreed:

(a) The County shall stop performing under this Agreement on the date specified and to the extent specified in the Notice of Termination.
(b) Local Agency shall request no further services requiring work to be performed after the termination date as specified in the Notice of Termination.

Upon termination, Local Agency agrees to pay the County for all services performed prior to termination.

9. DEPOSITS AND WITHDRAWALS

The City's Finance Director/Treasurer will provide an Authorized Signature List to the Treasurer of those positions and names authorized to deposit and request withdrawals of moneys of Local Agency in the County Treasury. When the Local Agency requests withdrawal of funds from the County Treasury, Local Agency and County shall comply with all applicable withdrawal provisions pursuant to California law, as now in effect and as may be subsequently added, including, but not limited to Government Code Section 27136.

10. NOTICES

Where required to be given under this Agreement, notice shall be in writing and shall be deemed given when delivered personally or deposited in the United States mail, postage prepaid, certified, addressed as follows:

Local Agency: City of Laguna Woods
Attention: City Manager
24264 El Toro Road
Laguna Woods, CA 92637

County: Orange County Treasurer-Tax Collector
Attention: Shari L. Freidenrich
P.O Box 4515
Santa Ana, CA 92702-4515

11. MERGER/NO CONTINUING WAIVER

This Agreement contains the entire and complete understanding of the parties and supersedes any and all other prior agreements, oral or written, and discussions of the parties with respect to the provision of services under this Agreement. No waiver of any term or condition of this Agreement shall be deemed a continuing waiver thereof.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date(s) written below.

DATED _____

LOCAL AGENCY

By _____
Shari L. Horne
Mayor

By _____

DATED _____

COUNTY OF ORANGE, CALIFORNIA,
a political subdivision of the State of California

By _____
Shari L. Freidenrich
Orange County Treasurer-Tax Collector

APPROVED AS TO FORM:

CITY OF LAGUNA WOODS

By _____
David B. Cosgrove, City Attorney

DATED: _____

COUNTY OF ORANGE

By _____
Ronnie Magsaysay, Deputy County Counsel
Office of the County Counsel

DATED: _____

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6.7
CITY ATTORNEY SERVICES

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RUTAN & TUCKER, LLP

ITEM 6.7

David B. Cosgrove
Direct Dial: (714) 662-4602
E-mail: dcosgrove@rutan.com

March 29, 2017

Honorable Mayor and Members of the City
Council
City of Laguna Woods
24264 El Toro Road
Laguna Woods, CA 92637

Re: Legal Representation Letter

Dear Council:

The existing term of our agreement for providing legal services to the City of Laguna Woods expires on June 30, 2017. This letter sets forth our proposal for the memorialization of basic terms to extend the engagement, and the arrangement for fees and costs that will apply to the engagement.

1. *Client; Scope of Representation.* Our client in this matter will be City of Laguna Woods (sometimes collectively referred to as "you" below.) We will be engaged to provide general City Attorney legal services and advice through June 30, 2019. We propose to continue the existing staffing of David B. Cosgrove as city Attorney, and Alisha Patterson as Assistant City Attorney. You may limit or expand the scope of our representation from time to time, provided that we must agree to any substantial expansion or limitation of the representation. The firm will perform these services, will take reasonable steps to keep you informed of progress, respond to your inquiries, and will consult with you as necessary.

2. *Duties of Client.* You agree to timely provide us such information, assistance and cooperation as is necessary for us to effectively perform our services and to timely pay our bills for fees, costs and expenses as further described herein.

3. *General Terms; Fees and Expenses.* To assist you in understanding our billing practices and other general terms, I enclose a copy of our current Policy on Professional Fees and General Terms of Engagement (the "General Terms"). The General Terms are incorporated in this letter. The General Terms describe the ranges of hourly rates for our attorneys and paraprofessionals and our policies regarding reimbursement of costs and expenses. Please specifically note that the hourly rate for all of the services we will be providing through June 30, 2018 shall be $225.00 per hour. Litigation and special projects are $275.00 per hour and third party reimbursable matters are $300.00 per hour. Bond financing will be based upon an hourly rate, as may be negotiated. On or before May 31, 2018, you and Rutan & Tucker will meet and

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confer regarding potential adjustment to billable hour rates to be in effect from July 1, 2018, until the end of the term of this agreement. In the absence of agreement regarding an adjustment, the rates specified herein shall continue in effect.

4. *Term of Engagement*. In accordance with the General Terms, either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable Rules of Professional Conduct.

5. *Binding Arbitration*. We appreciate the opportunity to serve as your attorneys and anticipate a productive, harmonious relationship. If you become dissatisfied for any reason with the services we have performed, the fees charged, or any other aspect of the attorney-client relationship, we encourage you to bring that to our attention immediately. Similarly, if we perceive a problem with the representation, we will discuss it with you. Most such problems can be rectified by communication and discussion. Although in our experience disputes of any type are rare, a dispute conceivably could arise between us which cannot be resolved by discussion or negotiation. We believe such attorney-client disputes are most satisfactorily resolved through binding arbitration rather than by litigation in court.

Arbitration is, as you know, a process by which both parties to a dispute agree to submit the matter to a retired judge or other arbitrator who has expertise in the area and to abide by the arbitrator's decision, instead of litigating in court. In arbitration, there is no right to a trial by jury and the arbitrator's legal and factual determinations are generally not subject to appellate review. Arbitration rules of evidence and procedure are often less formal and rigid than in a court trial. Arbitration often results in a decision much more quickly than proceedings in court, and the attorneys' fees and other costs incurred by both sides are often substantially less.

Both the United States and California Supreme Courts have endorsed arbitration as an accepted and favored method of resolving disputes, because it is economical and expeditious. Arbitration is also less acrimonious and more confidential than traditional litigation and is, therefore, particularly suited to resolution of disputes between attorneys and their clients.

Your agreement to arbitrate disputes is not a condition of our agreeing to represent you, and if you do not wish to agree to arbitrate, then you should advise me before signing the copy of this letter, so we can delete this section of the agreement. You are free to discuss the advisability of arbitration with us or independent counsel.

By signing this agreement, you agree that if any dispute arises out of or relating to this agreement, our relationship, or the services performed by us (including but not limited to any disputes regarding our fees and expenses and any failure by you to pay such fees and expenses in accordance with this agreement, claims of professional negligence, breach of contract or fiduciary

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duty, fraud or any claim based upon a statute), such dispute shall be resolved by submission to final and binding arbitration in Orange County, California, before a retired judge or justice of the California Superior Court or a higher court. Please be advised that by agreeing to binding arbitration, you are waiving any right to a jury trial on any such dispute. If you and we are unable to agree on a retired judge or justice, each party will name one retired judge or justice and the two named persons will select a neutral judge or justice who will act as the sole arbitrator. Should you elect to have any fee dispute arbitrated pursuant to non-binding arbitration under statutory or case law, (including your rights to request mandatory fee arbitration under the rules of the Orange County Bar Association) then such non-binding arbitration shall determine only the issue of the amount of fees properly chargeable to you. Any other claims or disputes between us, including claims for professional negligence, shall remain subject to binding arbitration pursuant to this agreement. In the event of such an arbitration, the parties shall be entitled to take discovery in accordance with the provisions of the California Code of Civil Procedure, but either party may request that the arbitrator limit the amount or scope of such discovery, and in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.

6. *Conflicts in this Matter*. We cannot, without appropriate consents, represent any party if there is a conflict of interest with any of our other clients. In order to avoid conflicts of interest among our clients, we maintain an index of relevant names. We have not discovered any conflict which requires further action before extending our existing arrangement for the provision of City Attorney services. Please inform us at once if you learn in the future of persons or entities who may be involved in actions adverse to the City so we can make a conflict of interest search with respect to them.

7. *Conflicts Waiver*. In undertaking this representation, our objective is to represent you to the best of our ability without forfeiting the continuing representation of our other clients. Rutan & Tucker LLP is a large law firm which has represented, and continues to represent, many different corporate and individual clients with various interests in numerous industries. It is possible that, during the time we are representing your interests in this matter, you may become involved in transactions and/or disputes in which your interests are adverse to those of one of the firm's present or future clients. Therefore, as a specific condition to our undertaking your representation, you understand and agree that this firm may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse to your interests. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a

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nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage.

Please be aware that you have the right to obtain the advice of independent counsel regarding the terms of this agreement, and you should feel free to do so.

This letter and the attached General Terms constitute the entire agreement between you and Rutan & Tucker, LLP with respect to our engagement. No prior oral or written understanding shall be of any force or effect with respect to these matters. This agreement may not be modified, except by a document in writing executed by both parties. A waiver of any party of any breach of any of the conditions, terms or time requirements under this letter shall not be construed as a waiver of any succeeding breach. This letter may be executed in multiple counterparts, each of which shall be deemed an original.

Please review this letter and the General Terms attached hereto carefully. If the terms and conditions of our representation and the billing arrangements under this agreement meet with your approval, please sign the enclosed copy of this letter and return it to me. Please call if you have any questions.

Once again, thank you for the opportunity to continue to work with you, and with the City.

Very truly yours,

RUTAN & TUCKER, LLP

David B. Cosgrove

Enclosure

ACCEPTED AND AGREED:

_____

Shari Horne
Mayor
City of Laguna Woods

POLICY ON PROFESSIONAL FEES AND GENERAL TERMS OF ENGAGEMENT

Professional Fees and Billing Procedures.

Experience has shown that the attorney-client relationship works best when there is a mutual understanding about fees and payment terms. The following is intended to explain briefly our present billing policies and procedures. These policies and procedures are subject to change. We encourage you to discuss with us at any time any questions you might have concerning these policies and procedures.

Our professional fees will be based on our agreed hourly rates of the attorneys and paraprofessionals working on your matter(s). Our hourly rates for attorneys and paraprofessionals are adjusted from time to time and generally as of January 1st of each year, but as stated above, no adjustments to rates will be made on this account through June 30, 2018. Any authorized adjustments in billing rates will be reflected in the invoice for legal services which constitutes our written notice to you.

Rutan & Tucker, LLP bills its clients for costs advanced on a client's behalf, such as filing fees, transcript and deposition fees, reasonable travel expenses, and expert witness fees. The firm also charges for certain costs and expenses incurred on behalf of clients such as long-distance telephone calls, facsimile and telecopier transmissions, copying, scanning, printing, postage, mileage, messengers, and computerized research. Notwithstanding the foregoing, we may forward to you large disbursement invoices for your direct payment to the supplier.

We make every effort to include disbursements in the statement for the month in which the disbursements are incurred. Some disbursements, however, may not be available to us until the following months, in which case a subsequent statement may be rendered to you for these additional charges, or an estimated amount may be included in the initial billing and an adjustment made when the actual disbursement information is available.

In the absence of other arrangements, our billing statements ordinarily will be rendered to you on a monthly basis.

Our billing statements are due and payable upon receipt. We ask payment of our statements on a current basis, as delayed payment adds to our overall costs of providing services. Unless you notify us of any objection to any such billing statement (specifically describing the basis for such objection), within thirty (30) days after the date we send the billing statement to you, we will presume that you have no objection to the amounts set forth in the billing statement. If any statement remains unpaid for more than 30 days after the date the statement is sent by this firm, interest may be added at the rate of 10% per annum on the unpaid balance.

Unless specifically agreed in writing, we cannot make any guarantee as to the amount which you will incur for attorneys' fees and costs in any matter, as those figures will wholly depend on the time and effort required to be devoted to such matter. Any estimates of anticipated fees and costs, whether for budgeting purposes or otherwise, are, due to the uncertainties involved, necessarily only an approximation of potential fees and costs. Unless specifically agreed in

writing, such estimates are not a maximum or minimum quotation and are not binding. The actual fees and costs will be determined in accordance with the policies described above.

General Terms.

We have been engaged to represent the City of Laguna Woods. Unless agreed to in writing, we are not representing any of its respective officials, affiliates, subsidiaries, officers, directors, principals, or employees. Accordingly, we can take on matters that may be adverse to these related parties or their legal interests, unless precluded by reason of the Rules of Professional Conduct.

Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable Rules of Professional Conduct. If we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in the matter(s) for which we have been engaged. If you so request, we will use reasonable efforts to suggest to you possible successor counsel and provide it with whatever documents you have provided to us, but will retain materials that we have generated, as noted below.

Unless previously terminated, our representation of you in any matter will terminate upon our sending to you our final invoice for services rendered for such matter. Upon the termination of such representation, our own lawyer work product documents, notes and files (the "Work Product Files") pertaining to your matter will be retained by the firm. Your documents, property and files that are not Work Product Files (the "Client Files") will be, at your request, returned to you upon the termination of such representation. Both the Client Files (unless otherwise returned to you at your request) and the Work Product Files will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, and consistent with applicable Public Records Act requirements and records retention policies of the City, we reserve the right to destroy or otherwise dispose of any such documents, property, files or other materials retained by us within a reasonable time after the termination of the engagement. Specifically, it is our current policy to store your Client Files for a period of five (5) years and at the conclusion of such five (5) year period we will make an attempt to contact you as to the disposition of your Client Files, but if we are unable to locate you, we reserve the right to destroy such Client Files.

We have made no representations, promises or guarantees to you regarding any outcome of any matter. Any comments about the outcome of your matter at any time during the performance of services do not constitute promises, guarantees, or assurances, as to the outcome of your matter.

Unless otherwise agreed in a signed writing, the firm shall have no responsibility to investigate or evaluate whether insurance is available for any matter covered by this engagement or to tender any matter covered by this engagement to any insurance carrier.

If we are required to respond to a subpoena of our records relating to services we have performed for you, or testify by deposition or otherwise concerning such services, then we will take reasonable steps to consult with you as to whether you wish to supply the information demanded or assert objections to the extent you may properly do so. You agree to pay us for our time and costs incurred in responding to any such demand, in accordance with the provisions of

this letter, including, but not limited to, time and expense incurred in search and photocopying costs, reviewing documents, appearing at depositions or hearings, and otherwise litigating issues raised by the request.

In order to maximize efficiency, please be advised that attorneys and paraprofessionals at this firm routinely use the following communications methods to the fullest extent possible: e-mail, document transfer by computer, mobile telephones, and facsimile transfers.

Although not required in California, some states require that a law firm disclose the existence of errors and omissions insurance coverage applicable to the services to be rendered. Rutan & Tucker, LLP hereby confirms the existence of such insurance coverage for the purposes of complying with such a requirement.

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6.8
AS NEEDED PLANNING SERVICES

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EXTENSION OF THE
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE
CITY OF LAGUNA WOODS
AND
MICHAEL BAKER INTERNATIONAL, INC.
FOR AS NEEDED PLANNING SERVICES

This EXTENSION of the AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT") that was approved by the City Council on October 16, 2013 by and among the City of Laguna Woods, a California municipal corporation ("CITY") and Michael Baker International, Inc. (formerly "PMC") ("CONSULTANT"), is made and entered into this 19th day of April 2017 by and among CITY and CONSULTANT.

WHEREAS, the initial term of the AGREEMENT was for the period between October 16, 2013 and 11:59 p.m. on June 30, 2016; and

WHEREAS, the AGREEMENT allows for the term of the AGREEMENT to be extended upon written agreement of both parties to the AGREEMENT a maximum of two times for no more than one fiscal year at a time; and

WHEREAS, the term of the AGREEMENT was previously extended for the period between July 1, 2016 and 11:59 p.m. on June 30, 2017.

NOW THEREFORE, the parties amend the AGREEMENT as follows:

1. CITY and CONSULTANT hereby agree to an EXTENSION of the AGREEMENT for a period beginning on July 1, 2017 and ending at 11:59 p.m. on June 30, 2018 with no changes to the terms and conditions of the AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this EXTENSION to be executed the day and year first above written.

CITY OF LAGUNA WOODS:

By_____
Christopher Macon, City Manager

CONSULTANT:

By_____
Al Warot, Associate Vice President

APPROVED AS TO FORM:

_____
David B. Cosgrove, City Attorney

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6.9
WATER QUALITY SERVICES

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EXTENSION OF THE
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE
CITY OF LAGUNA WOODS
AND
CHARLES ABBOTT ASSOCIATES, INC.
FOR WATER QUALITY SERVICES

This EXTENSION of the AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT") that was approved by the City Council on May 28, 2014 by and among the City of Laguna Woods, a California municipal corporation ("CITY") and Charles Abbott Associates, Inc. ("CONSULTANT"), is made and entered into this 19th day of April 2017 by and among CITY and CONSULTANT.

WHEREAS, the initial term of the AGREEMENT was for the period between June 13, 2014 and 11:59 p.m. on June 30, 2016; and

WHEREAS, the AGREEMENT allows for the term of the AGREEMENT to be extended upon written agreement of both parties to the AGREEMENT for any applicable mutually agreeable period through a maximum of 11:59 p.m. on June 30, 2019; and

WHEREAS, the term of the AGREEMENT was previously extended for the period between July 1, 2016 and 11:59 p.m. on June 30, 2017.

NOW THEREFORE, the parties amend the AGREEMENT as follows:

1. CITY and CONSULTANT hereby agree to an EXTENSION of the AGREEMENT for a period beginning on July 1, 2017 and ending at 11:59 p.m. on June 30, 2018 with no changes to the terms and conditions of the AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this EXTENSION to be executed the day and year first above written.

CITY OF LAGUNA WOODS:

By_____
Christopher Macon, City Manager

CONSULTANT:

By_____
Rusty R. Reed, President

APPROVED AS TO FORM:

_____
David B. Cosgrove, City Attorney

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6.10
BUILDING INSPECTION, PERMIT COUNTER, AND BUILDING OFFICIAL SERVICES

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EXTENSION OF THE
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE
CITY OF LAGUNA WOODS
AND
CIVILSOURCE, INC.
FOR BUILDING INSPECTION, PERMIT COUNTER,
AND BUILDING OFFICIAL SERVICES

This EXTENSION of the AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT") that was approved by the City Council on September 17, 2014 by and among the City of Laguna Woods, a California municipal corporation ("CITY") and CivilSource, Inc. ("CONSULTANT"), is made and entered into this 19th day of April 2017 by and among CITY and CONSULTANT.

WHEREAS, the initial term of the AGREEMENT was for the period between June 13, 2014 and 11:59 p.m. on June 30, 2016; and

WHEREAS, the AGREEMENT allows for the term of the AGREEMENT to be extended upon written agreement of both parties to the AGREEMENT for any applicable mutually agreeable period through a maximum of 11:59 p.m. on June 30, 2020; and

WHEREAS, the term of the AGREEMENT was previously extended for the period between July 1, 2016 and 11:59 p.m. on June 30, 2017.

NOW THEREFORE, the parties amend the AGREEMENT as follows:

1. CITY and CONSULTANT hereby agree to an EXTENSION of the AGREEMENT for a period beginning on July 1, 2017 and ending at 11:59 p.m. on June 30, 2018 with no changes to the terms and conditions of the AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this EXTENSION to be executed the day and year first above written.

CITY OF LAGUNA WOODS:

By_____
Christopher Macon, City Manager

CONSULTANT:

By_____
Amy Amirani, Vice President

APPROVED AS TO FORM:

_____
David B. Cosgrove, City Attorney

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6.11
CITY ENGINEERING AND TRAFFIC OPERATIONS SERVICES

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EXTENSION OF THE
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE
CITY OF LAGUNA WOODS
AND
CIVILSOURCE, INC.
FOR CITY ENGINEERING AND TRAFFIC OPERATIONS SERVICES

This EXTENSION of the AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT") that was approved by the City Council on June 17, 2015 by and among the City of Laguna Woods, a California municipal corporation ("CITY") and CivilSource, Inc. ("CONSULTANT"), is made and entered into this 19th day of April 2017 by and among CITY and CONSULTANT.

WHEREAS, the initial term of the AGREEMENT was for the period between July 1, 2015 and 11:59 p.m. on June 30, 2017; and

WHEREAS, the AGREEMENT allows for the term of the AGREEMENT to be extended upon written agreement of both parties to the AGREEMENT for any applicable mutually agreeable period through a maximum of 11:59 p.m. on June 30, 2020.

NOW THEREFORE, the parties amend the AGREEMENT as follows:

1. CITY and CONSULTANT hereby agree to an EXTENSION of the AGREEMENT for a period beginning on July 1, 2017 and ending at 11:59 p.m. on June 30, 2018 with no changes to the terms and conditions of the AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this EXTENSION to be executed the day and year first above written.

CITY OF LAGUNA WOODS:

By_____
Christopher Macon, City Manager

CONSULTANT:

By_____
Amy Amirani, Vice President

APPROVED AS TO FORM:

_____
David B. Cosgrove, City Attorney

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6.12
BUILDING OFFICIAL SERVICES

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EXTENSION OF THE
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE
CITY OF LAGUNA WOODS
AND
LILLEY PLANNING GROUP
FOR BUILDING OFFICIAL SERVICES

This EXTENSION of the AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT") that was approved by the City Council on October 15, 2014 by and among the City of Laguna Woods, a California municipal corporation ("CITY") and Lilley Planning Group ("CONSULTANT"), is made and entered into this 19th day of April 2017 by and among CITY and CONSULTANT.

WHEREAS, the initial term of the AGREEMENT was for the period between October 1, 2014 and 11:59 p.m. on June 30, 2015; and

WHEREAS, the AGREEMENT allows for the term of the AGREEMENT to be extended upon written agreement of both parties to the AGREEMENT for any applicable mutually agreeable period through a maximum of 11:59 p.m. on June 30, 2020; and

WHEREAS, the term of the AGREEMENT was previously extended for the period between July 1, 2015 and 11:59 p.m. on June 30, 2017.

NOW THEREFORE, the parties amend the AGREEMENT as follows:

1. CITY and CONSULTANT hereby agree to an EXTENSION of the AGREEMENT for a period beginning on July 1, 2017 and ending at 11:59 p.m. on June 30, 2018 with no changes to the terms and conditions of the AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this EXTENSION to be executed the day and year first above written.

CITY OF LAGUNA WOODS:

By_____ _____
Christopher Macon, City Manager Date

CONSULTANT:

By_____ _____
Surendra Patel, President Date

APPROVED AS TO FORM:

_____ _____
David B. Cosgrove, City Attorney Date

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6.13
CERTIFIED ACCESS SPECIALIST (CASp) AND BUILDING PLAN REVIEW SERVICES

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EXTENSION OF THE
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE
CITY OF LAGUNA WOODS
AND
CSG CONSULTANTS, INC.
FOR CERTIFIED ACCESS SPECIALIST (CASp)
AND BUILDING PLAN REVIEW SERVICES

This EXTENSION of the AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT") that was approved by the City Council on September 17, 2014 by and among the City of Laguna Woods, a California municipal corporation ("CITY") and CSG Consultants, Inc. ("CONSULTANT"), is made and entered into this 19th day of April 2017 by and among CITY and CONSULTANT.

WHEREAS, the initial term of the AGREEMENT was for the period between September 19, 2014 and 11:59 p.m. on June 30, 2016; and

WHEREAS, the AGREEMENT allows for the term of the AGREEMENT to be extended upon written agreement of both parties to the AGREEMENT for any applicable mutually agreeable period through a maximum of 11:59 p.m. on June 30, 2020; and

WHEREAS, the term of the AGREEMENT was previously extended for the period between July 1, 2016 and 11:59 p.m. on June 30, 2017.

NOW THEREFORE, the parties amend the AGREEMENT as follows:

1. CITY and CONSULTANT hereby agree to an EXTENSION of the AGREEMENT for a period beginning on July 1, 2017 and ending at 11:59 p.m. on June 30, 2018 with no changes to the terms and conditions of the AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this EXTENSION to be executed the day and year first above written.

CITY OF LAGUNA WOODS:

By_____ _____
Christopher Macon, City Manager Date

CONSULTANT:

By_____ _____
Cyrus Kianpour, President Date

APPROVED AS TO FORM:

_____ _____
David B. Cosgrove, City Attorney Date

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6.14
LAGUNA WOODS CIVIC SUPPORT FUND

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MEMORANDUM OF UNDERSTANDING

between

CITY OF LAGUNA WOODS

and

LAGUNA WOODS CIVIC SUPPORT FUND

related to

FUNDRAISING AND DISTRIBUTION OF FUNDS, AND INSURANCE

This MEMORANDUM OF UNDERSTANDING ("MOU"), is made and entered into this 19th day of April 2017 ("EFFECTIVE DATE"), by and among the City of Laguna Woods, a California municipal corporation ("CITY"), and the Laguna Woods Civic Support Fund, a nonprofit public benefit corporation ("CIVIC SUPPORT FUND").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. Fundraising and Distribution Authorization. Pursuant to Section 3.4 of the CIVIC SUPPORT FUND's Bylaws, the CIVIC SUPPORT FUND must receive prior written authorization from the City Council of the CITY for each program, project, or service for which the CIVIC SUPPORT FUND raises or distributes funds. In approving and executing this MOU, the City Council of the CITY authorizes the CIVIC SUPPORT FUND to raise and distribute funds for the following programs, projects, and services. Such authorization may be revoked at any time by written notice of the City Council of the CITY. In the event such notice is given, the CITY may require the CIVIC SUPPORT FUND to cease immediately all work in progress and the CIVIC SUPPORT FUND agrees that it shall do so without exception.

    a) The CIVIC SUPPORT FUND is authorized to raise and distribute funds to support programs, projects, and services offered by or at the Laguna Woods branch of the County of Orange's public library system, as well as facilities improvement and expansion. In doing so, the CIVIC SUPPORT FUND is additionally authorized to conduct business under the alternate business name of "Friends of the Laguna Woods OC Library", pursuant to Section 1.2 of the CIVIC SUPPORT FUND's Bylaws.

    b) The CIVIC SUPPORT FUND is authorized to raise and distribute funds to support programs, projects, and services related to attracting, retaining, and promoting Laguna Woods businesses.

    c) The CIVIC SUPPORT FUND is authorized to raise and distribute funds to support the development and construction of capital improvement projects included in the Capital Improvement Program adopted by the City Council of the CITY.

    The City Manager of the CITY is empowered to interpret the aforementioned authorizations on behalf of the City Council of the CITY.

2. Insurance. The CITY will defend, indemnify, and hold harmless the CIVIC SUPPORT FUND from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs which arise out of, pertain to, or relate to the performance of the activities authorized by the City Council of the CITY, and included in this MOU, but only to the extent which liability protection is afforded under the Memorandum of Coverage-Primary Liability Program administered by the California Joint Powers Insurance Authority.

3. Termination. The CITY may terminate this MOU, with or without cause, at any time by giving thirty (30) calendar days written notice of termination to the CIVIC SUPPORT FUND.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed the day and year first above written.

CITY OF LAGUNA WOODS:

By_____
Shari L. Horne, Mayor

LAGUNA WOODS CIVIC SUPPORT FUND:

By_____
Carol Moore, Chair of the Board

APPROVED AS TO FORM:

By_____
David B. Cosgrove, City Attorney

6.15
MOULTON PARKWAY WATER EFFICIENT MEDIAN IMPROVEMENT PROJECT
(NO REPORT)

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6.16
PAVEMENT MANAGEMENT PLAN PROJECT 1) EASTBOUND EL TORO ROAD (AVENIDA SEVILLA TO PASEO DE VALENCIA) 2) PEDESTRIAN ACCESSIBILITY
(NO REPORT)

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7.1
SIGN PROGRAM SP-1164 TO ALLOW FOR VARIOUS SIGNAGE AT 24256-24290 EL TORO ROAD AND 24310-24380 MOULTON PARKWAY, LAGUNA WOODS, CA 92637

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: April 19, 2017 Regular Meeting

SUBJECT: Sign Program SP-1164 to allow for various signage at 24256-24290 El Toro Road and 24310-24380 Moulton Parkway, Laguna Woods, CA 92637

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING SIGN PROGRAM SP-1164 TO

ALLOW FOR VARIOUS SIGNAGE AT 24256-24290 EL TORO ROAD AND 24310-24380 MOULTON PARKWAY, LAGUNA WOODS, CA 92637

Background

The City has received a sign program application from The Floyd Company (Applicant) to allow for various signage at the Willow Tree Center.

Project Location: 24256-24290 El Toro Road &
24310-24380 Moulton Parkway
Laguna Woods, CA 92637

Surrounding land uses are listed in Table 1.

A vicinity map is included as Attachment A.

Table 1: Surrounding Land Uses

General Location	General Plan Land Use Designation	Land Use
North	Commercial / Residential Community	Willow Tree Center / Laguna Woods Village residences
South	Community Facilities / Open Space	Methodist Church / Laguna Woods Village open space/trails
East	Residential Community	Laguna Woods Village residences
West	Commercial / Open Space	Retail businesses and offices / Via Campo Verde

The project location is zoned as Community Commercial, which designates areas to "provide for the development and preservation of high intensity commercial uses which serve the local community and regional area and are compatible with surrounding residential uses" (Laguna Woods Municipal Code Section 13.10.010).

Sign programs are intended to "provide incentive and latitude to achieve effectiveness, attractive appearance, compatible design and variety in permanent signage" (Laguna Woods Municipal Code Section 13.20.160). The City Council is responsible for approving or denying sign programs, subject to certain minimum findings set forth in Laguna Woods Municipal Code.

Discussion

The Laguna Woods Municipal Code allows for sign regulations to be supplemented by a sign program approved by the City Council. In this case, a sign program is required due to the pending remodel of the shopping center, a proposed combination of more than three permanent signs, and proposed permanent signage that does not comply with the City's sign regulations (increases in size, increases in the number of signs permitted, and additional sign types are proposed).

The proposed sign program (Attachment B) includes both new and remodeled wall signs, shopping center identification (pylon) signs, monument signs, and pedestrian (blade) signs. For completeness, the proposal also includes the signs previously approved by the City Council under Sign Program SP-1124 for the pad building currently occupied by The Coffee Bean & Tea Leaf. Locations, dimensions, and additional design details are included in Exhibit B to Attachment B.

Environmental Review

This project is categorically exempt under Section 15311 (Accessory Structures) of the California Environmental Quality Act (CEQA) guidelines.

Fiscal Impact

The City's expenses associated with processing the proposed project are recovered through planning services fees.

Report Prepared With: Rebecca M. Pennington, Development Programs Analyst

Attachments: A – Vicinity Map
B – Proposed Resolution
Exhibit A – Proposed Conditions of Approval
Exhibit B – Proposed Sign Program

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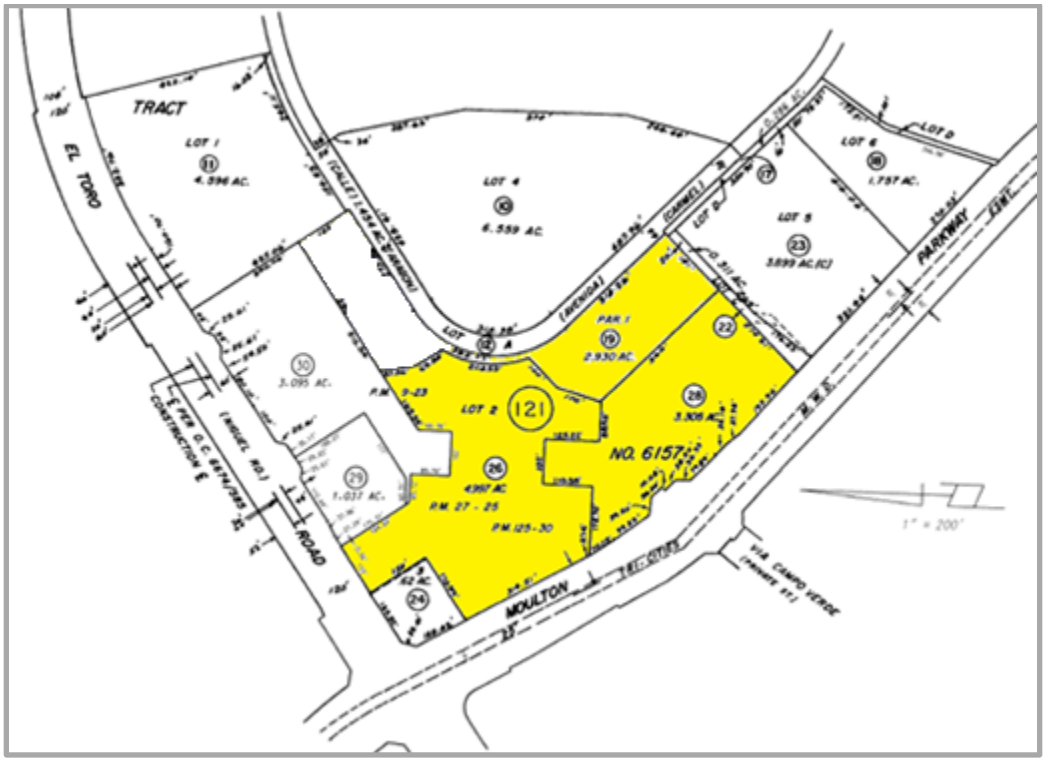
Vicinity Map
24256-24290 El Toro Road and 24310-24380 Moulton Parkway, Laguna Woods, CA 92637

Project Area



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RESOLUTION NO. 17-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING SIGN PROGRAM SP-1164 TO ALLOW FOR VARIOUS SIGNAGE AT 24256-24290 EL TORO ROAD AND 24310-24380 MOULTON PARKWAY, LAGUNA WOODS, CA 92637

WHEREAS, on April 19, 2017, the City Council of the City of Laguna Woods, after giving notice thereof as required by law, held a public hearing concerning the requested sign program, to allow for various signage at 24256-24290 El Toro Road and 24310-24380 Moulton Parkway in the Community Commercial District (CC); and

WHEREAS, the City Council has carefully considered all pertinent testimony, as well as all information contained in the agenda report prepared for this application, as presented at the public hearing; and

WHEREAS, staff has reviewed the environmental form submitted by the applicant in accordance with the City's procedures. Based upon the information received and staff's assessment of the information, the project has been determined to be categorically exempt pursuant to Section 15311 (Accessory Structures) of the California Environmental Quality Act (CEQA); and

WHEREAS, all legal prerequisites have occurred prior to the adoption of this resolution; and

WHEREAS, the City Council makes the following findings subject to the conditions of approval:

1. The proposed signs are well-designed, consistent with any design criteria otherwise applicable to the sign property, compatible with community character and harmonious with surrounding properties, buildings, and streetscapes.

   The proposed sign program provides regulations for permanent signage that are easily visible, provide no undue safety distractions to pedestrians or motorists, and are aesthetically appealing and compatible with signage within the shopping center and surrounding properties.

2. The proposed signs are clear and legible in the circumstances in which they are seen, including for purposes of promoting awareness of local businesses and activities.

   The proposed signage would help promote businesses and create a compatible appearance for signage throughout the shopping center. The proposed signs includes both new and remodeled wall signs, shopping center identification (pylon) signs, monument signs, and pedestrian (blade) signs, as well as the signs that were previously approved as part of Sign Program SP-1124 for the pad building currently occupied by The Coffee Bean & Tea Leaf. Locations, dimensions, and additional design details are included in Exhibit B. The proposed signs are similar in type as those commonly associated with similar businesses and shopping centers, and will help to promote visibility and safe circulation practices within the shopping center.

3. The proposed signs are appropriate to the type of business or activity to which they pertain.

   The proposed sign program identifies signage that would be appropriate in type, location, size/scale, and design to the businesses within the shopping center.

4. The proposed signs are displayed in a manner that does not harm public health, safety and welfare.

   As proposed, the signs permitted under the regulations within the sign program would not harm the public health, safety, and welfare. All new signs constructed pursuant to the sign program would be required to obtain all necessary planning and building approvals and permits. The proposed shopping center identification (pylon) and monument signs would be subject to the minimum setback requirements currently contained in the Laguna Woods Municipal Code, which help to promote visibility and safe circulation practices for vehicle ingress and egress. Additionally, Section 13.20.020(d) of the Laguna Woods Municipal Code requires all signs to be maintained in good condition and allows the City to “order the repair or removal of any sign that is unsafe, defective, damaged, or unsatisfactorily maintained.”

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct.

SECTION 2. The City Council approves Sign Program SP-1164 subject to the conditions of approval found in Exhibit A and plans found in Exhibit B.

SECTION 3. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED on this XX day of XX 2017.

_____
SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 17-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the XX day of XX 2017, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

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Exhibit A to Resolution No. 17-XX

Conditions of Approval for Sign Program SP-1164

1. The proposed project shall be constructed, developed, used, operated, and permanently maintained in accordance with the terms of the application, plans, drawing, and conditions imposed in the resolution of approval.

2. The Applicant(s)/Owner(s) shall comply with all of the requirements of Resolution No. 17-XX, adopted as part of Sign Program SP-1164.

3. The Applicant(s)/Owner(s) shall comply with all requirements of the Laguna Woods Municipal Code, as it pertains to this application, and any signs erected and maintained pursuant to the approved sign program, and such requirements are made a condition of permit approval. This includes, but is not limited to, all requirements related to building permits, engineering review, and plan review, generally, of proposed construction plans.

4. This approval does not eliminate the need for building permits or include any action or finding as to compliance or approval of any other applicable federal, state or local ordinance, regulation, rule, or requirements. All project signage shall be reviewed and constructed under separate permits.

5. Except as otherwise provided herein, or as permitted pursuant to the Laguna Woods Municipal Code, this approval is for the location and design of the specified signage shown on Exhibit B to Resolution No. 17-XX only. No additional approval is granted or to be implied.

6. The height of the shopping center identification (pylon) sign shown on page 15 of Exhibit B to Resolution No. 17-XX shall be limited to 25 feet.

7. A proposed sign program change may be submitted to the City Manager for any relocation, alteration, or addition to any feature or material not specifically approved in the original application. If the City Manager determines, in his or her reasonable discretion, that the proposed sign program change proposes non-substantial deviations from the approved sign program, and still complies with the provisions, spirit, intent, and findings of this approval action, the proposed sign program change may be approved by the City Manager without requiring a new public hearing or City Council approval. Notwithstanding the

foregoing, the City Manager may refer any such determination to the City Council, or for additional public hearing.

8. All signs erected and maintained pursuant to the approved sign program shall be kept clean, complete, and in good structural and functional working order, and shall not be allowed to fall into a state of disrepair, damage, or decrepitude.

9. Graffiti on the property shall be removed at the Applicant(s)'/Owner(s)' expense within 24 hours.

10. In accordance with policies adopted by the City, the Applicant(s)/Owner(s) shall reimburse the City for any cost incurred as a result of local law enforcement activities or code enforcement investigation/inspections that result in a finding of violation of any applicable laws and/or conditions of approval.

11. Termination: Upon approval, the permit shall become null and void 180 days after such time the approved use at the approved location ceases to be operated as noted by lapse of City business license, lapse of California State Board of Equalization permit, or date noted by city official with proper site verification of abandonment or discontinuance. This permit shall be deemed immediately terminated should the approved location be occupied by a use not in accord with this approval.

12. The Applicant(s)/Owner(s), or successor in interest, shall as a condition of issuance of this permit, at its sole expense, defend, indemnify, and hold harmless the City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding against the City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers to attach, set aside, void or annul an approval of the City Council, Planning Agency, or other decision-making body, or staff action concerning this sign program approval, or its implementation. The Applicant(s)/Owner(s) shall pay all of the City's defense costs incurred by counsel of the City's choosing, and shall reimburse the City for any and all court costs and other parties' attorney fees that the City may be required by a court to pay as a result of such defense. The Applicant(s)/Owner(s) may its sole discretion participate in the defense of any such action under this condition, with its own counsel.

WILLOW TREE CENTER

24256 - 24290 El Toro Rd., 24310 - 24380 Moulton Pkwy

SIGN PROGRAM

Laguna Woods, California

PROJECT DIRECTORY

LANDLORD: THE FLOYD COMPANY
191 E. Main St., Suite 2C
Tustin, CA 92780
Tel. 949-250-8500 x102
Fax. 949-435-3656

ARCHITECT: Architects Orange
144 N. Orange Street / Orange, CA 92866
P 714.639.9860

CONSULTANT: JONES SIGN
9025 BALBOA AVENUE, STE 150
SAN DIEGO, CA 92123-1520
TEL (858) 569-1400 x106
FAX (858) 569-1453

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A INTRODUCTION

The intent of this sign criteria is to provide the guidelines necessary to achieve a visually coordinated, balanced and appealing sign environment, harmonious with the architecture of the project, while maintaining provisions for individual graphic expression.

Performance of this sign criteria shall be rigorously enforced and any nonconforming sign shall be removed by the tenant or his sign contractor at their expense, upon demand by the Landlord.

Exceptions to these standards shall not be permitted without approval from the Landlord and will require approval of a modification to the sign program application by the City.

Accordingly, the Landlord will retain full rights of approval for any sign used in the center.

No sign shall be installed without the written Landlord approval and the required City permits.

Any information not covered within this sign program will default to the Laguna Woods Municipal Code regulations.

Existing signs not subject to the terms of this criteria.

B LANDLORD/TENANT REQUIREMENTS

1. Each Tenant shall submit to Landlord for written approval, three (3) copies of the detailed shop drawings of this proposed sign, indicating conformance with the sign criteria herein outlined.

2. The Landlord shall determine and approve the availability and position of a Tenant name on any ground sign(s).

3. The Tenant shall pay for all signs, related materials and installation fees (including final inspection costs).

4. The Tenant shall obtain all necessary permits and permit fees.

5. The Tenant shall be responsible for fulfillment of all requirements of this sign criteria.

6. It is the responsibility of the Tenant's sign company to verify all conduit and transformer locations and service access prior to fabrication.

7. Should a sign be removed, it is the Tenant's responsibility to patch all holes, paint surface to match the existing color, and restore surface to original condition.

C GENERAL SIGN CONSTRUCTION REQUIREMENTS:

1. All signs and their installation shall comply with all local building and electrical codes.

2. All electrical signs will be fabricated by a U.L. approved sign company, according to U.L. specifications and bear U.L. Label.

3. Sign company to be fully licensed with the City and State and shall have full Workman's Compensation and general liability insurance.

4. All penetrations of building exterior surfaces are to be sealed waterproof in color and finish to match existing exterior.

5. Internal illumination to be LED, installed and labeled in accordance with the "National Board of Fire Underwriters Specifications".

6. Painted surfaces to have a satin finish. Only paint containing acrylic polyurethane products may be used.

7. Logo and letter heights shall be as specified and shall be determined by measuring the normal capital letter of a type font exclusive of swashes, ascenders, and descenders.

8. All sign fabrication work shall be of excellent quality. All logo images and type-styles shall be accurately reproduced. Lettering that approximates type-styles will not be acceptable. The Landlord reserves the right to reject any fabrication work deemed to be below standard.

9. All lighting must match the exact specification of the approved working drawings. No exposed conduits or raceways will be allowed.

10. Signs must be made of durable rust –inhibiting materials that are appropriate and complimentary to the building.

11. Color coatings shall exactly match the colors specified on the approved plans.

12. Joining of materials (e.g., seams) shall be finished in way as to be unnoticeable. Visible welds shall be continuous and ground smooth. Rivets, screws, and other fasteners that extend to visible surfaces shall
be flush, filled, and finished so as to be unnoticeable.

13. Finished surfaces of metal shall be free from oil canning and warping. All sign finishes shall be free from dust, orange peel, drips, and runs and shall have a uniform surface conforming to the highest standards of the industry.

14. In no case shall any manufacturer's label be visible from the street from normal viewing angles.

15. Exposed raceways are not permitted.

16. Exposed junction boxes, lamps, tubing or neon crossovers of any type are not permitted.

D SHOP TENANT SIGNAGE SPECIFICATIONS:

The intent of this criteria is to insure a standardized uniform style throughout the center while encouraging the creativity of typographical and iconic elements to develop interest and style. Signs must be architecturally compatible with the entire center.

STOREFRONT SIGNAGE

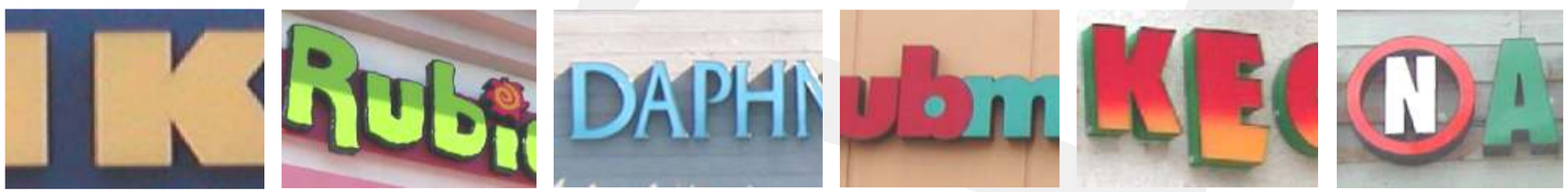
The following types of construction will be allowed:

- Acrylic face channels letters, logos or icons with through face illumination.
- Acrylic face channels letters, logos or icons with through face and halo illumination.
- Reverse pan channels letters, logos or icons with halo illumination.

In order to allow creativity and artistic designs, ascending and descending shapes will be allowed to extend beyond the envelope limits provided that the overall allocated square footage is not exceeded. In other words, these areas shall be calculated individually and added to the "boxed" area for the main sign body. (See diagram below)

Descender: (The part of the lowercase letters, such as g, p, and y, which extends below the other lowercase letters)

Irregular shaped icons & logos should be considered in sign design for increased visual impact.



E PROHIBITED SIGNS:

1. Signs constituting a Traffic Hazard:
No person shall install or maintain, or cause to be installed or maintained, any sign which simulates or imitates in size, color, lettering or design any traffic sign or signal, or which makes use of the words "STOP", "LOOK", "DANGER" or any words, phrases, symbols, or characters in such a manner as to interfere with, mislead or confuse traffic.

2. Signs in Proximity to Utility Lines:
Signs which have less horizontal or vertical clearance from authorized communication or energized electrical power lines that are prescribed by the laws of the State of California are prohibited.

3. Signs painted directly on a building surface will not be permitted.

4. Wall signs may project above the top of a parapet, the roof line at the wall, or roof line.

5. There shall be no signs that are flashing, moving or audible.

6. Billboard Signs are not permitted.

7. No standard plex faced cabinet construction allowed.

Note: A full list of prohibited signs can be found in the Laguna Woods Municipal Code.

F ABANDONMENT OF SIGNS:

Any tenant sign left after thirty (30) days from vacating premises shall become the property of Landlord. Abandoned signs shall be removed within 90 days after premises vacated.

G INSPECTION:

Landlord reserves the right to hire an independent electrical engineer at the Tenant's sole expense to inspect the installation of all Tenant's signs and to require the Tenant to have any discrepancies and/or code violations corrected at the Tenant's expense.

H MAINTENANCE:

It is the Tenant's responsibility to maintain their signs in proper working and clean conditions at all times . Otherwise, landlord reserves the right to hire his own contractor, make the necessary corrections, and bill tenant should it be deemed necessary.

I GROUND SIGN PANEL SPECIFICATIONS

1. All background panels to be the same color.

2. All panels to be opaque allowing only words and logos to illuminate.

3. Vacant panels to have solid color panel inserts. No reversing of panels used to identify former tenants permitted.

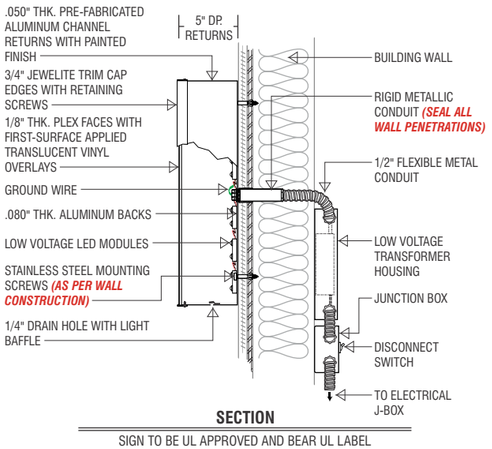
SIGN CONSTRUCTION

Type 1
Plex faced channels with through face illumination.
Type 2
Plex faced channels with through face and halo illumination.
Type 3
Reverse pan channels with halo illumination.
Type 4 (MAJOR TENANT ONLY)
Plex faced cabinet with through face illumination.

Use standard aluminum construction with Matthews satin acrylic polyurethane finish.
Illuminate with LEDs
Paint aluminum channel and or trim any color.

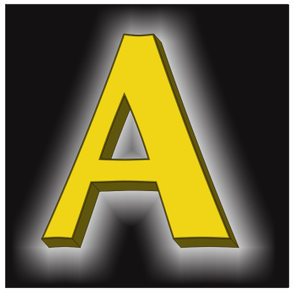
Section 1

LEXAN FACED CHANNEL WITH THROUGH FACE ILLUMINATION



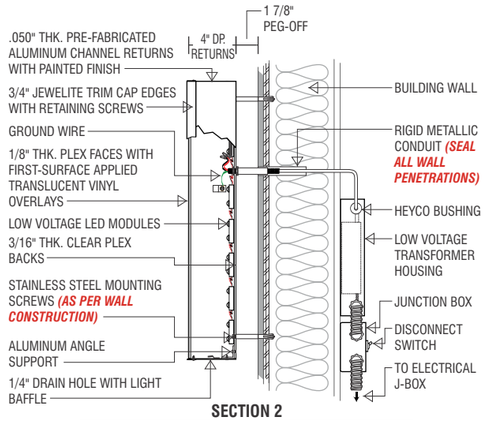
SIGN TO BE UL APPROVED AND BEAR UL LABEL

PLEX FACED CHANNEL LETTERS WITH LED ILLUMINATION



Section 2

LEXAN FACED CHANNEL WITH THROUGH FACE AND HALO ILLUMINATION.

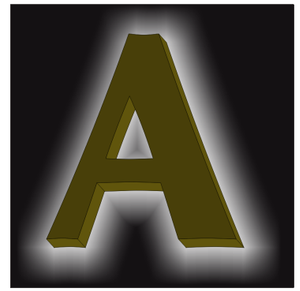


SIGN TO BE UL APPROVED AND BEAR UL LABEL

PLEX FACED CHANNEL LETTERS WITH THROUGH FACE & HALO LED ILLUMINATION

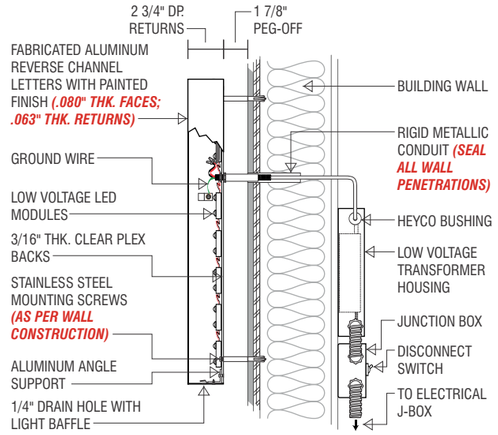
Section 4

LEXAN FACED CABINET WITH THROUGH FACE ILLUMINATION



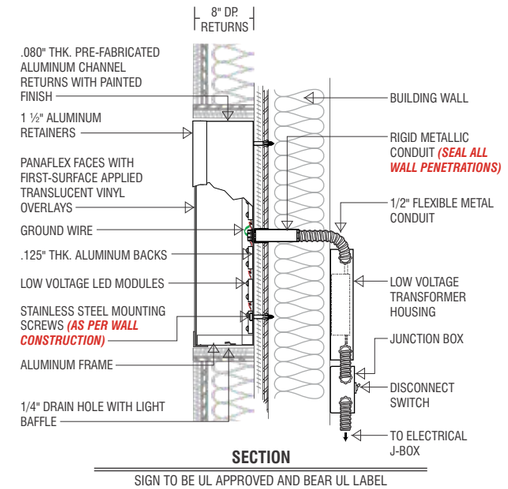
Section 3

REVERSE PAN CHANNEL WITH HALO ILLUMINATION



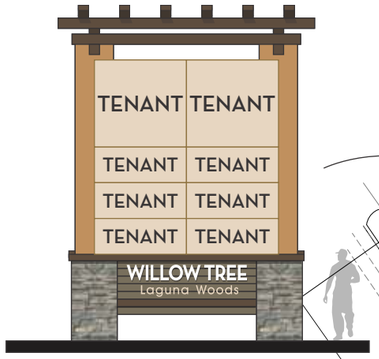
SIGN TO BE UL APPROVED AND BEAR UL LABEL

REVERSE PAN CHANNEL LETTERS WITH LED ILLUMINATION



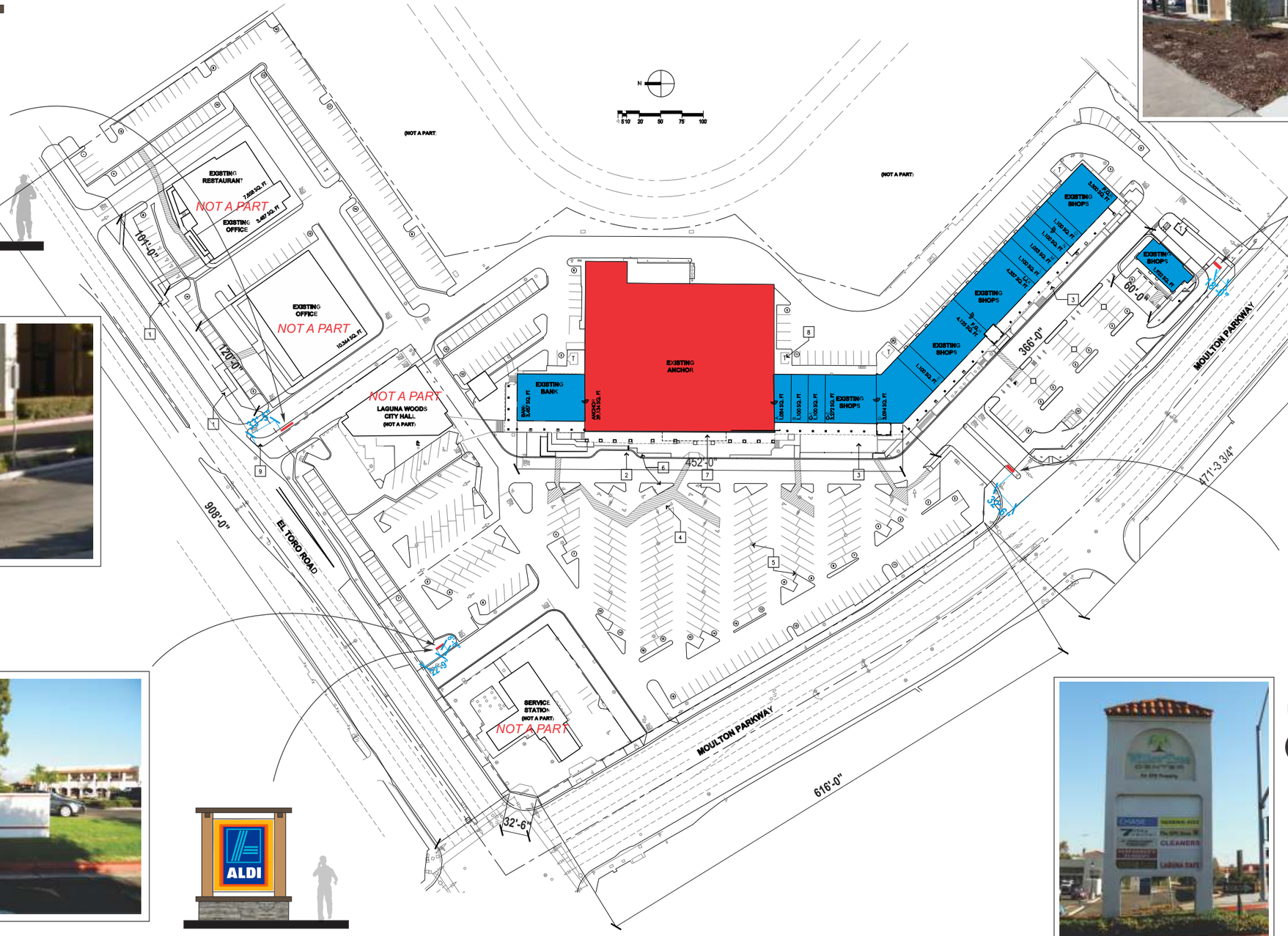
SIGN TO BE UL APPROVED AND BEAR UL LABEL

PLEX FACED CABINET WITH LED ILLUMINATION



B

EXISTING SIGN



EXISTING SITE

D

A

EXISTING SIGN

C

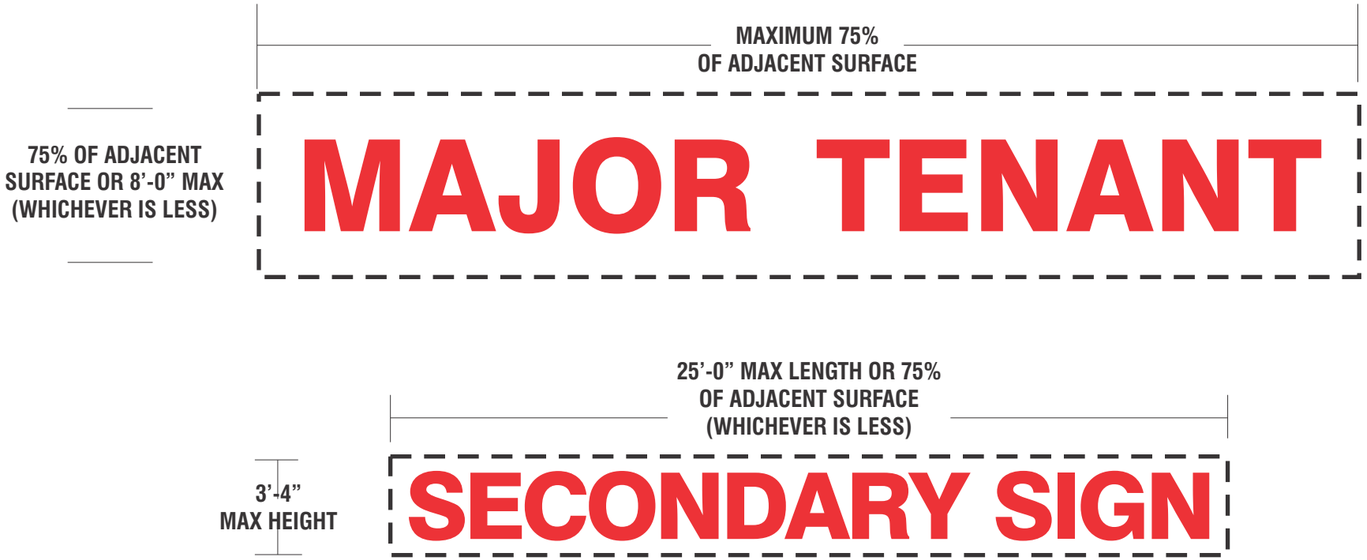
EXISTING SIGN

SIZE: 1.5 SQUARE FOOT OF SIGN AREA PER LINEAR FOOT OF FRONTAGE OF LEASED PREMISES.
CONSTRUCTION: SEE PAGE 7 FOR AVAILABLE TYPES
ILLUMINATION: YES
COPY: TENANT NAME AND / OR LOGO
HEIGHT: SEVENTY FIVE PERCENT OF ADJACENT SURFACE
LENGTH: SEVENTY FIVE PERCENT OF ADJACENT SURFACE
TYPEFACE: CUSTOM LOGO AND TYPE OK
COLORS: CUSTOM COLORS OK - NO GOLD TRIM CAP
SECONDARY SIGNS: NO

NOTE: ALL TENANT WALL SIGNS TO BE INSTALLED VISUALLY CENTERED WITHIN THEIR SIGN BAND AREA.

BANK TENANT - NORTH ELEVATION
SCALE: ⅛=1'

BANK TENANT - WEST ELEVATION
SCALE: 1/16=1'



SIZE: 2.5 SQUARE FOOT OF SIGN AREA PER LINEAR FOOT OF FRONTAGE OF LEASED PREMISES.
MATERIALS: VARIETY OF TYPES PER SIGN CRITERIA, SINGLE TYPE OF CONSTRUCTION ALLOWED.
ILLUMINATION: YES
COPY: TENANT NAME AND / OR LOGO
HEIGHT: SEVENTY FIVE PERCENT OF ADJACENT SURFACE
LENGTH: SEVENTY FIVE PERCENT OF ADJACENT SURFACE
TYPEFACE: CUSTOM LOGO AND TYPE OK
COLORS: CUSTOM COLORS OK
SECONDARY SIGNS: YES (NOT TO EXCEED 25% OF TOTAL ALLOWABLE SIGN AREA). ONLY MAJOR SERVICES/DEPARTMENTS ALLOWED. NO ADVERTISING OR SLOGANS.

NOTE: ALL TENANT WALL SIGNS TO BE INSTALLED VISUALLY CENTERED WITHIN THEIR SIGN BAND AREA.

MAJOR TENANT- WEST ELEVATION SCALE: 1/32"=1'-0"

MAJOR TENANT- WEST ELEVATION SCALE: 1/64"=1'-0"

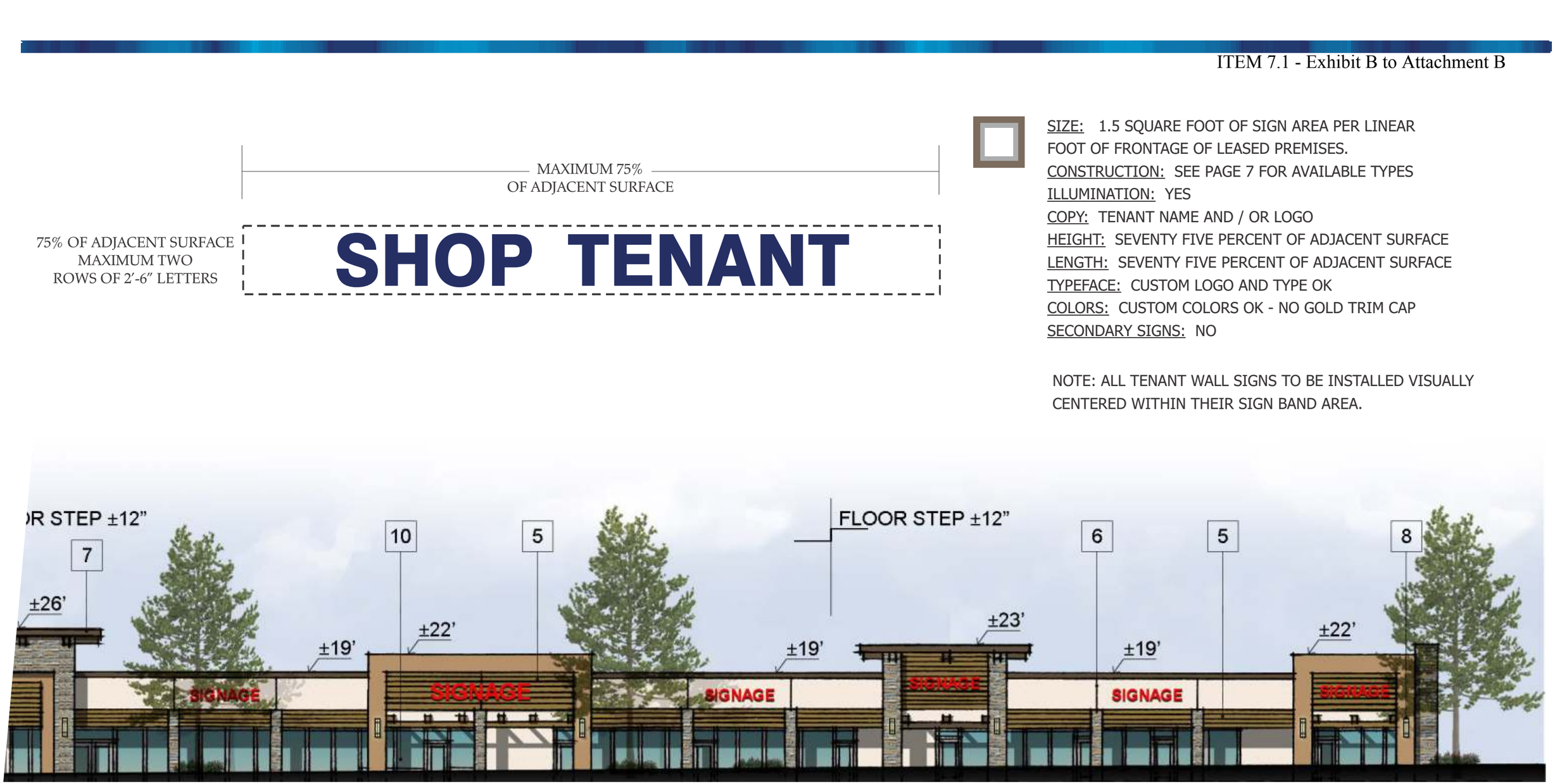
MAXIMUM 75%
OF ADJACENT SURFACE

75% OF ADJACENT SURFACE
MAXIMUM TWO
ROWS OF 2′-6″ LETTERS

SHOP TENANT

SIZE: 1.5 SQUARE FOOT OF SIGN AREA PER LINEAR FOOT OF FRONTAGE OF LEASED PREMISES.
CONSTRUCTION: SEE PAGE 7 FOR AVAILABLE TYPES
ILLUMINATION: YES
COPY: TENANT NAME AND / OR LOGO
HEIGHT: SEVENTY FIVE PERCENT OF ADJACENT SURFACE
LENGTH: SEVENTY FIVE PERCENT OF ADJACENT SURFACE
TYPEFACE: CUSTOM LOGO AND TYPE OK
COLORS: CUSTOM COLORS OK - NO GOLD TRIM CAP
SECONDARY SIGNS: NO

NOTE: ALL TENANT WALL SIGNS TO BE INSTALLED VISUALLY CENTERED WITHIN THEIR SIGN BAND AREA.



SHOP TENANT- PARTIAL SOUTH EAST ELEVATION
SCALE: 1/16″=1′-0″

SHOP TENANT- PARTIAL SOUTH ELEVATION
SCALE: 1/16”=1’-0”

SHOP TENANT- PARTIAL SOUTH EAST ELEVATION
SCALE: 1/16”=1’-0”

MAXIMUM 75%
OF ADJACENT SURFACE

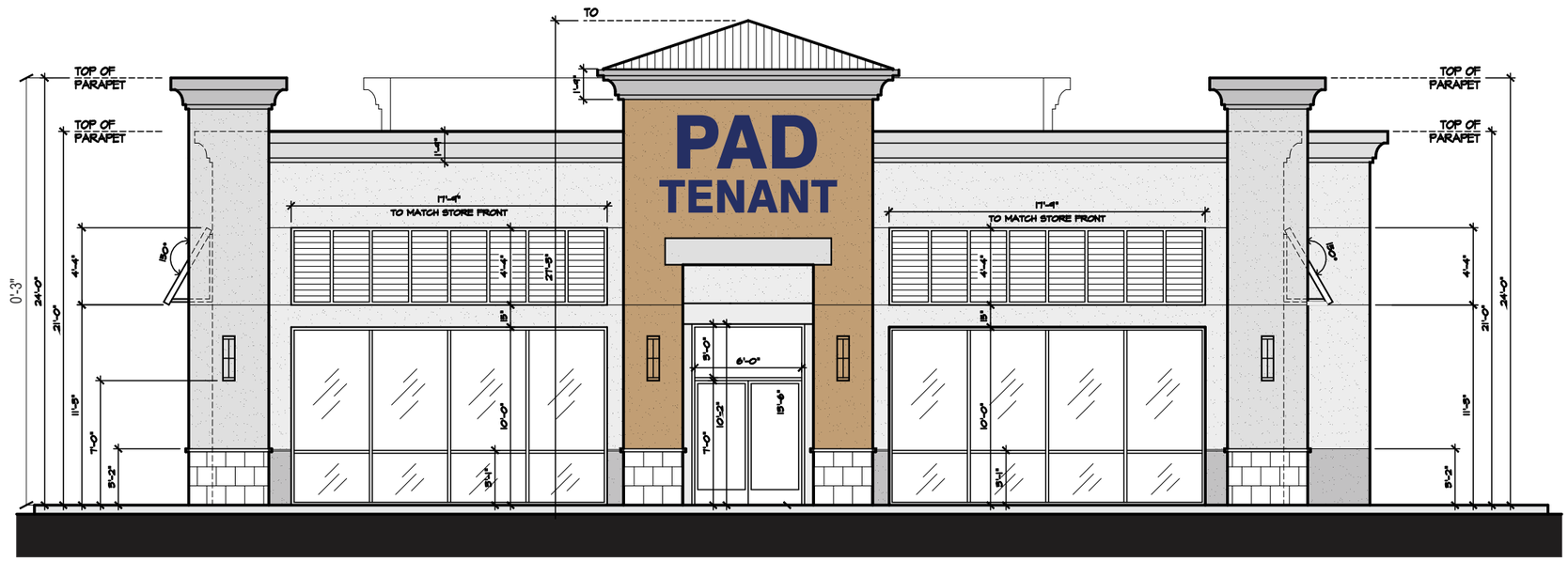
75% OF ADJACENT SURFACE
MAXIMUM TWO
ROWS OF 3′-0″ LETTERS

PAD TENANT

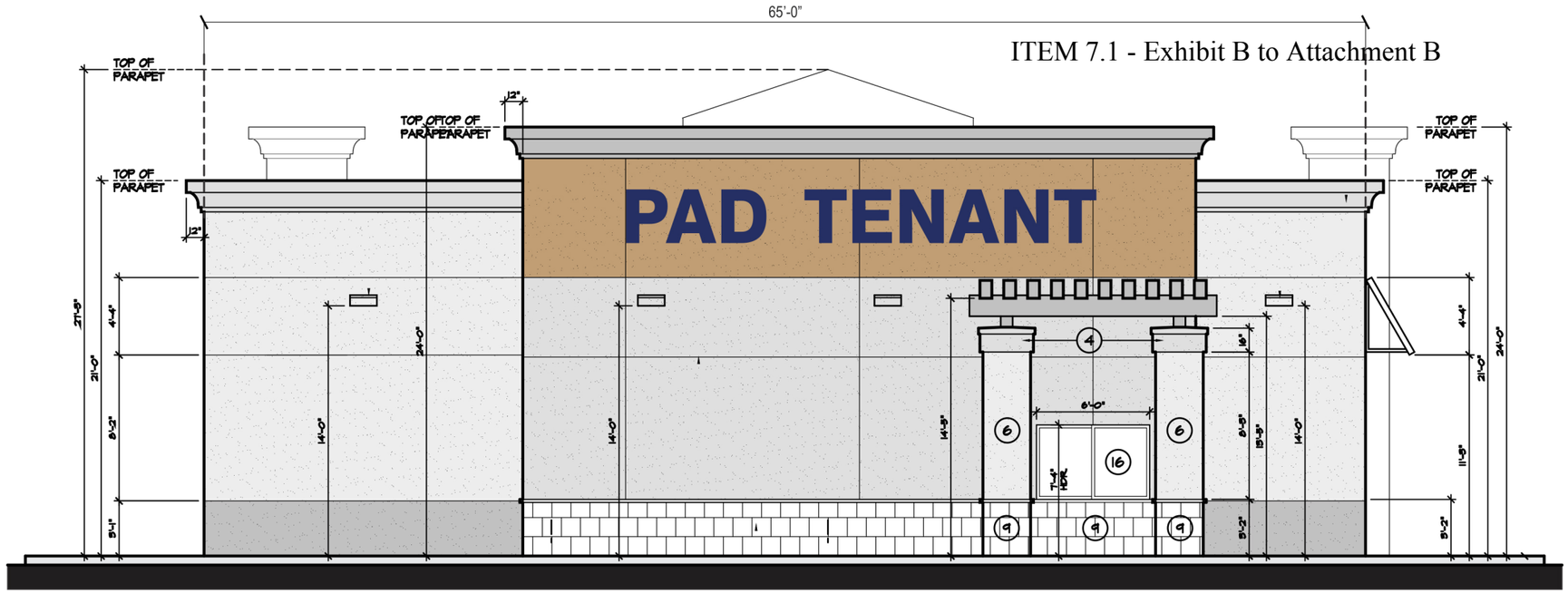
SIZE: SQUARE FOOTAGE SHOWN PER ELEVATION.
CONSTRUCTION: SEE PAGE 7 FOR AVAILABLE TYPES
ILLUMINATION: YES
COPY: TENANT NAME AND / OR LOGO
HEIGHT: SEVENTY FIVE PERCENT OF ADJACENT SURFACE
LENGTH: SEVENTY FIVE PERCENT OF ADJACENT SURFACE
TYPEFACE: CUSTOM LOGO AND TYPE OK
COLORS: CUSTOM COLORS OK - NO GOLD TRIM CAP
SECONDARY SIGNS: NO

MAXIMUM SQ.FT. = 31.64 SQ.FT.

NOTE: ALL TENANT WALL SIGNS TO BE INSTALLED VISUALLY CENTERED WITHIN THEIR SIGN BAND AREA.

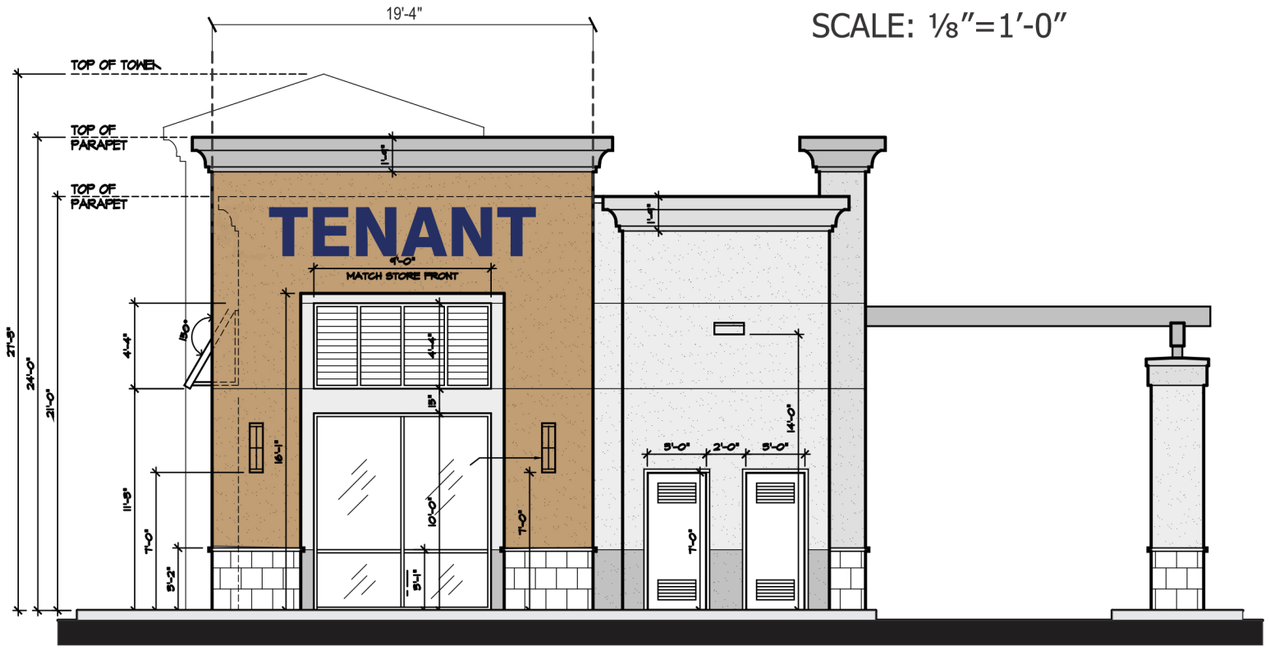


PAD TENANT- SOUTHWEST ELEVATION SCALE: ⅛″=1′-0″



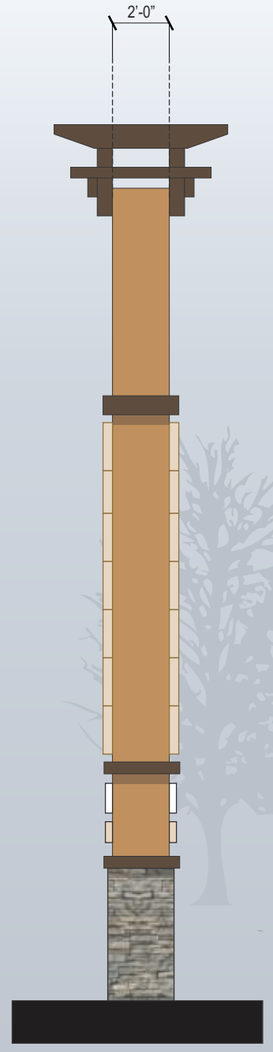
PAD TENANT- NORTHEAST ELEVATION
SCALE: ⅛"=1'-0"

MAXIMUM SQ.FT. = 63.47 SQ.FT.



PAD TENANT- NORTHWEST ELEVATION
SCALE: ⅛"=1'-0"

MAXIMUM SQ.FT. = 31.64 SQ.FT.



515.1 SQUARE FEET

A **INTERNALLY LIT D/F PYLON**
SCALE: 3/16"=1'-0"

A "WILLOW TREE" - LETTERS TO BE PLEX FACED CHANNEL LETTERS. WHITE FACES AND RETURNS. (FONT: NEUTRA TEXT LIGHT SC ALT)

B FABRICATED ALUMINUM TRELLIS AND LEDGES. SKIN PAINTED TO MATCH BUILDING COLOR WITH MAP SATIN FINISH.

C FABRICATED ALUMINUM SIGN COLUMN w/ INTERNAL ALUMINUM FRAMEWORK BOLTED TO STEEL SUPPORT COLUMNS. SKIN TO BE PAINTED TO PAINTED TO MATCH BUILDING COLOR WITH MAP SATIN FINISH.

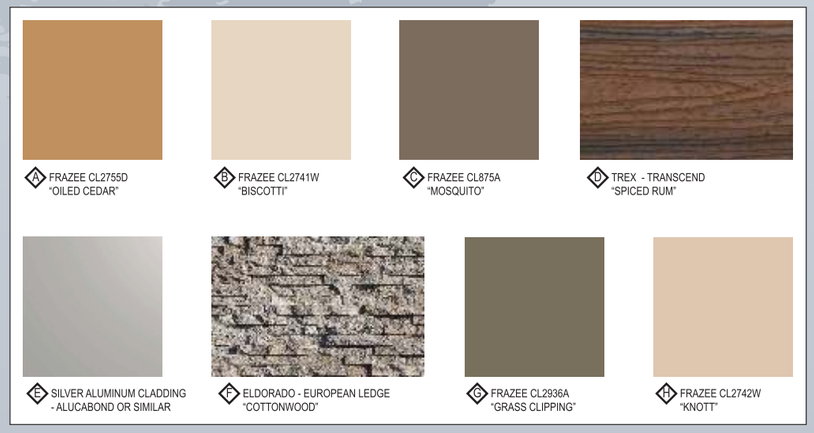
D FABRICATED ALUMINUM TENANT PANELS TO HAVE ROUTED OUT & BACKED UP GRAPHICS. #7328 WHITE ACRYLIC w/ FIRST SURFACE 3M TRANS VINYL WHERE REQUIRED. PANELS TO BE OPAQUE AND HAVE UNIFORM COLOR.

E MAJOR TENANT CABINET TO BE INTERNALLY ILLUMINATED DOUBLE FACED CABINET. FLEX FACE WITH APPLIED VINYL.

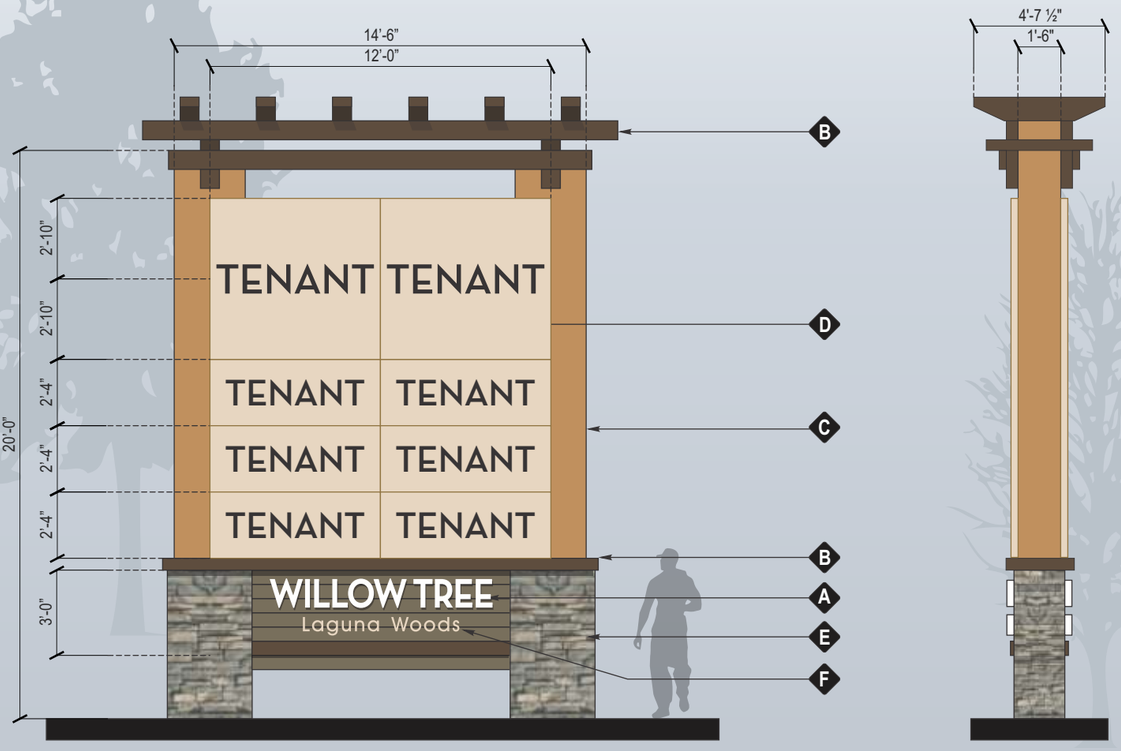
F EL DORADO STONE VENEER

G "LAGUNA WOODS" USE DIGITALLY PRINTED VINYL TO MATCH FRAZEE "BISCOTTI". (FONT: AVANTGARDE MD BT)

NOTE: ALL VACANT SPACES TO BE A NEW SOLID PANEL INSERT. NO OLD PANELS MAY BE USED. (FRAZEE "BISCOTTI")



NOTE:
SET BACK A MINIMUM OF 8'-0" FROM FACE OF PUBLIC STREET CURB AND 2'-0" FROM BACK OF SIDEWALK.



364.5 SQUARE FEET

A "WILLOW TREE" - LETTERS TO BE PLEX FACED CHANNEL LETTERS. WHITE FACES AND RETURNS. (FONT: NEUTRA TEXT LIGHT SC ALT)

B FABRICATED ALUMINUM TRELLIS AND LEDGES. SKIN PAINTED TO MATCH BUILDING COLOR WITH MAP SATIN FINISH.

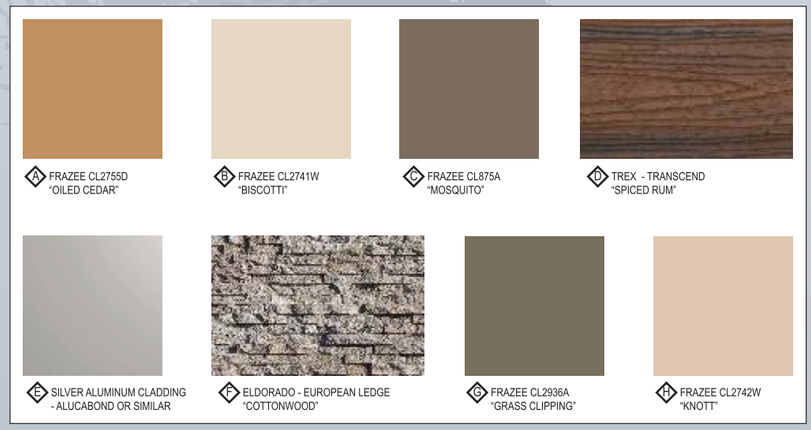
C FABRICATED ALUMINUM SIGN COLUMN w/ INTERNAL ALUMINUM FRAMEWORK BOLTED TO STEEL SUPPORT COLUMNS. SKIN TO BE PAINTED TO PAINTED TO MATCH BUILDING COLOR WITH MAP SATIN FINISH.

D FABRICATED ALUMINUM TENANT PANELS TO HAVE ROUTED OUT & BACKED UP GRAPHICS. #7328 WHITE ACRYLIC w/ FIRST SURFACE 3M TRANS VINYL WHERE REQUIRED.

E EL DORADO STONE VENEER.

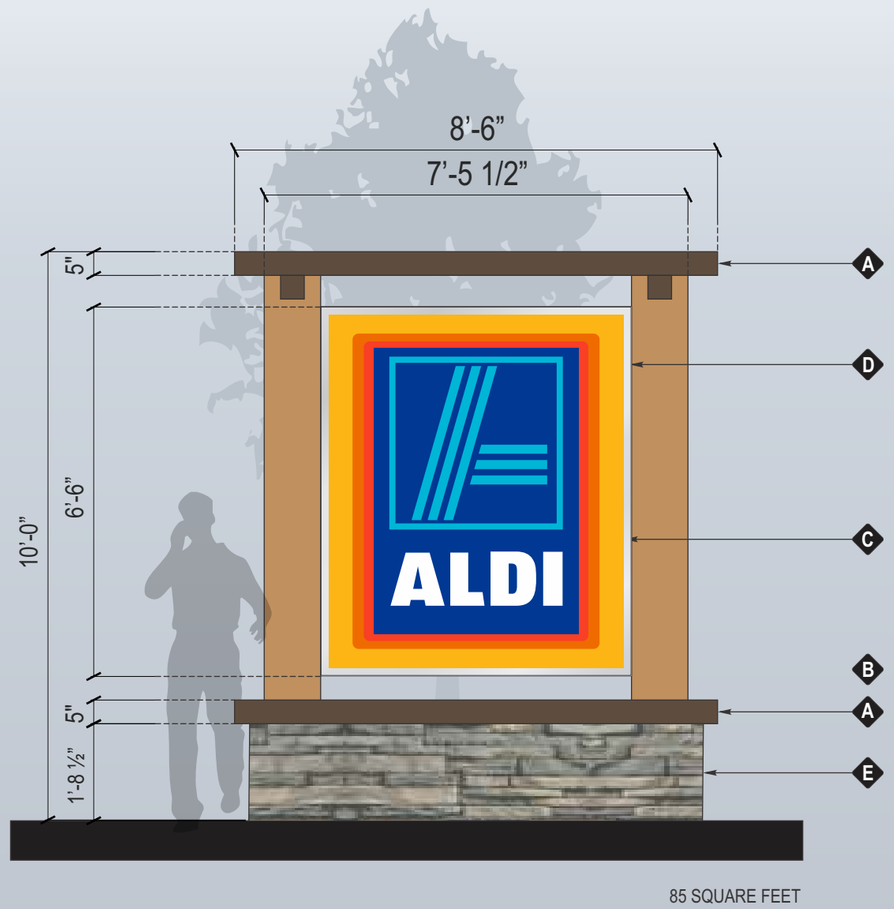
F "LAGUNA WOODS" USE DIGITALLY PRINTED VINYL TO MATCH FRAZEE "BISCOTTI". (FONT: AVANTGARDE MD BT)

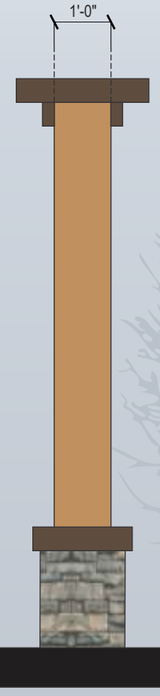
NOTE: ALL VACANT SPACES TO BE A NEW SOLID PANEL INSERT. NO OLD PANELS MAY BE USED. (FRAZEE "BISCOTTI")



NOTE:
SET BACK A MINIMUM OF 8'-0" FROM FACE OF PUBLIC STREET CURB AND 2'-0" FROM BACK OF SIDEWALK.

B **INTERNALLY LIT D/F PYLON**
SCALE: 3/16"=1'-0"





85 SQUARE FEET

A FABRICATED ALUMINUM TRELLIS AND LEDGES. SKIN PAINTED TO MATCH BUILDING COLOR WITH MAP SATIN FINISH.

B FABRICATED ALUMINUM SIGN COLUMN w/ INTERNAL ALUMINUM FRAMEWORK BOLTED TO STEEL SUPPORT COLUMNS. SKIN TO BE PAINTED TO PAINTED TO MATCH BUILDING COLOR WITH MAP SATIN FINISH.

C MAJOR TENANT LOGO CABINET TO BE INTERNALLY ILLUMINATED DOUBLE FACED CABINET. FLEX FACE WITH APPLIED VINYL.

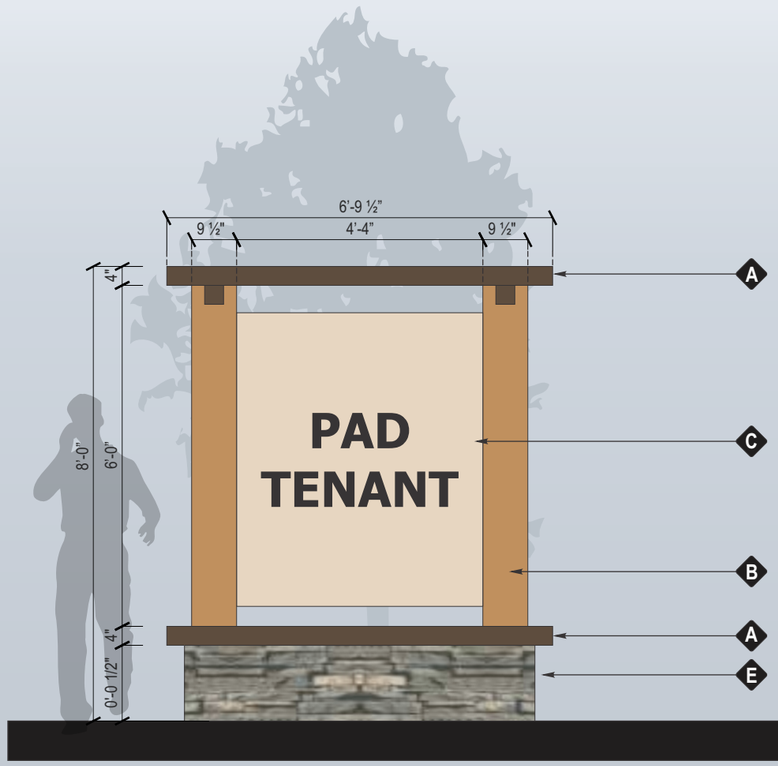
E EL DORADO STONE VENEER

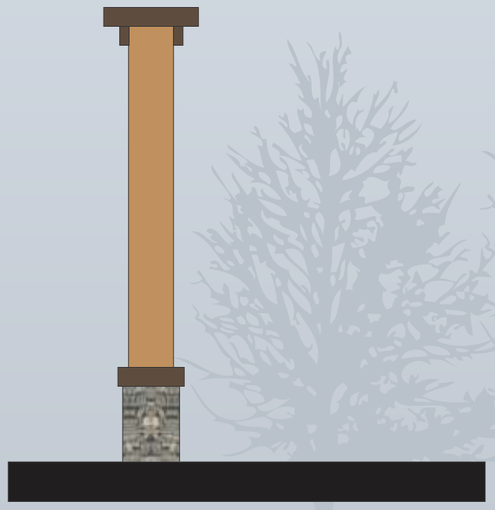
NOTE: ALL VACANT SPACES TO BE A NEW SOLID PANEL INSERT. NO OLD PANELS MAY BE USED. (FRAZEE "BISCOTTI")

NOTE:
SET BACK A MINIMUM OF 8'-0" FROM FACE OF PUBLIC STREET CURB AND 2'-0" FROM BACK OF SIDEWALK.

C INTERNALLY LIT D/F MONUMENT

SCALE: ⅜"=1'-0"





54.3 SQUARE FEET

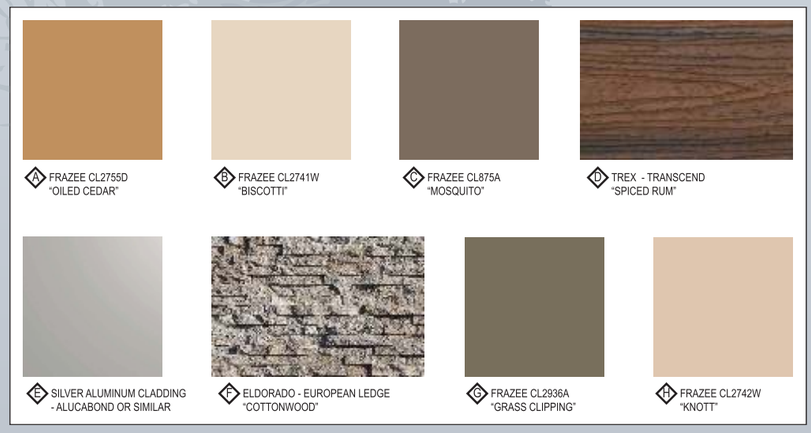
A FABRICATED ALUMINUM TRELLIS AND LEDGES. SKIN PAINTED TO MATCH BUILDING COLOR WITH MAP SATIN FINISH.

B FABRICATED ALUMINUM SIGN COLUMN w/ INTERNAL ALUMINUM FRAMEWORK BOLTED TO STEEL SUPPORT COLUMNS. SKIN TO BE PAINTED TO PAINTED TO MATCH BUILDING COLOR WITH MAP SATIN FINISH.

C MAJOR TENANT LOGO CABINET TO BE INTERNALLY ILLUMINATED DOUBLE FACED CABINET. FLEX FACE WITH APPLIED VINYL.

E EL DORADO STONE VENEER

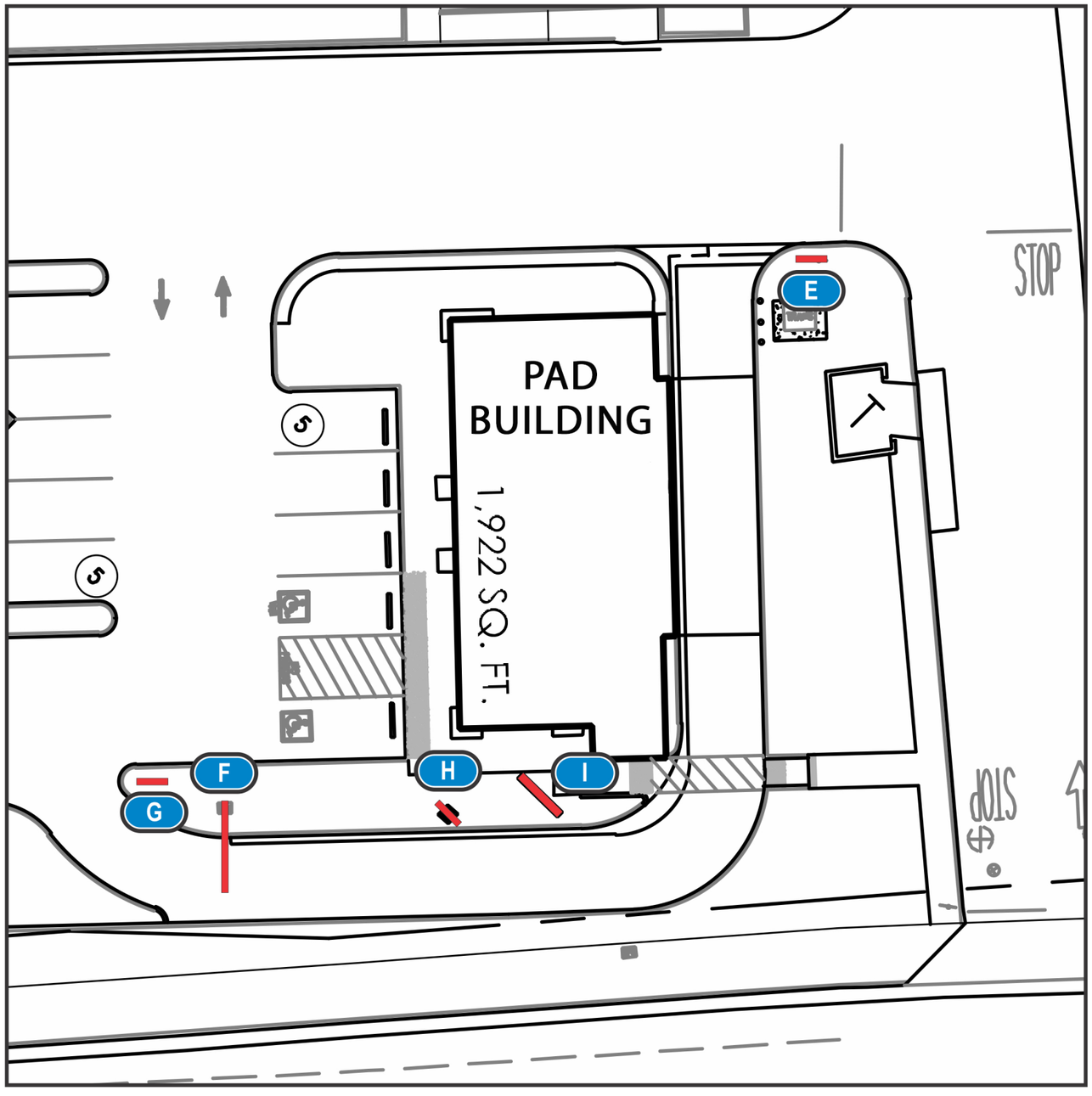
NOTE: ALL VACANT SPACES TO BE A NEW SOLID PANEL INSERT. NO OLD PANELS MAY BE USED. (FRAZEE "BISCOTTI")

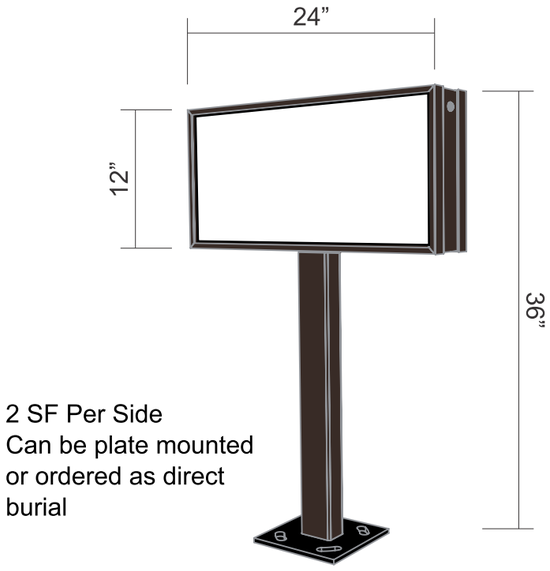


NOTE:
SET BACK A MINIMUM OF 8'-0" FROM FACE OF PUBLIC STREET CURB AND 2'-0" FROM BACK OF SIDEWALK.

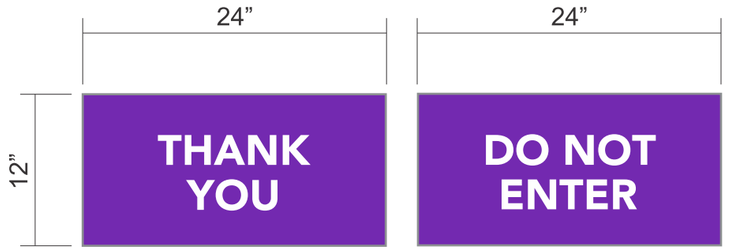
D INTERNALLY LIT D/F MONUMENT

SCALE: ⅜"=1'-0"


STOP
E
PAD
BUILDING
1,922 SQ. FT.
S
S
F
G
H
I
STOP



2 SF Per Side
Can be plate mounted
or ordered as direct
burial



E D/F DRIVE-THRU “DO NOT ENTER” DIRECTIONAL

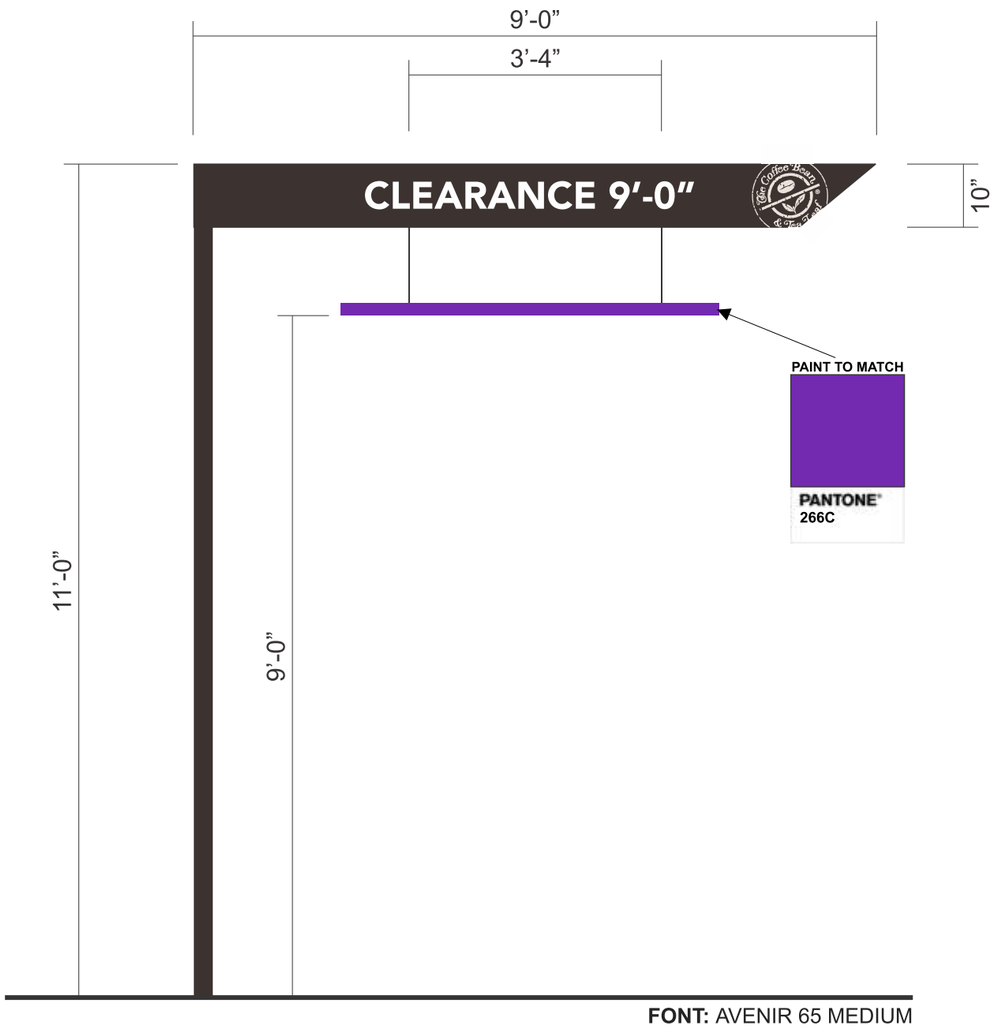
Scale: 1”=1’-0”

FONT: AVENIR 65 MEDIUM

Cabinet:	Extruded Aluminum Duranodic Bronze
Trimcap:	3/4” Duranodic Bronze
Faces:	White Plex with Vinyl to match Oracal #403 Light Violet Paint: Purple PMS 266C
Illumination:	White LED’s
Power Source:	LED Power Pack

Sign shall bear UL Label

***** ALL DT REQUIRING POWER MUST HAVE SERVICE SWITCH**



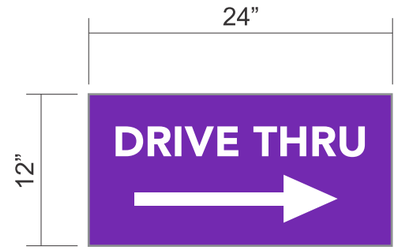
FONT: AVENIR 65 MEDIUM

F **DRIVE-THRU CLEARANCE BAR**

Scale: 1/2”=1’-0”

SIDE VIEW

2 SF Per Side
Can be plate mounted
or ordered as direct
burial



G S/F DRIVE-THRU “ENTRANCE” DIRECTIONAL

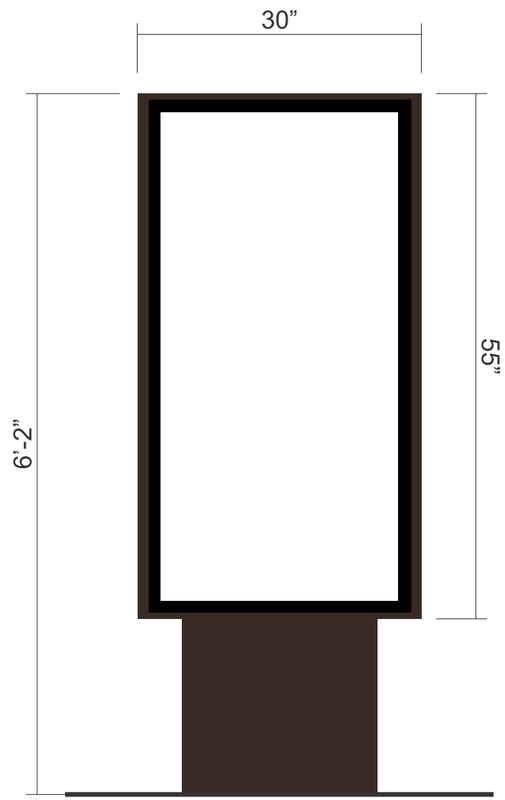
Scale: 1”=1’-0” **FONT:** AVENIR 65 MEDIUM

Cabinet:	Extruded Aluminum Duranodic Bronze
Trimcap:	3/4” Duranodic Bronze
Faces:	White Plex with Vinyl to match Oracal #403 Light Violet Paint: Purple PMS 266C
Illumination:	White LED’s
Power Source:	LED Power Pack

Sign shall bear UL Label

***** ALL DT REQUIRING POWER MUST HAVE SERVICE SWITCH**

*** ALL DT REQUIRING POWER MUST HAVE SERVICE SWITCH

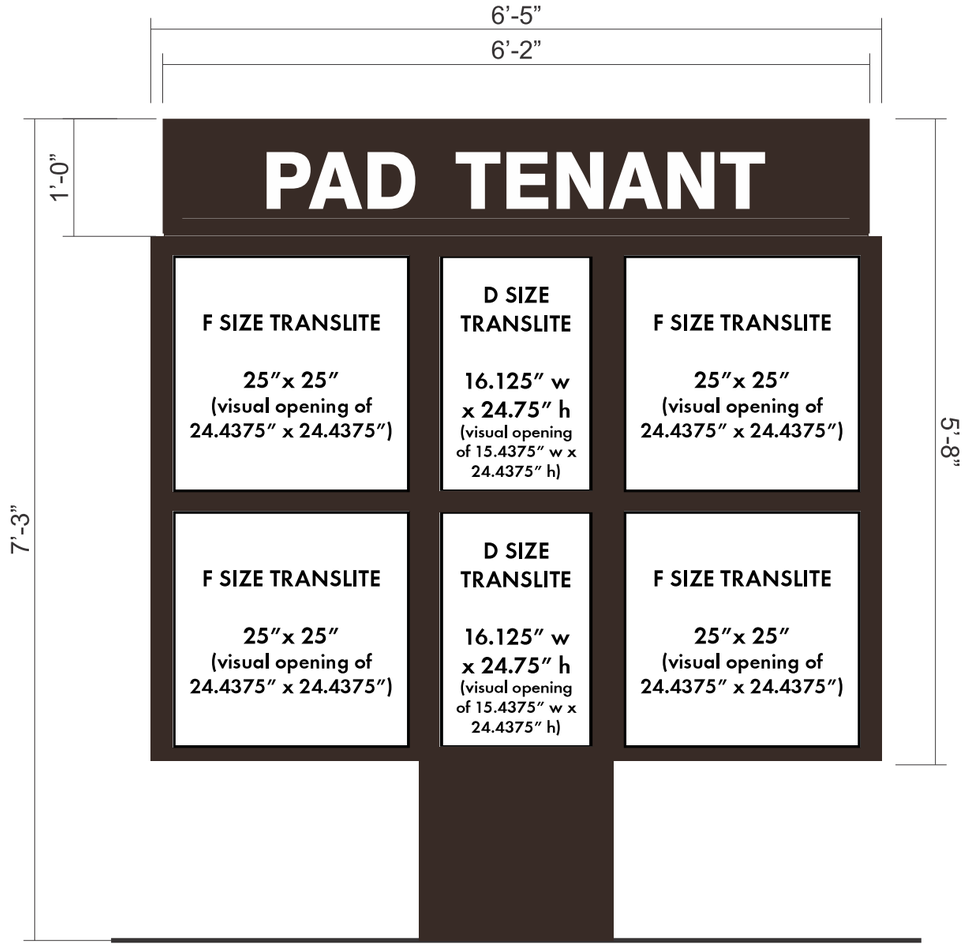


H **PREVIEW BOARD** **11.45 Sq Ft.**

Scale: 3/4”=1’-0”

Extruded Aluminum Duranodic Bronze
White LED’s
LED Power Pack

Sign shall bear UL Label



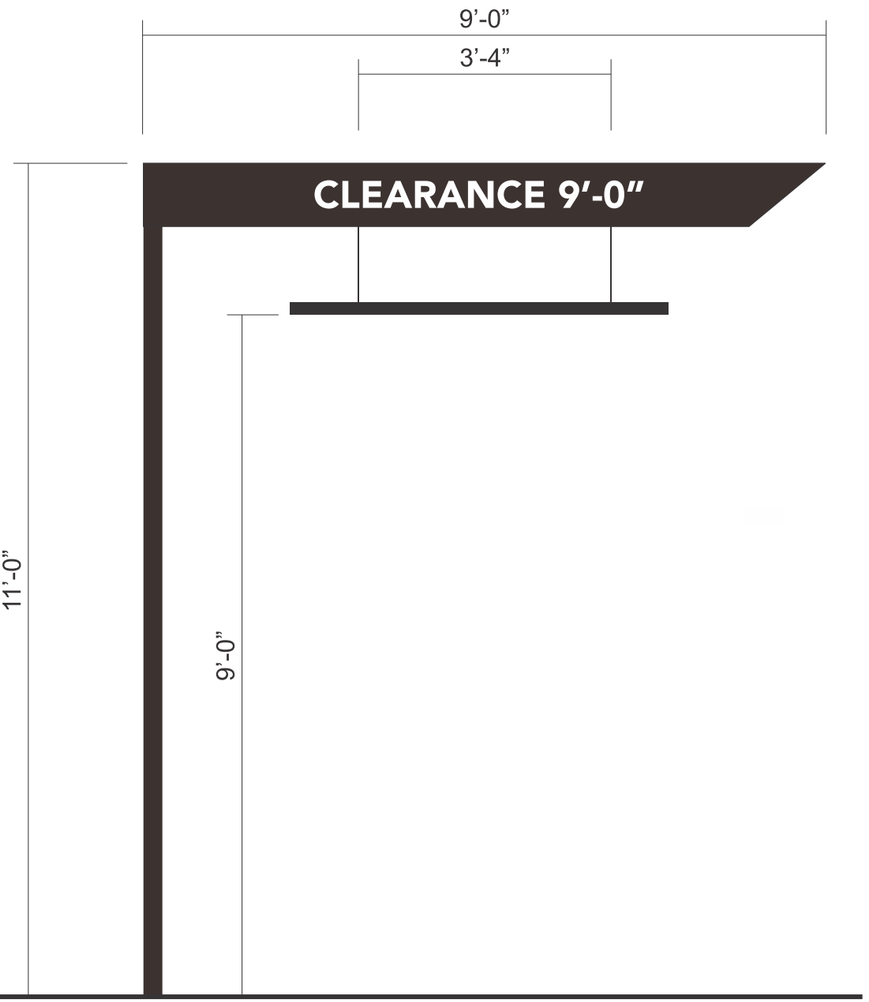
I **MENU BOARD** **34.87 Sq Ft.**

Scale: 3/4”=1’-0”

Extruded Aluminum Duranodic Bronze
White LED’s
LED Power Pack

Sign shall bear UL Label

FUTURE TENANT CLEARANCE BAR AND DIRECTIONAL SIGNAGE

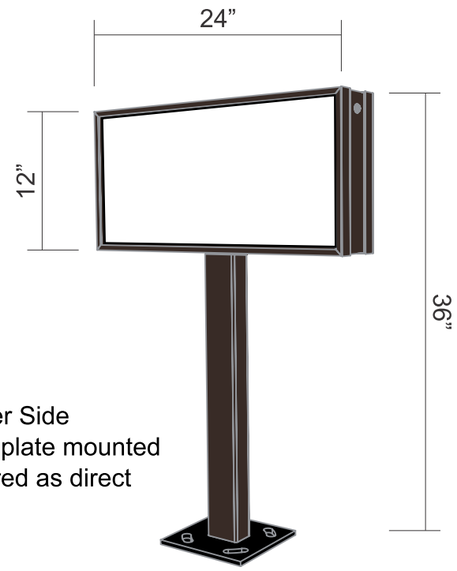


F **DRIVE-THRU CLEARANCE BAR**

Scale: 1/2”=1’-0”

COLOR LEGEND

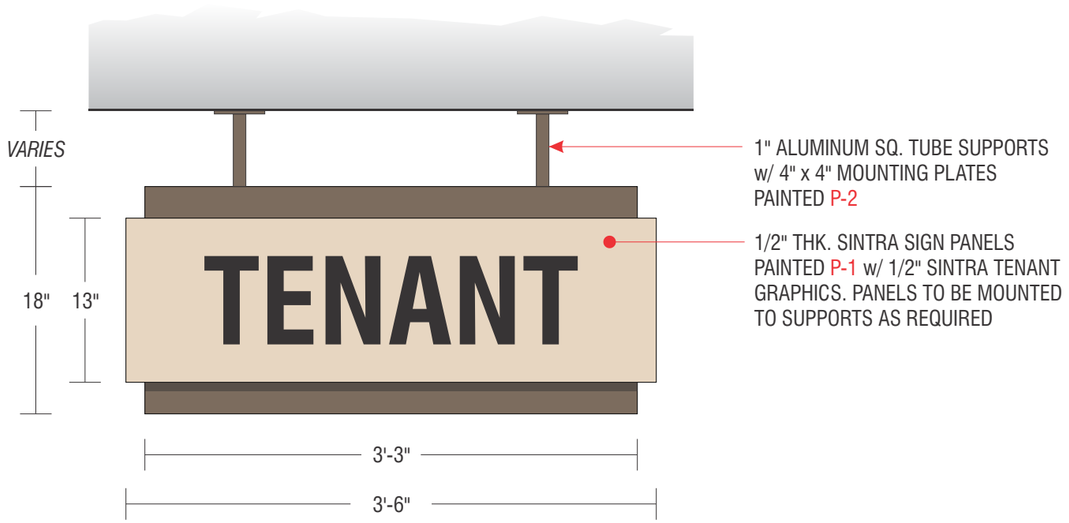
- WHITE ACRYLIC
- OPAQUE VINYL: TO MATCH BROWN PMS 4625 C
  PAINT: BROWN PMS 4625 C
- OPAQUE VINYL: TO MATCH PURPLE PMS 266 C
  PAINT: PURPLE PMS 266 C



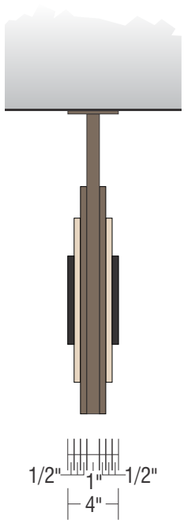
G **S/F DRIVE-THRU “ENTRANCE” DIRECTIONAL**

Scale: 1”=1’-0” **FONT:** AVENIR 65 MEDIUM

J D/F NON-ILLUMINATED UNDER CANOPY BLADE SIGN DISPLAYS

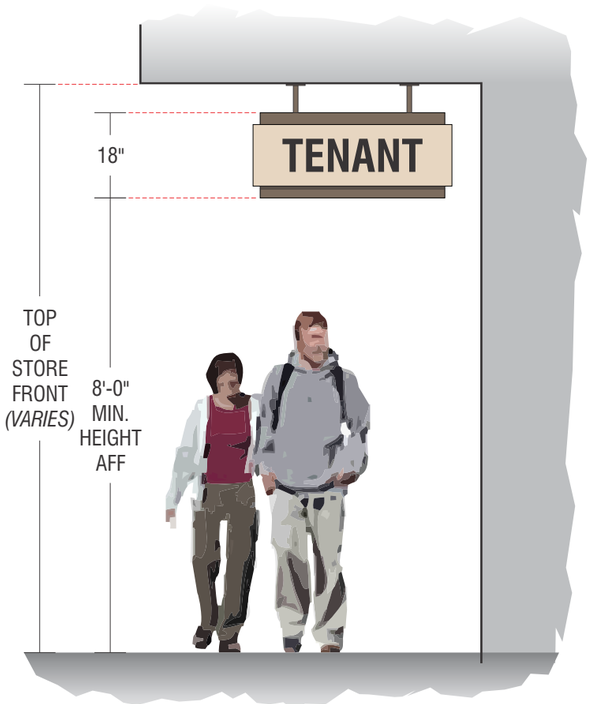


FRONT VIEW
SCALE: 1"=1'-0"



END VIEW
SCALE: 1"=1'-0"

NOTES:
- **ONE (1) BLADE SIGN PER TENANT**
- **BLADE SIGNS NOT PERMITTED FOR PAD TENANT**
- **ALL VACANT SPACES TO BE A NEW SOLID PANEL INSERT. NO OLD PANELS MAY BE USED (FRAZEE "BISCOTTI")**



BLADE SIGN ELEVATION
SCALE: 3/8"=1'-0"

SPECIFICATIONS

1. SEE SPECIFICATION CALL-OUTS THIS SHEET

COLORS/FINISHES

P-1 FRAZEE CL2741W "BISCOTTI"
P-2 FRAZEE CL875A "MOSQUITO"

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7.2
STATE VIDEO FRANCHISE AND PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") FEES

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: April 19, 2017 Regular Meeting

SUBJECT: State Video Franchise and Public, Educational, and Governmental ("PEG") Fees

---

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE

VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

AND

6. Approve the introduction and first reading of an ordinance – read by title with further reading waived – entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

Background

Section 6.42.020 of the Laguna Woods Municipal Code contains regulations related to the imposition of a Public, Educational, and Governmental ("PEG") fee on state franchised video service providers operating within the City. Those regulations were adopted in 2007 and have remained unchanged since then. The PEG fee is charged in the amount of 1% of gross revenue and is used by the City to support any PEG-related purpose consistent with state and federal law (e.g., the operation and maintenance of the City's television channel; "Channel 31").

In 2006, the California Legislature adopted the Digital Infrastructure and Video Competition Act ("DIVCA"), which changed the manner in which video service providers are regulated by placing local franchising with a state franchising system administered by the California Public Utilities Commission. DIVCA authorizes cities to adopt an ordinance imposing a fee on state franchise holders to support PEG-related purposes, provided, however, that ordinances adopting PEG fees "shall expire, and may be reauthorized, upon the expiration of the state franchise" (Cal. Pub. Utilities Code § 5870(n).).

Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company d/b/a AT&T California ("AT&T") and Cox Communications California, LLC d/b/a Cox Communications ("Cox") hold state video franchises to operate in Laguna Woods. Those franchises expire on March 30, 2017 and April 27, 2017, respectively.

Discussion

Today's meeting is an opportunity for City Council action, as well as public input, on the proposed reauthorization of PEG fees charged to state video franchisees (attachments A and B). Staff recommends that the City Council adopt both an urgency ordinance and a regular ordinance in order to retroactively reauthorize the PEG fee effective March 30, 2017, and therefore preserve funding available to support PEG-related purposes.

An urgency ordinance is necessary for the immediate preservation of the public peace, health, and safety because the City depends upon the PEG fee to support PEG access channel facilities, which are essential to providing city residents with important civic programming, including emergency alerts and community and government news. If the urgency ordinance did not become effective immediately, but instead became effective 30 days after its second reading, funding for City PEG facilities could be affected causing residents who rely on PEG channels for emergency broadcasts and news updates to lose a vital source of City information. Any lapse in funding may also lead to confusion among state video franchisees operating within Laguna Woods regarding the payment of PEG fees, leading the City to incur additional costs to recover any overdue fees. The urgency ordinance would also bridge the gap between the expiration of the state video franchises and the adoption of the regular permanent ordinance, which would occur 30 days following the second reading and adoption of the regular ordinance.

In addition to the proposed urgency ordinance, staff recommends that the City Council introduce and approve the first reading of a regular ordinance that pertains to the exact same issue. Upon its effective date, the regular ordinance would repeal and replace the urgency ordinance in its entirety.

If the City Council takes the recommended action at today's meeting, the proposed urgency ordinance would become effective immediately, while the regular ordinance would be agendized for a second reading and consideration of adoption at an upcoming meeting. The regular ordinance would take effect 30 days after adoption. In order to maintain its effectiveness until the regular ordinance takes

effect, the urgency ordinance would require a public hearing and extension within 45-days of the date of adoption.

Environmental Review

The adoption of regulations is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Fiscal Impact

Funds to support this project are included in the City's budget.

In Fiscal Year 2015-16, the City received approximately $3,000 in PEG fees from state video franchisees. If the City Council does not reauthorize the PEG fee, the City would no longer receive PEG fees from state video franchisees following the expiration of existing state video franchises.

Attachments: A – Proposed Urgency Ordinance
B – Proposed Ordinance

ORDINANCE NO. 17-XX

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

WHEREAS, the City Council adopted Ordinance No. 07-03 on June 27, 2007, wherein a new Chapter 6.42 was added to Title 6 of the Laguna Woods Municipal Code called "Regulation of State Video Franchise Holders" that imposed certain fees on cable providers within the City's jurisdiction; and

WHEREAS, Public Utilities Code section 5870(n) provides that the Public, Educational, and Governmental ("PEG") PEG fee may be reauthorized upon the expiration of an applicable state franchise; and

WHEREAS, the first state franchise to include the City, California Video Franchise Certificate Franchise No. 0002 granted to Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company d/b/a AT&T California ("AT&T"), expires on March 30, 2017; and

WHEREAS, the second state franchise to include the City, California Video Franchise Certificate Franchise No. 0003 granted to Cox Communications California, LLC d/b/a Cox Communications ("Cox"), expires on April 27, 2017; and

WHEREAS, on April, 2017, the City Council held a duly noticed public hearing on the proposed Ordinance at which it considered all of the information, evidence, and testimony presented, both written and oral.

WHEREAS, the City Council intends to readopt Section 6.42.020 of the Laguna Woods Municipal Code to reauthorize the collection of PEG fees.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds as follows:

a. Currently, the City depends upon the PEG access fee to support PEG access channel facilities, which are essential to providing city residents with important civic programming, including emergency alerts and community and government news. Pursuant to Public Utilities Code Section 5870(n), the City's PEG access fee codified in Section 6.42.020 of the Laguna Woods Municipal Code expires upon the expiration of a state franchise. The first state franchise to include the City, California Video Franchise Certificate Franchise No. 0002 granted to AT&T, expired on March 30, 2017. The second state franchise to include the City, California Video Franchise Certificate Franchise No. 0003 granted to Cox, expires on April 27, 2017. If the City's PEG fee is not reauthorized immediately, the City's funding for its PEG programming facilities may be interrupted. Any loss of funding would jeopardize a trustworthy, reliable, and immediate means by which the City communicates with its residents. Lapses in funding may also lead to confusion among state video franchisees operating within the City regarding the payment of PEG fees leading the City to incur additional costs to recover any overdue fees.

b. Therefore, the City Council finds and determines that the immediate preservation of the public peace, health, and safety requires that this ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b) and take effect immediately upon adoption. If this Ordinance did not become effective immediately, but instead became effective 30 days after its second reading, funding for City PEG facilities could be affected causing residents who rely on PEG channels for emergency broadcasts and news updates to lose a vital source of City information. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, and safety and its urgency is hereby declared.

SECTION 2. Section 6.42.020 of Chapter 6.42 of Title 6 of the Laguna Woods Municipal Code entitled "State Video Franchise and PEG Fees" is hereby readopted in its entirety to read as follows:

Sec. 6.42.020. - State video franchise and PEG fees.

(a) For any state video franchise holder operating within the boundaries of the City, there shall be a fee paid to the City equal to five (5%) percent of the gross revenue of that State video franchise holder.

(b) For any state video franchise holder operating within the boundaries of the City, there shall be an additional fee paid to the City equal to one (1%)

percent of the gross revenue of that state video franchise holder, which fee shall be used by the City for any Public, Educational, and/or Governmental (PEG) purposes consistent with State and Federal law.

(c) Gross revenue, for the purposes of subsections (a) and (b) above, shall have the definition set forth in California Public Utilities Code § 5860.

(d) The City Council, may, by resolution, opt to temporarily waive the collection, but not the imposition, of the franchise fee and/or the PEG fee.

SECTION 3. In readopting this Section 6.42.020 of Chapter 6.42 of Title 6 of the Laguna Woods Municipal Code, the City intends, to the extent required by California Public Utilities Code section 5870(n), to reauthorize the Public, Educational, and Governmental ("PEG") channel facilities fee adopted by the City on June 2, 2009, effective March 30, 2017. In adopting this Ordinance, the City does not in any manner affect or alter the continuing obligation of State franchisees to collect and pay the preexisting PEG fee.

SECTION 4. This Ordinance is declared to be an Urgency Ordinance by authority conferred on the City Council of the City of Laguna Woods by Government Code sections 36934, 36937, and 65858, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 5. This Urgency Ordinance shall be of no further force and effect forty-five (45) days from and after the date of its adoption unless the same is extended pursuant to the authority conferred upon the City Council by Government Code Section 65858.

SECTION 6. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

SECTION 7. The Deputy City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

SECTION 8. All of the above-referenced documents and information have been and are on file with the City Clerk of the City.

PASSED, APPROVED AND ADOPTED this XX day of XX 2017.

_____
SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

_____
DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 17-XX** was duly adopted and passed at a regular meeting of the City Council on the XX day of XX 2017 by the following vote to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

ORDINANCE NO. 17-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

WHEREAS, the City Council adopted Ordinance No. 07-03 on June 27, 2007, wherein a new Chapter 6.42 was added to Title 6 of the Laguna Woods Municipal Code called "Regulation of State Video Franchise Holders" that imposed certain fees on cable providers within the City's jurisdiction; and

WHEREAS, Public Utilities Code section 5870(n) provides that the Public, Educational, and Governmental ("PEG") PEG fee may be reauthorized upon the expiration of an applicable state franchise; and

WHEREAS, the first state franchise to include the City, California Video Franchise Certificate Franchise No. 0002 granted to Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company d/b/a AT&T California ("AT&T"), expires on March 30, 2017; and

WHEREAS, the second state franchise to include the City, California Video Franchise Certificate Franchise No. 0003 granted to Cox Communications California, LLC d/b/a Cox Communications ("Cox"), expires on April 27, 2017; and

WHEREAS, on April, 2017, the City Council held a duly noticed public hearing on the proposed Ordinance at which it considered all of the information, evidence, and testimony presented, both written and oral.

WHEREAS, the City Council intends to readopt Section 6.42.020 of the Laguna Woods Municipal Code to reauthorize the collection of PEG fees.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 6.42.020 of Chapter 6.42 of Title 6 of the Laguna Woods Municipal Code entitled "State Video Franchise and PEG Fees" is hereby readopted in its entirety to read as follows:

Sec. 6.42.020. - State video franchise and PEG fees.

(a) For any state video franchise holder operating within the boundaries of the City, there shall be a fee paid to the City equal to five (5%) percent of the gross revenue of that State video franchise holder.

(b) For any state video franchise holder operating within the boundaries of the City, there shall be an additional fee paid to the City equal to one (1%) percent of the gross revenue of that state video franchise holder, which fee shall be used by the City for any Public, Educational, and/or Governmental (PEG) purposes consistent with State and Federal law.

(c) Gross revenue, for the purposes of subsections (a) and (b) above, shall have the definition set forth in California Public Utilities Code § 5860.

(d) The City Council, may, by resolution, opt to temporarily waive the collection, but not the imposition, of the franchise fee and/or the PEG fee.

SECTION 2. In readopting this Section 6.42.020 of Chapter 6.42 of Title 6 of the Laguna Woods Municipal Code, the City intends, to the extent required by California Public Utilities Code section 5870(n), to reauthorize the Public, Educational, and Governmental ("PEG") channel facilities fee adopted by the City on June 2, 2009, effective March 30, 2017. In adopting this Ordinance, the City does not in any manner affect or alter the continuing obligation of State franchisees to collect and pay the preexisting PEG fee.

SECTION 3. This Ordinance shall take effect and be in full force and operation thirty (30) days after adoption. Upon the effective date of this Ordinance, Urgency Ordinance No. 17-XX shall be repealed and replaced in its entirety. Furthermore, the City Council declares its intent that the reauthorization of the PEG access fees shall be retroactive to March 30, 2017, to the end that there be no interruption of PEG fee revenues to the City.

SECTION 4. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such

decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

SECTION 5. The Deputy City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

SECTION 6. All of the above-referenced documents and information have been and are on file with the City Clerk of the City.

PASSED, APPROVED AND ADOPTED this XX day of XX 2017.

_____
SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

_____
DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 17-XX** was duly introduced and placed upon its first reading at a regular meeting of the City Council on the XX day of XX 2017, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the XX day of XX 2017 by the following vote to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

7.3
BUILDING, PLANNING, AND ENCROACHMENT PERMIT FEES

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: April 19, 2017 Regular Meeting

SUBJECT: Building, Planning, and Encroachment Permit Fees

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING NEW AND INCREASED OR MODIFIED BUILDING AND PLANNING SERVICES FEES, AND ENCROACHMENT PERMIT FEES

Background

ClearSource Financial, under contract with the City, recently completed a study of the "nexus" between the City's fees and the reasonable costs of providing building and planning services, as well as encroachment permitting (Attachment A). That study is a part of the City's annual evaluation of the adequacy and rationality of its fees, including its reasonable costs of providing services.

The Building, Planning, and Encroachment Permit Fee Study includes calculations of how fees would need to be established in order to recover the City's reasonable costs of providing services. State law prohibits the City from charging more than its reasonable costs. While the City may charge less than its reasonable costs, the practical implication of doing so is that subsidies would then be borne by taxpayers as the City covers its costs with property tax, sales tax, or other revenues that could otherwise be used to fund and maintain other programs, projects, and services.

Concurrent with the preparation of the Building, Planning, and Encroachment Permit Fee Study, a Central Services Cost Allocation Study was prepared to (1) estimate the share of citywide overhead costs eligible for recovery from fees and (2) calculate a citywide indirect cost rate. The outcomes of that study have been incorporated into the Building, Planning, and Encroachment Permit Fee Study.

Discussion

At today's meeting, the City Council will conduct a public hearing regarding the proposed Building, Planning, and Encroachment Permit Fee Schedule (Attachment B), after which adoption will be considered. In accordance with State law, any new and increased or modified fees could take effect no less than 60 days from the date of adoption. Staff recommends an effective date of June 19, 2017.

In addition to being attached to this report, the proposed Building, Planning, and Encroachment Permit Fee Schedule, including a list of all proposed fees, and the accompanying Building, Planning, and Encroachment Permit Fee Study, have been publically available at Laguna Woods City Hall and on the City's website since April 3, 2017. The Central Services Cost Allocation Study has also been publically available on the City's website and at Laguna Woods City Hall.

Due to the City's current moratorium on medical marijuana dispensaries, neither of the medical marijuana dispensary-related regulatory permit fees were evaluated as a part of the Building, Planning, and Encroachment Permit Fee Study.

In addition to the fees previously considered by the City Council on February 15, 2017, the proposed fee study and fee schedule include three new fees related to the implementation of new wireless facilities regulations.

Environmental Review

The adoption of building, planning, and encroachment permit fees is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to sections 15061(b)(3) and 15273 of the CEQA Guidelines.

Fiscal Impact

The proposed Building, Planning, and Encroachment Permit Fee Schedule would modify cost recovery for most fees to 100% and would include both fee increases and fee reductions. In accordance with State law, revenue from fees would offset only the City's reasonable costs of providing services.

Funds to support this project are included in the City's budget.

Attachments: A – Building, Planning, and Encroachment Permit Fee Study
B – Proposed Resolution
Exhibit A – Proposed Building, Planning, and Encroachment Permit Fee Schedule

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City of Laguna Woods
Building, Planning, and Encroachment Permit Fee Study

- March 2017 -

(This represents an updated version of the Building, Planning, and Encroachment Permit Fee Study Report, dated "February 2017". This version has been updated to reflect estimated costs of service for review of requests for wireless use permits and eligible facility request permits. All other information presented in the February 2017 report remains unchanged.)

ClearSource
Financial Consulting

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Executive Summary

Background

The City of Laguna Woods conducts periodic examinations of the various user and regulatory fees it collects. Routinely examining the costs of providing fee related services and making deliberate decisions about the recovery of costs and fee modifications helps cities maintain fiscal sustainability and respond to the changing needs of citizens, changes in regulations, and changes in local and regional economies.

The current study examines the City's costs of providing building, planning, and encroachment permit fee-related services. The outcomes and recommendations of the study are intended to comply with applicable federal, state, and local laws including providing confirmation that the proposed fees (charges) recommended as a result of this study are not a tax as defined in Article 13C of the California Constitution and that the proposed fees are no more than necessary to the cover the reasonable costs of the City's activities and services addressed in the fees. Additionally, this report is intended to show that the manner in which the costs are allocated to a payor bear a fair and reasonable relationship to the payor's burdens on, or benefits received from the activities and services provided by the City of Laguna Woods.

The primary goals of this study were to:

- Identify the full cost of providing building, planning, and encroachment fee-related services
- Calculate fully-burdened hourly rates for fee-related service providers
- Determine current cost recovery levels
- Examine existing fee calculation methodologies and modify, if necessary, to more closely align calculation methodology to the cost of services being provided
- Provide a sample fee schedule that illustrates fees assuming full or targeted cost recovery levels
- Estimate anticipated revenue impacts of modifying fees to reflect full or targeted cost recovery
- Deliver an updated schedule of fees after Council review and adoption of any fee modifications

Key Findings

- **Building**
    - 81 individual building fee categories were examined as part of this study.
    - Permit processing times were recalibrated for many services based on feedback received from City staff and building contract personnel.
        - The cost of service for 49 fee categories remains unchanged (minor adjustments are due to rounding)
        - The cost of service for 26 fee categories increased slightly due to modified service time estimates
        - The cost of service for 6 fee categories decreased slightly due to reduced service time estimates

- The cost of service study calculated a $138 fully-burdened hourly rate for fee-related building services. The prior study also calculated a $138 fully-burdened hourly rate.
- Proposed cost recovery is 100% for the majority of services examined.

- **Planning**
  - Roughly 30 individual planning fee categories were examined as part of this study.
  - Minor fee reductions are proposed for the majority of fees. The proposed fee reductions assume most in-house planning fee-related services will be led by a City Management Analyst. The Management Analyst position is a lower cost position than the Assistant City Manager position that previously led the City's in-house planning fee-related service efforts.
  - The City's proposed fees are intended to recover 100% of the cost of service (exception for Appeal Fee. The Appeal fee is set to recover roughly 25% of the cost of service).
  - The cost of service study calculated a $142 fully-burdened hourly rate for fee-related planning services. The prior study calculated a $150 fully-burdened hourly rate. The sample fee schedule provided in the Appendix of this report illustrates fee changes assuming recovery of 100% of the estimated cost of service.
  - A new fee is proposed for requests for new street addresses or modifications of an existing address.
  - New fees are proposed for wireless use permit filings, eligible facility request permit filings, and pre-submittal meetings associated with eligible facility request permits.

- **Encroachment Permit Fees**
  - Each year, the City typically issues between 25 and 35 encroachment permits. For most of these permits, the City currently collects an initial deposit and charges against the deposit for any encroachment permit-related costs. While this method ensures the City recovers its costs, it makes it difficult for applicants to forecast fees and requires the City to manage many deposits.
  - This study developed a sample fee structure intended to reduce the use of deposits, while creating fixed fee categories that correspond to the nature of encroachment requests likely to occur in the City of Laguna Woods.
  - The sample fee structure was developed with an overarching goal of fee equity, meaning less complex projects and/or projects with a shorter duration, result in lower encroachment permit fees than more complex projects and/or projects with a longer duration.
  - The City's proposed fees are intended to recover 100% of the cost of service.
  - The cost of service study calculated a $165 fully-burdened hourly rate for fee-related encroachment-permit services.

Recommendations

The fees included as part of this study are set at the direction of the City Council. Consequently, the City Council may adopt fees and modify them at a future date as costs of service change, city policies or goals change, project volumes change, service recipient feedback is received, and annual revenue impact of fees is confirmed.

If the City decides to adopt modified fees it should:

- **Ensure that City staff begin fee collections using updated fee schedules** once the adopted fees are effective.
- **Actively monitor and bill for deposit-based fees** - Fees for highly variable services are often set to recover the estimated full cost of service, using an hourly billing methodology and collection of an initial deposit. In order to recover the targeted amounts expected from these fees, the City should be diligent about tracking time for deposit-based projects and requesting additional amounts for projects with costs exceeding those collected via the initial deposit.
- **Periodically Review and Adjust Fees and Calculation Methodologies** – As part of this study, several changes were made to fee calculation methodologies. These changes were made in an effort to more closely align fees to the services provided. The city should continue its proactive efforts to refine fee structures to reflect the review and permitting services provided by the city. Additionally, the fee schedule allows for hourly billing of projects that fall outside the scope of those considered when developing the fee schedule. Also, if fees for services are unintentionally omitted from the adopted fee schedule, they should be added to the fee schedule as part of a future update.
- **Monitor feedback and permit statistics** - Monitor permit and application volumes and homeowner/contractor feedback to determine if fee modifications are resulting in any unanticipated changes in project frequency and to increase the level of detail available for revenue forecasting.

Additionally, the City may consider the following:

- **Adjust fees on an annual basis using inflationary index** - In order to maintain pace with regional cost inflation, the City should consider adjusting its fees on an annual basis. The all-urban Consumer Price Index for Los Angeles, Riverside, and Orange County is a readily available inflationary index that may be used for adjusting fees (alternative indices are available).
- **Conduct future fee studies on a regular basis** – In order to avoid situations where cost recovery levels fall below full or targeted levels, the City should consider conducting future fee studies whenever operations change significantly or, at a minimum, every two fiscal years.

Legislative Guidance

The objectives of the study, the methodology used to complete the study, and the proposed fees were significantly influenced by Article 13C of the California Constitution and Section 66014 of the California Government Code.

Article 13C states that the local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity. Additionally, Article 13C identifies the following as items that are *not* defined as taxes:

1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
6) A charge imposed as a condition of property development.
7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

Section 66014(a) of the California Government Code includes the following, “Notwithstanding any other provision of law, when a local agency charges fees for zoning variances; zoning changes; use permits; building inspections; building permits; …the processing of maps under the provisions of the Subdivision Map Act…; or planning services…; those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.”

Study Methodology

This study calculated the estimated reasonable cost of providing various building, planning, and encroachment permit fee-related services. Generally, the estimated reasonable cost of providing the fee-related services and activities examined in this study can be calculated as the product of the composite fully-burdened hourly labor rate of the in-house staff or contract service personnel responsible for providing services and the estimated labor time required to process a typical request for service (see illustration below).

Hourly rate * Labor hours = Cost of service

The composite fully-burdened hourly rates calculated in this study are based on the estimated annual hours spent providing fee related services, and estimated labor, services and supplies, and citywide overhead expenditures:

- Estimated annual hours spent providing fee related services were developed based on responses received from multiple interviews and targeted questionnaires.
- Labor expenditures for in-house personnel were based on forecasts of Fiscal Year 2016/17 salary and benefits expenditures.
- Contract service personnel related costs were based on the rates outlined in the consultant agreements established for various building, planning, and engineering services.
- All other services and supplies expenditures were based on Fiscal Year 2016/17 budgeted expenditures.

Estimated labor times were developed based on responses received from multiple interviews and targeted questionnaires of the staff primarily responsible for the provision of services examined in the study, along with an extensive review of actual permits issued during previous years.

Once cost of service levels are identified, the City may use this information to inform targeted cost recovery from fees. Fees set at the cost of service target full cost recovery. Fees set at any amount less than the cost of service target less than full cost recovery.

Proposed fee ÷ Cost of service = Targeted Cost Recovery

General Findings

Building Fees

The Planning and Environmental Services Department provides permitting, plan check, and inspection services for all new construction, alterations, and additions throughout Laguna Woods, enforcing the provisions of the California Building Standards Code. Additionally the Department serves as a primary building code resource to contractors, architects, engineers, developers, business owners, and property owners in Laguna Woods.

- 81 individual building fee categories were examined as part of this study.
- Permit processing times were recalibrated for many services based on feedback received from City staff and building contract personnel.
    - The cost of service for 49 fee categories remains unchanged (minor adjustments are due to rounding)
    - The cost of service for 26 fee categories increased slightly due to modified service time estimates
    - The cost of service for 6 fee categories decreased slightly due to reduced service time estimates
- The cost of service study calculated a $138 fully-burdened hourly rate for fee-related building services. The prior study also calculated a $138 fully-burdened hourly rate.
- Proposed cost recovery is 100% for the majority of services examined.

Planning Fees

The Planning and Environmental Services Department leads the City's current and long-range planning efforts, including processing and review of applications for development within the City of Laguna Woods. Additionally the Department serves as a primary planning and zoning resource to contractors, architects, engineers, developers, business owners, and property owners in Laguna Woods.

Roughly 30 individual planning fee categories were examined as part of this study. Significant findings from the cost of service analysis include:

- Minor fee reductions are proposed for the majority of fees. The proposed fee reductions assume the majority of in-house planning fee-related services will be led by a City Management Analyst. The Management Analyst position is a lower cost position than the Assistant City Manager position that previously led the City's in-house planning fee-related service efforts. The cost of service study calculated a $142 fully-burdened hourly rate for fee-related planning services. The prior fee study calculated a $150 fully-burdened hourly rate.
- The City's proposed fees are intended to recover 100% of the cost of service (exception for Appeal Fee. The Appeal fee is set to recover roughly 25% of the cost of service).

Encroachment Permit Fees

Each year, the City typically issues between 25 and 35 encroachment permits for activities occurring within the City right-of-way. The primary applicants for encroachment permits in the City of Laguna Woods include utility and telecommunications companies such as Southern California Edison, AT&T, and regional water districts. Additionally, requests for encroachments may be received from landscaping companies, environmental engineering companies, and other businesses and contractors.

For most of these permits, the City currently collects an initial deposit and charges against the deposit for any encroachment permit-related costs. While this method ensures the City recovers its costs, it makes it difficult for applicants to forecast fees and requires the City to manage many deposits.

This study developed a sample fee structure intended to reduce the use of deposits, while creating fixed fee categories that correspond to the nature of encroachment requests likely to occur in the City of Laguna Woods. The findings are based on numerous discussions with the City Engineer and a review of common encroachment requests received by the City. Additionally the sample fee structure is developed with an overarching goal of fee equity, meaning less complex projects and/or projects with a shorter duration, result in lower encroachment permit fees than more complex projects and/or projects with a longer duration. A comparison of the current fee structure and the fee structure developed as part of this study is summarized in the following tables.

Categorization of Encroachment Requests Categories ("Minor" or "Major" Encroachment)

Typical Characteristics of Minor Projects	Examples of Minor Projects
• Non-ground disturbing activities • Project duration is typically three days or less • Projects require only minor traffic control, if any. Traffic control is removed daily.	• Landscape projects along parkway (e.g. trimming) • Temporary staging for a project outside the public right-of-way • Events that require closure of traffic lanes (e.g. marathon or walk) • Utility projects that do not require excavation, such as inspection of manholes, vaults, etc. • Replacement of a damaged street pole

Typical Characteristics of Major Projects	Examples of Major Projects
• Projects that disturb the pavement, sidewalk or the surface ground • Projects that last longer than three days and/or require permanent traffic control for the duration of the project	• Projects requiring excavation, such as installing a manhole or modifying the structure of a vault • Projects that require trenching within the public right-of-way (e.g. projects requiring re-pavement or re-installation of sidewalk panels, etc.

Comparison of Current Fee Structure and Fee Structure Developed as Part of this Study

Current Fee Structure	Advantages	Disadvantages
Bill per hour with variable initial deposit depending on project characteristics	• Allows for full recovery of costs	• Increases difficulty for applicants to forecast fees • Requires significant city staff time to manage deposits • Increases difficulty to alter cost recovery targets for varying project types

Fee Structure from Study	Advantages	Disadvantages
Significant use of fixed fee categories based on project type. Reduced use of deposits.	• Fees tailored to projects likely to occur in Laguna Woods • Fixed fees allow applicants to forecast their fees • Allow City staff to consistently apply fee schedule • Reduced time associated with deposit management	• Fixed fees are based on typical project types, consequently, fees may result in over/under-recovery for projects that require effort different from that assumed in the fee calculation

Anticipated Revenue Impact of Fee Structure Modifications

The City's current deposit-based fee structure is intended to recover the full cost of encroachment permitting services and activities. The sample fee structure developed as part of this study is based on the assumption that the City will continue to target full cost recovery for encroachment permit fees. If the City continues this practice, the revenue impact of any fee schedule modification is anticipated to be immaterial.

Appendix

The appendix provides detailed analytical findings from the study, including the amount of cost, or estimated cost, required to provide the services for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. For any fees targeted to recover less than 100% of the estimated reasonable cost of service, it is anticipated that General Fund revenues of the City would fund the difference between the targeted recovery level and 100% recovery of the estimated cost of service. These amounts are identified in the Working Version of the Schedules of Building, Planning, and Encroachment Permit Fees. Additionally, the appendix includes a sample, for illustrative purposes, of the Master Schedules of Building, Planning, and Encroachment Permit Fees assuming full or targeted cost recovery levels.

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Calculation of Fully-Burdened Hourly Rates

Calculation of Fully-Burdened Hourly Rate

Building

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Planning & Environmental Services (Building) - Allocation of Annual Labor Effort [a]

Position	Bldg Official	Bldg Insp'ctr Shift I-1	Bldg Insp'ctr Shift I-2	Bldg Insp'ctr Shift I-3	P'rmt Technician	Permit Assistant	Add'l Contract Svcs [b]	Total
Allocation to Building	100%	100%	100%	100%	100%	100%	100%	
Calculation of Productive Hours								
Annual Hours - Standard	832	2,080	1,664	416	2,080	2,080	100	9,252
Less: Annual Leave	-	-	-	-	-	-	-	-
Productive Hours	832	2,080	1,664	416	2,080	2,080	100	9,252
Indirect Activities and Services								
General Administration and Mgmt	158	390	312	78	390	390	-	1,718
Certification and Training	-	-	-	-	-	-	-	-
Code, Policies, and Procedures Update	42	-	-	-	-	-	-	42
Code Enforcement and Compliance	42	-	-	-	-	-	-	42
Permit Processing and Support	-	-	-	-	-	1,125	-	1,125
Public Information and Assistance	83	-	-	-	195	195	-	473
Total Indirect Activities and Services Work Hours	324	390	312	78	585	1,710	-	3,399
Direct Hours	508	1,690	1,352	338	1,495	370	100	5,853
Salary	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Benefits	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Contract Services	$ 65,545	$ 147,056	$ 117,645	$ 29,411	$ 136,552	$ 66,175	$ 12,500	$ 574,884
Total	$ 65,545	$ 147,056	$ 117,645	$ 29,411	$ 136,552	$ 66,175	$ 12,500	$ 574,884
Indirect Activities and Services								
General Administration and Mgmt	19%	19%	19%	19%	19%	19%	0%	18%
Certification and Training	0%	0%	0%	0%	0%	0%	0%	0%
Code, Policies, and Procedures Update	5%	0%	0%	0%	0%	0%	0%	1%
Code Enforcement and Compliance	5%	0%	0%	0%	0%	0%	0%	1%
Permit Processing and Support	0%	0%	0%	0%	0%	54%	0%	6%
Public Information and Assistance	10%	0%	0%	0%	9%	9%	0%	4%
Total Indirect Activities and Services Work Hours	39%	19%	19%	19%	28%	82%	0%	30%
Direct Hours	61%	81%	81%	81%	72%	18%	100%	70%

Notes

[a] Source: Contract services agreements and annual labor allocation feedback provided by Planning and Environmental Services Department and City Management staff.
[b] E.g. CASp, consulting Building Official, engineering.

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Planning & Environmental Services (Building) - Calculation of Fully-Burdened Hourly Rate

Estimated In-House Labor and Contract Services Expenditures [a][b][c]

Description	Total	Notes
Salaries	$ -	
Benefits	$ -	
Contract Services	$ 574,884	
Total - Labor Expenditures	$ 574,884	

Recurring Non-Labor Expenditures

Description	FY 2016/17 Budget	Adjustment	Subtotal	Notes
Planning & Environmental Services				
General Expenses				
Building Services	$ 526,900	$ (526,900)	$ -	[d]
Building Services, Printing	$ 1,800	$ -	$ 1,800	[e]
Building Services, Publications	$ 1,000	$ -	$ 1,000	[f]
Code Enforcement Services	$ 40,592	$ (40,592)	$ -	[g]
Community Waste Events and Collections	$ 53,550	$ (53,550)	$ -	[g]
Planning Services	$ 15,000	$ (15,000)	$ -	[g]
Non-Operating	$ -	$ -	$ -	[g]
Waste Management Services	$ 35,000	$ (35,000)	$ -	[g]
Water Quality Services	$ 99,677	$ (99,677)	$ -	[g]
Compensation & Benefits				
Salaries, Full-time	$ 88,712	$ (88,712)	$ -	[h]
Community Events	$ 5,320	$ (5,320)	$ -	[h]
Fringe Benefits	$ 12,000	$ (12,000)	$ -	[h]
Payroll Taxes	$ 6,786	$ (6,786)	$ -	[h]
Community Events	$ 407	$ (407)	$ -	[h]
Retirement	$ 8,406	$ (8,406)	$ -	[h]
Community Events	$ 504	$ (504)	$ -	[h]
Long-term Disability	$ 897	$ (897)	$ -	[h]
Subtotal	$ 896,551	$ (893,751)	$ 2,800	

Departmental Overhead

Description	Dept OH Personnel	Bldg Share of Est Dept OH	Total	Notes
Estimated Departmental Overhead	$ 123,032	30%	$ 36,910	[i]

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Planning & Environmental Services (Building) - Calculation of Fully-Burdened Hourly Rate

Citywide Overhead

Description	FY 17/18 C'wide Indirect Rate	Modified Direct Expenditures	Bldg Share of C'wide Overhead	Notes
Estimated Citywide Overhead	32%	$ 614,594	$ 196,670	[j][k]

Calculation of Fully-Burdened Hourly Rate

Description	Annual Allocation [a]	Labor	Non-Labor	Dept Overhead	Citywide Overhead	Total	Targeted Recovery from Fees	Amount Recoverable from Fees	Targeted Hourly Rate
General Administration and Mgmt	18%	$ 105,611	$ 514	$ 6,781	$ 36,130	$ 149,036	99%	$ 147,995	$ 25
Certification and Training	0%	$ -	$ -	$ -	$ -	$ -	100%	$ -	$ -
Code, Policies, and Procedures Update	1%	$ 3,277	$ 16	$ 210	$ 1,121	$ 4,625	100%	$ 4,625	$ 1
Code Enforcement and Compliance	1%	$ 3,277	$ 16	$ 210	$ 1,121	$ 4,625	0%	$ -	$ -
Permit Processing and Support	6%	$ 35,792	$ 174	$ 2,298	$ 12,245	$ 50,509	100%	$ 50,509	$ 9
Public Information and Assistance	4%	$ 25,560	$ 124	$ 1,641	$ 8,744	$ 36,070	100%	$ 36,070	$ 6
Direct Hours	70%	$ 401,367	$ 1,955	$ 25,769	$ 137,309	$ 566,400	100%	$ 566,400	$ 97
Total	100%	$ 574,884	$ 2,800	$ 36,910	$ 196,670	$ 811,264	99%	$ 805,598	$ 138
								Direct Hours	5,853

Notes

[a] See worksheet labeled "Planning & Environmental Services (Building) - Allocation of Annual Labor Effort".

[b] Excludes in-house labor expenses budgeted to this department, since the forecasted expenditures for in-house staff are allocated as part of the departmental overhead costs. Adjustment to avoid double counting.

[c] The expenditures shown here are reflective of the current contract services costs anticipated to be incurred for Building Official, structural engineering plan review, over the counter plan review, and permit inspection.

[d] Accounted for in labor and contract services section of the model. Adjustment to avoid double counting.

[e] For printing of development related forms and job cards.

[f] For building code books.

[g] Adjustment to exclude costs not linked to building fee-related services.

[h] These expenses have been adjusted out to avoid double counting. They are accounted for in the departmental overhead section of this model.

[i] Amount represents compensation and benefits of the Management Analyst for development programs.

[j] See Citywide Overhead Cost Allocation Plan for FY 17/18 - Full Cost Version.

[k] Building share of estimated citywide overhead calculated as follows: citywide indirect cost rate * modified direct expenditures for building fee-related services.

Calculation of Fully-Burdened Hourly Rate

Planning

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Planning & Environmental Services (Planning) - Allocation of Annual Labor Effort [a]

Position	Mgmt. Analyst [a]	Contract Services [b]	Total
Allocation to Planning	60%	100%	
Calculation of Productive Hours			
Annual Hours - Standard	1,248	250	1,498
Less: Annual Leave	72	-	72
Productive Hours	1,176	250	1,426
Indirect Activities and Services			
General Administration and Mgmt	294	-	294
Certification and Training	24	-	24
Code, Policies, and Procedures Update	59	-	59
Code Enforcement and Compliance	12	-	12
Public Information and Assistance	176	-	176
Total Indirect Activities and Services Work Hours	564	-	564
Direct Hours	612	250	862
Salary	$ 53,227	$ -	$ 53,227
Benefits	$ 16,853	$ -	$ 16,853
Contract Services	$ -	$ 23,750	$ 23,750
Total	$ 70,081	$ 23,750	$ 93,831
Indirect Activities and Services			
General Administration and Mgmt	25%	0%	19%
Certification and Training	2%	0%	1%
Code, Policies, and Procedures Update	5%	0%	4%
Code Enforcement and Compliance	1%	0%	1%
Public Information and Assistance	15%	0%	11%
Total Indirect Activities and Services Work Hours	48%	0%	36%
Direct Hours	52%	100%	64%

Notes

** Amounts represent estimated labor effort and costs associated with Planning functional division. Services provided to other functional divisions have been excluded from this analysis in order to avoid recovering non-planning related costs from planning fees. Estimated annual support to the Planning functional division is based on feedback received from City staff.*

[a] Source: Annual labor allocation estimates provided by Planning and Environmental Services and City Management staff.

[b] Assumes 250 annual hours for current planning services at $95 per hour.

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Planning & Environmental Services (Planning) - Calculation of Fully-Burdened Hourly Rate

Estimated In-House Labor and Contract Services Expenditures [a]

Description	Total	Notes
Salaries	$ 53,227	
Benefits	$ 16,853	
Contract Services	$ 23,750	
Total - Labor Expenditures	$ 93,831	

Recurring Non-Labor Expenditures

Description	FY 2016/17 Budget	Adjustment	Subtotal	Notes
Planning & Environmental Services				
General Expenses				
Building Services	$ 526,900	$ (526,900)	$ -	[b]
Building Services, Printing	$ 1,800	$ (1,800)	$ -	[b]
Building Services, Publications	$ 1,000	$ (1,000)	$ -	[b]
Code Enforcement Services	$ 40,592	$ (40,592)	$ -	[b]
Community Waste Events and Collections	$ 53,550	$ (53,550)	$ -	[b]
Planning Services	$ 15,000	$ (15,000)	$ -	[c]
Non-Operating	$ -	$ -	$ -	[b]
Waste Management Services	$ 35,000	$ (35,000)	$ -	[b]
Water Quality Services	$ 99,677	$ (99,677)	$ -	[b]
Compensation & Benefits				
Salaries, Full-time	$ 88,712	$ (88,712)	$ -	[d]
Community Events	$ 5,320	$ (5,320)	$ -	[d]
Fringe Benefits	$ 12,000	$ (12,000)	$ -	[d]
Payroll Taxes	$ 6,786	$ (6,786)	$ -	[d]
Community Events	$ 407	$ (407)	$ -	[d]
Retirement	$ 8,406	$ (8,406)	$ -	[d]
Community Events	$ 504	$ (504)	$ -	[d]
Long-term Disability	$ 897	$ (897)	$ -	[d]
Subtotal	$ 896,551	$ (896,551)	$ -	

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Planning & Environmental Services (Planning) - Calculation of Fully-Burdened Hourly Rate

Departmental Overhead

Description	Dept OH Personnel	Planning Est. Share of Dept Overhead	Total	Notes
Estimated Departmental Overhead	$ 123,032	0%	$ -	[e]

Citywide Overhead

Description	FY 17/18 C'wide Indirect Rate	Modified Direct Expenditures	Plan'g Share of C'wide Overhead	Notes
Estimated Citywide Overhead	32%	$ 93,831	$ 30,026	[f][g]

Calculation of Fully-Burdened Hourly Rate

Description	Annual Allocation [a]	Labor	Non-Labor	Dept Overhead	Citywide Overhead	Total	Targeted Recovery from Fees	Amount Recoverable from Fees	Targeted Hourly Rate
General Administration and Mgmt	19%	$ 17,520	$ -	$ -	$ 5,606	$ 23,127	99%	$ 22,914	$ 27
Certification and Training	1%	$ 1,402	$ -	$ -	$ 449	$ 1,850	100%	$ 1,850	$ 2
Code, Policies, and Procedures Update	4%	$ 3,504	$ -	$ -	$ 1,121	$ 4,625	100%	$ 4,625	$ 5
Code Enforcement and Compliance	1%	$ 701	$ -	$ -	$ 224	$ 925	0%	$ -	$ -
Public Information and Assistance	11%	$ 10,512	$ -	$ -	$ 3,364	$ 13,876	100%	$ 13,876	$ 16
Direct Hours	64%	$ 60,192	$ -	$ -	$ 19,261	$ 79,453	100%	$ 79,453	$ 92
Total	100%	$ 93,831	$ -	$ -	$ 30,026	$ 123,856	99%	$ 122,719	$ 142
								Direct Hours	862

Notes

[a] See worksheet labeled "Planning & Environmental Services (Planning) - Allocation of Annual Labor Effort".

[b] Adjustment to exclude expenditures not linked to current planning fee-related services.

[c] Adjustment to exclude Contract Planning expenditures not related to applicant initiated planning activities.

[d] Accounted for in labor and contract services section of the model. Adjustment to avoid double counting.

[e] The Management Analyst for development programs is currently the primary contact point for current planning services. If additional personnel are added to this division in the future, the Planning division will receive a share of Departmental Overhead.

[f] See Citywide Overhead Cost Allocation Plan for FY 17/18 - Full Cost Version.

[g] Planning share of estimated citywide overhead calculated as follows: citywide indirect cost rate * modified direct expenditures for planning fee-related services.

Calculation of Fully-Burdened Hourly Rate

Encroachment Permits

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Calculation of Fully-Burdened Hourly Rate

Estimated Contract Services Hourly Rate for Encroachment Permitting

Description	Rate	Unit	Notes
City Engineer/ City Traffic Engineer	$ 125	per hour	[a]
Total	$ 125	per hour	

Recurring Non-Labor Expenditures

Description	FY 2016/17 Adopted	Adjustment	Subtotal	Notes
Engineering and Infrastructure Services				
General Expenses				
Engineering Services	$ 7,500	$ (7,500)	$ -	[b]
Landscaping Services	$ 60,131	$ (60,131)	$ -	[b]
Landscaping Services, M2 Maint of Effort	$ 84,173	$ (84,173)	$ -	[b]
Maintenance, Catch Basins	$ 2,800	$ (2,800)	$ -	[b]
Utilities				
Utilities, Street Lights, Residential	$ 33,696	$ (33,696)	$ -	[b]
Compensation & Benefits				
Salaries, Full-time	$ 36,380	$ (36,380)	$ -	[c]
Fringe Benefits	$ 12,000	$ (12,000)	$ -	[c]
Payroll Taxes	$ 5,566	$ (5,566)	$ -	[c]
Retirement	$ 4,838	$ (4,838)	$ -	[c]
Long-term Disability	$ 897	$ (897)	$ -	[c]
Subtotal	$ 247,981	$ (247,981)	$ -	

Citywide Overhead

Description	FY 16/17 C'wide Overhead Rate	Notes
Estimated Citywide Overhead	32%	[d]

Calculation of Fully-Burdened Hourly Rate

Description	Services Hourly Rate	Citywide Overhead Rate	Total
Services	$ 125	$ 40	$ 165

Notes:

[a] Source: Consultant Services Agreement for City Engineering and Traffic Operations Services.

[b] Adjustment to exclude expenditures not linked to fee-related services and/or adjustment to exclude items already considered in the contract services hourly rate section of this model.

[c] These expenditures are composed of a portion of the budgeted salary and benefits expenditures of the Mgmt. Analyst/Sr. Mgmt. Analyst position. The hourly rate calculation assumes any encroachment permit-related services provided by this position will be treated as direct services at the calculated fully-burdened hourly rate. This assumptions avoids duplicate counting of costs for similar work activities. If the department organization changes significantly, the encroachment permit services hourly rate may be recalculated to receive a proportionate share of departmental overhead.

[d] See Citywide Overhead Cost Allocation Plan for FY 17/18 - Full Cost Version.

Calculation of the Costs of Providing Fee Related Services

Calculation of the Costs of Providing Fee Related Services

Building

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Cost of Service Calculation - Building Fees

		Cost of Service (Summary)					Cost Recovery Summary				
	Fee Description	Est. Labor Time (Hours)	x	Hourly Rate	=	Cost of Service	Current Fee	Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery	Modified Cost Recovery	Notes
1	Water Heater Change Out	0.62	x	$138	=	$85	$85	100%	$85	100%	
2	Water Heater Relocation	1.08	x	$138	=	$149	$142	95%	$149	100%	
3	Dishwasher Change Out	0.62	x	$138	=	$85	$85	100%	$85	100%	
4	Tub to Tub Insert Only	1.17	x	$138	=	$161	$142	89%	$161	100%	
5	Tub to Tub Tile Back Only	1.58	x	$138	=	$218	$200	92%	$218	100%	
6	Shower to Shower Insert Only	1.17	x	$138	=	$161	$142	89%	$161	100%	
7	Shower to Shower Tile Only	2.00	x	$138	=	$275	$257	93%	$275	100%	
8	Tub to Shower Only	2.00	x	$138	=	$275	$257	93%	$275	100%	
9	Water/Drain Line (Install/Alter/Repair) w/out Structural	0.62	x	$138	=	$85	$85	100%	$85	100%	
10	Water/Drain Line (Install/Alter/Repair) with Structural	1.58	x	$138	=	$218	$241	111%	$218	100%	
11	Line Repair (CIPP)/Svc Install - First 30 LF	0.67	x	$138	=	$92	$85	93%	$92	100%	
12	Line Repair (CIPP)/Svc Install - Each Add'l 30 LF	0.42	x	$138	=	$57	$57	100%	$57	100%	
13	New HVAC / HVAC Change Out (Central System) - Residential	1.17	x	$138	=	$161	$142	89%	$161	100%	
14	New HVAC / HVAC Change Out (All Others) - Residential	0.62	x	$138	=	$85	$85	100%	$85	100%	
15	Electrical - Fixtures and Receptacles	0.67	x	$138	=	$92	$85	93%	$92	100%	
16	Washer/Dryer Hook Up	0.83	x	$138	=	$114	$114	100%	$114	100%	
17	Electrical Wheelchair Lift	3.25	x	$138	=	$447	$418	93%	$447	100%	
18	Re-Roof (Tile, Single-Ply) - First 1,000 SF	1.03	x	$138	=	$142	$142	100%	$142	100%	
19	Re-Roof (Tile, Single-Ply) - Each Add'l 1,000 SF	0.20	x	$138	=	$28	$28	100%	$28	100%	[a]
20	Re-Roof (All Other) - First 1,000 SF	1.25	x	$138	=	$172	$142	83%	$172	100%	
21	Re-Roof (All Other) - Each Add'l 5,000 SF	0.20	x	$138	=	$28	$28	100%	$28	100%	[a]
22	Fenestration - Skylights/Solartubes (1 Hr. Buildings)	1.17	x	$138	=	$161	$184	114%	$161	100%	
23	Fenestration - Skylights/Solartubes (All Others)	0.88	x	$138	=	$120	$114	94%	$120	100%	
24	Fenestration - Window Retrofit	0.96	x	$138	=	$132	$114	86%	$132	100%	
25	Fenestration - Doors/Windows (One New - Framed)	1.38	x	$138	=	$189	$212	112%	$189	100%	[b]
26	Structural, Drywall	0.92	x	$138	=	$126	$126	100%	$126	100%	
27	Structural, Insulation, Drywall	1.33	x	$138	=	$184	$184	100%	$184	100%	
28	Lath	1.00	x	$138	=	$138	$184	133%	$138	100%	
29	Structural, Insulation, Lath	2.17	x	$138	=	$298	$298	100%	$298	100%	
30	Structural, Insulation, Shear, Lath	3.58	x	$138	=	$493	$494	100%	$493	100%	
31	Framing/Structural - 1 inspection	1.92	x	$138	=	$264	$264	100%	$264	100%	[c]
32	Framing/Structural - 2 inspections	2.33	x	$138	=	$321	$321	100%	$321	100%	[c]
33	Framing/Structural - 3 inspections	2.75	x	$138	=	$379	$379	100%	$379	100%	[c]

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Cost of Service Calculation - Building Fees

		Cost of Service (Summary)					Cost Recovery Summary				
	Fee Description	Est. Labor Time (Hours)	x	Hourly Rate	=	Cost of Service	Current Fee	Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery	Modified Cost Recovery	Notes
34	Temporary Shade Structure (Commercial)	1.92	x	$138	=	$264	$223	84%	$264	100%	
35	Patio/Balcony Cover/Enclosure - Standard, Open, Pre-Engineered	1.33	x	$138	=	$184	$177	96%	$184	100%	
36	Patio/Balcony Cover/Enclosure - Standard, Enclosed, Pre-Engineered	2.00	x	$138	=	$275	$269	98%	$275	100%	
37	Patio/Balcony Cover/Enclosure - Site Specific Engineering	3.38	x	$138	=	$465	$447	96%	$465	100%	
38	Alteration - Residential (Res.) Kitchen	2.58	x	$138	=	$356	$356	100%	$356	100%	
39	Alteration - Res. Kitchen, plus HVAC OR Fenestration	3.00	x	$138	=	$413	$413	100%	$413	100%	
40	Alteration - Res. Kitchen, plus HVAC AND Fenestration/Other	3.42	x	$138	=	$470	$471	100%	$470	100%	
41	Alteration - Res. Kitchen, plus 1 Bath	3.00	x	$138	=	$413	$413	100%	$413	100%	
42	Alteration - Res. Kitchen, plus 2+ Bath (Includes bathroom splits)	3.42	x	$138	=	$470	$471	100%	$470	100%	
43	Alteration - Res. Kitchen, plus 1 Bath, plus HVAC OR Fenestration/Other	3.42	x	$138	=	$470	$471	100%	$470	100%	
44	Alteration - Res. Kitchen, plus 2+ Bath, plus HVAC OR Fenestration/Other	3.83	x	$138	=	$528	$528	100%	$528	100%	
45	Alteration - Res. Kitchen, plus 1 Bath, plus HVAC AND Fenestration/Other	3.83	x	$138	=	$528	$528	100%	$528	100%	
46	Alteration - Res. Kitchen, plus 2+ Bath, plus HVAC AND Fenestration/Other	4.25	x	$138	=	$585	$585	100%	$585	100%	
47	Alteration/Remodel - Res. 1 Bath	1.75	x	$138	=	$241	$241	100%	$241	100%	
48	Alteration/Remodel - Res. 2+ Baths (includes bathroom splits)	2.58	x	$138	=	$356	$356	100%	$356	100%	
49	Alteration - Res. 2+ Baths (incl. split), plus HVAC/Other	3.00	x	$138	=	$413	$413	100%	$413	100%	
50	Room Addition	6.00	x	$138	=	$826	$827	100%	$826	100%	
51	Alteration/Remodel w/ Room Addition	8.50	x	$138	=	$1,170	$1,171	100%	$1,170	100%	
52	Sign (Wall) - First	1.17	x	$138	=	$161	$154	96%	$161	100%	
53	Sign (Wall) - Each Add'l	0.08	x	$138	=	$11	$11	100%	$11	100%	
54	Sign (Monument) - First	1.92	x	$138	=	$264	$246	93%	$264	100%	
55	Sign (Monument) - Each Add'l	0.17	x	$138	=	$23	$23	100%	$23	100%	
56	Antenna - Telecommunications	3.67	x	$138	=	$505	$475	94%	$505	100%	
57	Antenna - Equipment Shelter	1.75	x	$138	=	$241	$211	88%	$241	100%	
58	Solar - Residential Systems (Expedited Process)	1.67	x	$138	=	$229	$211	92%	$229	100%	
59	Solar - Residential Systems (All Others)	3.00	x	$138	=	$413	$395	96%	$413	100%	
60	Solar - Commercial Systems	8.50	x	$138	=	$1,170	$1,000	85%	$1,000	85%	[d]
61	Demolition - Residential Interior	1.17	x	$138	=	$161	$184	114%	$161	100%	
62	Demolition - Residential (All Other)	0.67	x	$138	=	$92	$85	93%	$92	100%	[e]
63	Demolition - Non-Residential	2.50	x	$138	=	$344	$344	100%	$344	100%	
64	Certificate of Occupancy - Temporary	0.62	x	$138	=	$85	$85	100%	$85	100%	
65	Certificate of Occupancy	1.87	x	$138	=	$257	$257	100%	$257	100%	

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Cost of Service Calculation - Building Fees

	Fee Description	Cost of Service (Summary)					Cost Recovery Summary				Notes
		Est. Labor Time (Hours)	x	Hourly Rate	=	Cost of Service	Current Fee	Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery	Modified Cost Recovery	
66	Miscellaneous/All Other - First Inspection	0.62	x	$138	=	$85	$85	100%	$85	100%	
67	Miscellaneous/All Other - Each Add'l Inspection	0.42	x	$138	=	$57	$57	100%	$57	100%	
68	Miscellaneous/All Other - Plan Check (Per Hr)	1.00	x	$138	=	$138	$138	100%	$138	100%	
69	Work Without Permit	1.33	x	$138	=	$184	$165	90%	$184	100%	
70	Re-Inspection - Missed Appointment	0.42	x	$138	=	$57	$57	100%	$57	100%	
71	Additional Inspections	0.62	x	$138	=	$85	$85	100%	$85	100%	
72	Replacement Job Card	0.20	x	$138	=	$28	$34	125%	$28	100%	
73	Cancelled Permit Refund Processing Fee	0.50	x	$138	=	$69	$25	36%	$25	36%	
74	State Energy Form Assistance (Upon Request) (Per Page)	0.25	x	$138	=	$34	$4	12%	$4	12%	
75	Building and Safety Appeal Application	1.00	x	$138	=	$138	$138	100%	$138	100%	
76	Alternate Materials Method Review (Per Hr)	1.00	x	$138	=	$138	$138	100%	$138	100%	
77	Inspection Outside of Normal Business Hours (Per Hr)	1.25	x	$138	=	$172	$172	100%	$172	100%	

Notes

[a] For purposes of calculating re-roof fees, fractional square footages shall be rounded up to the nearest 1,000 SF. For example 1,600 SF shall be rounded to 2,000 SF.
[b] For Installation of multiple doors or windows see Framing/Structural fees.
[c] Examples of items included in this fee include post, beam, beamtail, raftertail, corbel, shearpanel, and truss repair/replacement.
[d] California Government Code Section 66015(b)(1), establishes maximum fees for commercial rooftop solar energy systems. Fees shall not exceed $1,000 for systems up to 50kW plus $7 per kilowatt for each kilowatt between 51kW and 250kW, plus $5 for each kilowatt above 250kW. Fees in excess of these amounts require written findings and resolution or ordinance.
[e] Fee for ceiling scrapes, lead paint removal, floor removal, etc.

City of Laguna Woods
Fee Study
Cost of Service Calculation - Building Fees
(New Construction & Tenant Improvements)

Hourly Rate		$138	Estimated Labor Hours			Cost of Service					
	Occupancy Classification	Threshold SqFt	Plan Check	Permit / Inspection	Total	Plan Check	Plan Check Fee per Add'l 100 SF	Permit / Inspection	Permit / Insp. Fee per Add'l 100 SF	Total	Total Fee Per Add'l 100 SF
1	Shell Building	500	7.50	7.50	15.00	$1,032	$24.09	$1,032	$44.74	$2,065	$68.82
	New Construction	2,000	10.13	12.38	22.50	$1,394	$15.49	$1,703	$18.93	$3,097	$34.41
		5,000	13.50	16.50	30.00	$1,858	$9.29	$2,271	$11.36	$4,129	$20.65
		10,000	16.88	20.63	37.50	$2,323	$4.30	$2,839	$12.90	$5,162	$17.21
		20,000	20.00	30.00	50.00	$2,753	varies	$4,129	varies	$6,882	varies
		> 20,000	varies	varies	varies	varies	varies	varies	varies	varies	varies
2	Accessory/Utility	100	1.75	3.25	5.00	$241	$80.30	$447	$149.12	$688	$229.42
	(e.g. Private garage,	250	2.63	4.88	7.50	$361	$48.18	$671	$89.47	$1,032	$137.65
	gatehouse)	500	3.50	6.50	10.00	$482	$24.09	$895	$44.74	$1,376	$68.82
	New Construction	1,000	4.38	8.13	12.50	$602	$11.24	$1,118	$20.88	$1,721	$32.12
		2,500	5.60	10.40	16.00	$771	varies	$1,432	varies	$2,202	varies
		> 2,500	varies	varies	varies	varies	varies	varies	varies	varies	varies
3	All Other	500	12.00	12.00	24.00	$1,652	$38.54	$1,652	$71.58	$3,304	$110.12
	New Construction	2,000	16.20	19.80	36.00	$2,230	$24.78	$2,725	$30.28	$4,955	$55.06
		5,000	21.60	26.40	48.00	$2,973	$14.87	$3,634	$18.17	$6,607	$33.04
		10,000	27.00	33.00	60.00	$3,717	$6.88	$4,542	$20.65	$8,259	$27.53
		20,000	32.00	48.00	80.00	$4,405	varies	$6,607	varies	$11,012	varies
		> 20,000	varies	varies	varies	varies	varies	varies	varies	varies	varies
4	Tenant Improvements	250	1.40	2.60	4.00	$193	$38.54	$358	$71.58	$551	$110.12
	New Construction	500	2.10	3.90	6.00	$289	$19.27	$537	$35.79	$826	$55.06
		1,000	2.80	5.20	8.00	$385	$6.42	$716	$11.93	$1,101	$18.35
		2,500	3.50	6.50	10.00	$482	$6.26	$895	$11.63	$1,376	$17.89
		5,000	4.64	8.61	13.25	$638	varies	$1,186	varies	$1,824	varies
		> 5,000	varies	varies	varies	varies	varies	varies	varies	varies	varies

Notes

* Current fees vary based on the estimated calculated value of the project for fee setting purposes.

City of Laguna Woods
Fee Study
Cost of Service Calculation - Building Fees
(New Construction & Tenant Improvements)

Hourly Rate		$138	Current Fee						Current Cost Recovery				
	Occupancy Classification	Threshold SqFt	Plan Check	Plan Check Fee per Add'l 100 SF	Permit / Inspection	Permit / Insp. Fee per Add'l 100 SF	Total	Total Fee Per Add'l 100 SF	Current Fee	Cost of Svc PC & Prmt Base Cost	Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery	Modified Cost Recovery
1	Shell Building	500	$1,033	$24.11	$1,033	$44.77	$2,066	$68.88	$2,066	$2,065	100%	$2,065	100%
	New Construction	2,000	$1,395	$15.50	$1,705	$18.94	$3,100	$34.44	$3,100	$3,097	100%	$3,097	100%
		5,000	$1,860	$9.30	$2,273	$11.37	$4,133	$20.66	$4,133	$4,129	100%	$4,129	100%
		10,000	$2,325	$4.30	$2,841	$12.91	$5,166	$17.22	$5,166	$5,162	100%	$5,162	100%
		20,000	$2,755	varies	$4,133	varies	$6,888	varies	$6,888	$6,882	100%	$6,882	100%
		> 20,000	varies		varies		varies		varies	varies		deposit	
2	Accessory/Utility	100	$241	$80.36	$448	$149.24	$689	$229.60	$689	$688	100%	$688	100%
	(e.g. Private garage,	250	$362	$48.22	$672	$89.54	$1,033	$137.76	$1,033	$1,032	100%	$1,032	100%
	gatehouse)	500	$482	$24.11	$895	$44.77	$1,378	$68.88	$1,378	$1,376	100%	$1,376	100%
	New Construction	1,000	$603	$11.25	$1,119	$20.89	$1,722	$32.14	$1,722	$1,721	100%	$1,721	100%
		2,500	$771	varies	$1,433	varies	$2,204	varies	$2,204	$2,202	100%	$2,202	100%
		> 2,500	varies		varies		varies		varies	varies		deposit	
3	All Other	500	$1,653	$38.57	$1,653	$71.63	$3,306	$110.21	$3,306	$3,304	100%	$3,304	100%
	New Construction	2,000	$2,232	$24.80	$2,728	$30.31	$4,959	$55.10	$4,959	$4,955	100%	$4,955	100%
		5,000	$2,976	$14.88	$3,637	$18.18	$6,612	$33.06	$6,612	$6,607	100%	$6,607	100%
		10,000	$3,719	$6.89	$4,546	$20.66	$8,265	$27.55	$8,265	$8,259	100%	$8,259	100%
		20,000	$4,408	varies	$6,612	varies	$11,021	varies	$11,021	$11,012	100%	$11,012	100%
		> 20,000	varies		varies		varies		varies	varies		deposit	
4	Tenant Improvements	250	$193	$38.57	$358	$71.63	$551	$110.21	$551	$551	100%	$551	100%
	New Construction	500	$289	$19.29	$537	$35.82	$827	$55.10	$827	$826	100%	$826	100%
		1,000	$386	$6.43	$716	$11.94	$1,102	$18.37	$1,102	$1,101	100%	$1,101	100%
		2,500	$482	$6.27	$895	$11.64	$1,378	$17.91	$1,378	$1,376	100%	$1,376	100%
		5,000	$639	varies	$1,186	varies	$1,825	varies	$1,825	$1,824	100%	$1,824	100%
		> 5,000	varies		varies		varies		varies	varies		deposit	

Notes

* Current fees vary based on the estimated calculated value of the project for fee setting purposes.

City of Laguna Woods
Fee Study
Cost of Service Calculation - Building Fees
(New Construction & Tenant Improvements)

Hourly Rate		$138	Proposed Fee						Proposed Cost Recovery				
	Occupancy Classification	Threshold SqFt	Plan Check	Plan Check Fee per Add'l 100 SF	Permit / Inspection	Permit / Insp. Fee per Add'l 100 SF	Total	Total Fee Per Add'l 100 SF	Proposed Fee	Cost of Svc PC & Prmt Base Cost	Proposed Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery	Modified Cost Recovery
1	Shell Building	500	$1,032	$24.09	$1,032	$44.74	$2,065	$68.82	$2,065	$2,065	100%	$2,065	100%
	New Construction	2,000	$1,394	$15.49	$1,703	$18.93	$3,097	$34.41	$3,097	$3,097	100%	$3,097	100%
		5,000	$1,858	$9.29	$2,271	$11.36	$4,129	$20.65	$4,129	$4,129	100%	$4,129	100%
		10,000	$2,323	$4.30	$2,839	$12.90	$5,162	$17.21	$5,162	$5,162	100%	$5,162	100%
		20,000	$2,753	varies	$4,129	varies	$6,882	varies	$6,882	$6,882	100%	$6,882	100%
		> 20,000	varies		varies		varies		varies	varies		deposit	
2	Accessory/Utility	100	$241	$80.30	$447	$149.12	$688	$229.42	$688	$688	100%	$688	100%
	(e.g. Private garage,	250	$361	$48.18	$671	$89.47	$1,032	$137.65	$1,032	$1,032	100%	$1,032	100%
	gatehouse)	500	$482	$24.09	$895	$44.74	$1,376	$68.82	$1,376	$1,376	100%	$1,376	100%
	New Construction	1,000	$602	$11.24	$1,118	$20.88	$1,721	$32.12	$1,721	$1,721	100%	$1,721	100%
		2,500	$771	varies	$1,432	varies	$2,202	varies	$2,202	$2,202	100%	$2,202	100%
		> 2,500	varies		varies		varies		varies	varies		deposit	
3	All Other	500	$1,652	$38.54	$1,652	$71.58	$3,304	$110.12	$3,304	$3,304	100%	$3,304	100%
	New Construction	2,000	$2,230	$24.78	$2,725	$30.28	$4,955	$55.06	$4,955	$4,955	100%	$4,955	100%
		5,000	$2,973	$14.87	$3,634	$18.17	$6,607	$33.04	$6,607	$6,607	100%	$6,607	100%
		10,000	$3,717	$6.88	$4,542	$20.65	$8,259	$27.53	$8,259	$8,259	100%	$8,259	100%
		20,000	$4,405	varies	$6,607	varies	$11,012	varies	$11,012	$11,012	100%	$11,012	100%
		> 20,000	varies		varies		varies		varies	varies		deposit	
4	Tenant Improvements	250	$193	$38.54	$358	$71.58	$551	$110.12	$551	$551	100%	$551	100%
	New Construction	500	$289	$19.27	$537	$35.79	$826	$55.06	$826	$826	100%	$826	100%
		1,000	$385	$6.42	$716	$11.93	$1,101	$18.35	$1,101	$1,101	100%	$1,101	100%
		2,500	$482	$6.26	$895	$11.63	$1,376	$17.89	$1,376	$1,376	100%	$1,376	100%
		5,000	$638	varies	$1,186	varies	$1,824	varies	$1,824	$1,824	100%	$1,824	100%
		> 5,000	varies		varies		varies		varies	varies		deposit	

Notes

* Current fees vary based on the estimated calculated value of the project for fee setting purposes.

Calculation of the Costs of Providing Fee Related Services

Planning

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Cost of Service Calculation - Planning Fees

		Cost of Service (Summary)					Volume and Revenue Statistics						
	Fee Description	Est. Labor Time (Hours)	x	Targeted Hourly Rate	=	Cost of Service	Current Fee		Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery		Modified Cost Recovery	Notes
	Fixed Fee Services												
1	Community Facilities Yearly Sign Permit	0.50	x	$142	=	$71	$74	Flat	104%	$71	Flat	100%	
2	Film Permit	4.00	x	$142	=	$568	$592	Flat	104%	$568	Flat	100%	[a]
3	Med. Marijuana Dispensary Permit - Renewal						$1,850	Flat	n/a	$1,850	Flat		[b]
4	New Address Est. / Address Change Request	2.50	x	$142	=	$355	n/a	Flat	n/a	$355	Flat	100%	
5	Notice of Exemption	2.00	x	$142	=	$284	$296	Flat	104%	$284	Flat	100%	[c]
6	Outdoor Seating Permit	2.50	x	$142	=	$355	$370	Flat	104%	$355	Flat	100%	
7	Sign Permit - Part of Sign Program	0.50	x	$142	=	$71	$74	Flat	104%	$71	Flat	100%	
8	Sign Permit - Permanent	2.00	x	$142	=	$284	$296	Flat	104%	$284	Flat	100%	
9	Sign Permit - Temporary	0.50	x	$142	=	$71	$74	Flat	104%	$71	Flat	100%	
10	Special Event Permit	2.00	x	$142	=	$284	$296	Flat	104%	$284	Flat	100%	
11	Temporary Use Permit	4.00	x	$142	=	$568	$592	Flat	104%	$568	Flat	100%	
12	Tree Removal Permit	1.50	x	$142	=	$213	$222	Flat	104%	$213	Flat	100%	
13	Wireless Use Permit Filing Fee	11.50	x	$142	=	$1,633	n/a		n/a	$1,633	Flat	100%	[d]
14	Eligible Facility Request Permit Filing Fee	8.50	x	$142	=	$1,207	n/a		n/a	$1,207	Flat	100%	
15	Eligible Facility Request Permit Pre-Submittal Meeting	2.00	x	$142	=	$284	n/a		n/a	$284	Flat	100%	
16	Zoning Letter	1.25	x	$142	=	$178	$185	Flat	104%	$178	Flat	100%	
17	Appeal (City Council)	14.50	x	$142	=	$2,059	$500	Flat	24%	$500	Flat	24%	
	Deposit-Based Fee Services												
18	Change Plan	16.00	x	$142	=	$2,272	$2,000	Deposit	varies	$2,000	Deposit	100%	
19	Conditional Use Permit	28.75	x	$142	=	$4,083	$4,000	Deposit	100%	$4,000	Deposit	100%	
20	Development Agreement	133.50	x	$142	=	$18,957	$10,000	Deposit	100%	$10,000	Deposit	100%	
21	Environmental Impact Report	varies	x	$142	=	varies	$10,000	Deposit	100%	$10,000	Deposit	100%	
22	General Plan Amendment	131.50	x	$142	=	$18,673	$10,000	Deposit	100%	$10,000	Deposit	100%	
23	Zoning Code Amendment	131.50	x	$142	=	$18,673	$10,000	Deposit	100%	$10,000	Deposit	100%	
24	Initial Study/Neg. Dec./Mitigated Neg Dec.	varies	x	$142	=	varies	$5,000	Deposit	100%	$5,000	Deposit	100%	
25	Med. Marijuana Dispensary Permit - Initial						$4,000	Deposit	100%	$4,000	Deposit		[b]
26	Sign Program	19.00	x	$142	=	$2,698	$2,500	Deposit	100%	$2,500	Deposit	100%	
27	Site Development Permit	28.00	x	$142	=	$3,976	$4,000	Deposit	100%	$4,000	Deposit	100%	
28	Specific Plan	133.50	x	$142	=	$18,957	$10,000	Deposit	100%	$10,000	Deposit	100%	
29	Variance	25.00	x	$142	=	$3,550	$3,500	Deposit	100%	$3,500	Deposit	100%	
30	Zone Change	116.50	x	$142	=	$16,543	$10,000	Deposit	100%	$10,000	Deposit	100%	
31	Other Services Not Identified	varies	x	$142	=	varies	varies	Deposit	100%	varies	Deposit	100%	

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Cost of Service Calculation - Planning Fees

Fee Description	Cost of Service (Summary) Est. Labor Time (Hours)	x	Targeted Hourly Rate	=	Cost of Service	Volume and Revenue Statistics Current Fee	Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery	Modified Cost Recovery	Notes

Notes

[a] Film permit fee applies for major filming (production)

[b] Medical Marijuana Dispensary permit fees were not examined as part of this study due to the City's moratorium on medical marijuana dispensaries.

[c] A pass-through of any County filing fees will also be collected from the applicant.

[d] A pass-through of any noticing fees will also be collected from the applicant (e.g. mailing costs, newspaper publication).

Calculation of the Costs of Providing Fee Related Services

Encroachment Permits

City of Laguna Woods
Study of Building, Planning, and Encroachment Permit Fees
Cost of Service Calculation

	Fee Description	Cost of Service (Summary) Est. Labor Time (Hours)	x	Fully Burdened Hourly Rate	=	Cost of Service	Current and Proposed Cost Recovery Current Fee	Proposed Fee Assuming Full Cost Recovery		Proposed Cost Recovery	Notes
	Minor Projects										
1	Landscape Maintenance	1.50	x	$165	=	$248	varies	$248	flat	100%	
2	Temporary Staging	1.50	x	$165	=	$248	varies	$248	flat	100%	
3	Traffic Control Only	2.00	x	$165	=	$330	varies	$330	flat	100%	
4	Utilities Structure Inspection	2.50	x	$165	=	$413	varies	$413	flat	100%	
5	Pole Replacement	2.50	x	$165	=	$413	varies	$413	flat	100%	
	Major Projects										
6	Major Project										[a]
	a) First Day	4.00	x	$165	=	$660	varies	$660	flat	100%	
	b) Each Additional Day	1.50	x	$165	=	$248	varies	$248	per day	100%	
7	Projects Greater Than Two Weeks in Duration	varies	x	$165	=	varies	varies	$3,000	deposit		

Notes

[a] Major Projects include ground disturbing activities, projects lasting longer than three days, or projects that require permanent traffic control for the duration of the project (e.g. excavation, trenching, boring, etc.).

* The City Manager may waive encroachment permit fees for activities associated with City projects or contracts.

Working Version of the Master Fee Schedule

City of Laguna Woods

Working Version of the Schedule of Building Fees - Mechanical, Electrical, Plumbing, and Miscellaneous Items

	Fee Description	Current Fee	Est. Cost of Service	Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery [a]	Increase (Decrease) Amount	Modified Cost Recovery	Notes
1	Water Heater Change Out	$85	$85	100%	$85	($0)	100%	
2	Water Heater Relocation	$142	$149	95%	$149	$7	100%	
3	Dishwasher Change Out	$85	$85	100%	$85	($0)	100%	
4	Tub to Tub Insert Only	$142	$161	89%	$161	$18	100%	
5	Tub to Tub Tile Back Only	$200	$218	92%	$218	$18	100%	
6	Shower to Shower Insert Only	$142	$161	89%	$161	$18	100%	
7	Shower to Shower Tile Only	$257	$275	93%	$275	$18	100%	
8	Tub to Shower Only	$257	$275	93%	$275	$18	100%	
9	Water/Drain Line (Install/Alter/Repair) w/out Structural	$85	$85	100%	$85	($0)	100%	
10	Water/Drain Line (Install/Alter/Repair) with Structural	$241	$218	111%	$218	($23)	100%	
11	Line Repair (CIPP)/Svc Install - First 30 LF	$85	$92	93%	$92	$7	100%	
12	Line Repair (CIPP)/Svc Install - Each Add'l 30 LF	$57	$57	100%	$57	($0)	100%	
13	New HVAC / HVAC Change Out (Central System) - Residential	$142	$161	89%	$161	$18	100%	
14	New HVAC / HVAC Change Out (All Others) - Residential	$85	$85	100%	$85	($0)	100%	
15	Electrical - Fixtures and Receptacles	$85	$92	93%	$92	$7	100%	
16	Washer/Dryer Hook Up	$114	$114	100%	$114	($0)	100%	
17	Electrical Wheelchair Lift	$418	$447	93%	$447	$29	100%	
18	Re-Roof (Tile, Single-Ply) - First 1,000 SF	$142	$142	100%	$142	($0)	100%	[b]
19	Re-Roof (Tile, Single-Ply) - Each Add'l 1,000 SF	$28	$28	100%	$28	($0)	100%	[b]
20	Re-Roof (All Other) - First 1,000 SF	$142	$172	83%	$172	$30	100%	[b]
21	Re-Roof (All Other) - Each Add'l 5,000 SF	$28	$28	100%	$28	($0)	100%	[b]
22	Fenestration - Skylights/Solartubes (1 Hr. Buildings)	$184	$161	114%	$161	($23)	100%	
23	Fenestration - Skylights/Solartubes (All Others)	$114	$120	94%	$120	$7	100%	
24	Fenestration - Window Retrofit	$114	$132	86%	$132	$18	100%	
25	Fenestration - Doors/Windows (One New - Framed)	$212	$189	112%	$189	($23)	100%	[c]
26	Structural, Drywall	$126	$126	100%	$126	($0)	100%	
27	Structural, Insulation, Drywall	$184	$184	100%	$184	($0)	100%	
28	Lath	$184	$138	133%	$138	($46)	100%	
29	Structural, Insulation, Lath	$298	$298	100%	$298	($0)	100%	
30	Structural, Insulation, Shear, Lath	$494	$493	100%	$493	($0)	100%	
31	Framing/Structural - 1 inspection	$264	$264	100%	$264	($0)	100%	[a] [d]
32	Framing/Structural - 2 inspections	$321	$321	100%	$321	($0)	100%	[a] [d]
33	Framing/Structural - 3 inspections	$379	$379	100%	$379	($0)	100%	[a] [d]
34	Temporary Shade Structure (Commercial)	$223	$264	84%	$264	$41	100%	
35	Patio/Balcony Cover/Enclosure - Standard, Open, Pre-Engineered	$177	$184	96%	$184	$7	100%	
36	Patio/Balcony Cover/Enclosure - Standard, Enclosed, Pre-Engineered	$269	$275	98%	$275	$7	100%	
37	Patio/Balcony Cover/Enclosure - Site Specific Engineering	$447	$465	96%	$465	$18	100%	
38	Alteration - Residential (Res.) Kitchen	$356	$356	100%	$356	($0)	100%	
39	Alteration - Res. Kitchen, plus HVAC OR Fenestration	$413	$413	100%	$413	($0)	100%	
40	Alteration - Res. Kitchen, plus HVAC AND Fenestration/Other	$471	$470	100%	$470	($0)	100%	
41	Alteration - Res. Kitchen, plus 1 Bath	$413	$413	100%	$413	($0)	100%	
42	Alteration - Res. Kitchen, plus 2+ Bath (Includes bathroom splits)	$471	$470	100%	$470	($0)	100%	
43	Alteration - Res. Kitchen, plus 1 Bath, plus HVAC OR Fenestration/Other	$471	$470	100%	$470	($0)	100%	
44	Alteration - Res. Kitchen, plus 2+ Bath, plus HVAC OR Fenestration/Other	$528	$528	100%	$528	($0)	100%	
45	Alteration - Res. Kitchen, plus 1 Bath, plus HVAC AND	$528	$528	100%	$528	($0)	100%	
46	Alteration - Res. Kitchen, plus 2+ Bath, plus HVAC AND	$585	$585	100%	$585	($0)	100%	
47	Alteration/Remodel - Res. 1 Bath	$241	$241	100%	$241	($0)	100%	
48	Alteration/Remodel - Res. 2+ Baths (includes bathroom splits)	$356	$356	100%	$356	($0)	100%	

City of Laguna Woods

Working Version of the Schedule of Building Fees - Mechanical, Electrical, Plumbing, and Miscellaneous Items

	Fee Description	Current Fee	Est. Cost of Service	Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery [a]	Increase (Decrease) Amount	Modified Cost Recovery	Notes
49	Alteration - Res. 2+ Baths (incl. split), plus HVAC/Other	$413	$413	100%	$413	($0)	100%	
50	Room Addition	$827	$826	100%	$826	($1)	100%	
51	Alteration/Remodel w/ Room Addition	$1,171	$1,170	100%	$1,170	($1)	100%	
52	Sign (Wall) - First	$154	$161	96%	$161	$7	100%	
53	Sign (Wall) - Each Add'l	$11	$11	100%	$11	($0)	100%	
54	Sign (Monument) - First	$246	$264	93%	$264	$18	100%	
55	Sign (Monument) - Each Add'l	$23	$23	100%	$23	($0)	100%	
56	Antenna - Telecommunications	$475	$505	94%	$505	$29	100%	
57	Antenna - Equipment Shelter	$211	$241	88%	$241	$30	100%	
58	Solar - Residential Systems (Expedited Process)	$211	$229	92%	$229	$18	100%	
59	Solar - Residential Systems (All Others)	$395	$413	96%	$413	$18	100%	
60	Solar - Commercial Systems	$1,000	$1,170	85%	$1,000	$0	85%	
61	Demolition - Residential Interior	$184	$161	114%	$161	($23)	100%	
62	Demolition - Residential (All Other)	$85	$92	93%	$92	$7	100%	[e]
63	Demolition - Non-Residential	$344	$344	100%	$344	($0)	100%	
64	Certificate of Occupancy - Temporary	$85	$85	100%	$85	($0)	100%	
65	Certificate of Occupancy	$257	$257	100%	$257	($0)	100%	
66	Miscellaneous/All Other - First Inspection	$85	$85	100%	$85	($0)	100%	
67	Miscellaneous/All Other - Each Add'l Inspection	$57	$57	100%	$57	($0)	100%	
68	Miscellaneous/All Other - Plan Check (Per Hr)	$138	$138	100%	$138	($0)	100%	
69	Work Without Permit	$165	$184	90%	$184	$18	100%	
70	Re-Inspection - Missed Appointment	$57	$57	100%	$57	($0)	100%	
71	Additional Inspections	$85	$85	100%	$85	($0)	100%	
72	Replacement Job Card	$34	$28	125%	$28	($7)	100%	
73	Cancelled Permit Refund Processing Fee	$25	$69	36%	$25	$0	36%	
74	State Energy Form Assistance (Upon Request) (Per Page)	$4	$34	12%	$4	$0	12%	
75	Building and Safety Appeal Application	$138	$138	100%	$138	($0)	100%	
76	Alternate Materials Method Review (Per Hr)	$138	$138	100%	$138	($0)	100%	
77	Inspection Outside of Normal Business Hours (Per Hr)	$172	$172	100%	$172	($0)	100%	

Notes

[a] The City uses specialized service providers to process certain plan review and inspection activities. These specialized services include, but are not limited to, structural engineering review services and specialized inspection services. The modified fees are intended to reflect the estimated costs of all typical plan review and inspection services. However, for projects requiring the use of outside service providers, or projects that are more complex than typical, the City will collect fees that represent the actual costs incurred by the City.

[b] For purposes of calculating re-roof fees, fractional square footages shall be rounded up to the nearest 1,000 SF. For example 1,600 SF shall be rounded to 2,000 SF.

[c] For Installation of multiple doors or windows see Framing/Structural fees.

[d] Examples of items included in this fee include post, beam, beamtail, raftertail, corbel, shearpanel, and truss repair/replacement.

[e] Fee for ceiling scrapes, lead paint removal, floor removal, etc.

City of Laguna Woods

Working Version of the Schedule of Building Fees
New Construction and Non-Residential Tenant Improvements

	Construction Class	SqFt	Current Fee	Est. Cost of Svc	Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery [a]	Increase (Decrease) Amount	Modified Cost Recovery
1	Shell Building	500	$2,066	$2,065	100%	$2,065	-$2	100%
	New Construction	2,000	$3,100	$3,097	100%	$3,097	-$2	100%
		5,000	$4,133	$4,129	100%	$4,129	-$3	100%
		10,000	$5,166	$5,162	100%	$5,162	-$4	100%
		20,000	$6,888	$6,882	100%	$6,882	-$5	100%
		> 20,000	varies	varies		deposit		
2	Accessory/Utility	100	$689	$688	100%	$688	-$1	100%
	(e.g. Private garage, gatehouse)	250	$1,033	$1,032	100%	$1,032	-$1	100%
	New Construction	500	$1,378	$1,376	100%	$1,376	-$1	100%
		1,000	$1,722	$1,721	100%	$1,721	-$1	100%
		2,500	$2,204	$2,202	100%	$2,202	-$2	100%
		> 2,500	varies	varies		deposit		
3	All Other	500	$3,306	$3,304	100%	$3,304	-$3	100%
	New Construction	2,000	$4,959	$4,955	100%	$4,955	-$4	100%
		5,000	$6,612	$6,607	100%	$6,607	-$5	100%
		10,000	$8,265	$8,259	100%	$8,259	-$6	100%
		20,000	$11,021	$11,012	100%	$11,012	-$9	100%
		> 20,000	varies	varies		deposit		
4	Tenant Improvements	250	$551	$551	100%	$551	$0	100%
	New Construction	500	$827	$826	100%	$826	-$1	100%
		1,000	$1,102	$1,101	100%	$1,101	-$1	100%
		2,500	$1,378	$1,376	100%	$1,376	-$1	100%
		5,000	$1,825	$1,824	100%	$1,824	-$1	100%
		> 5,000	varies	varies		deposit		

Notes

[a] The City uses specialized service providers to process certain plan review and inspection activities. These specialized services include, but are not limited to, structural engineering review services and specialized inspection services. The proposed fees are intended to reflect the estimated costs of all typical plan review and inspection services. However, for projects requiring the use of outside service providers, or projects that are more complex than typical, the City will collect fees that represent the actual costs incurred by the City.

City of Laguna Woods

Working Version of the Schedule of Planning Fees

	Fee Description	Current Fee	Est. Cost of Service	Current Cost Recovery	Modified Fee Assuming Full or Targeted Cost Recovery	Increase (Decrease) Amount	Modified Cost Recovery	Notes
	Fixed Fee Services							
1	Community Facilities Yearly Sign Permit	$74	$71	104%	$71	($3)	100%	
2	Film Permit	$592	$568	104%	$568	($24)	100%	[a]
3	Med. Marijuana Dispensary Permit - Renewal	$1,850		n/a	$1,850	$0		
4	New Address Est. / Address Change Request	n/a	$355	n/a	$355		100%	
5	Notice of Exemption	$296	$284	104%	$284	($12)	100%	[b]
6	Outdoor Seating Permit	$370	$355	104%	$355	($15)	100%	
7	Sign Permit - Part of Sign Program	$74	$71	104%	$71	($3)	100%	
8	Sign Permit - Permanent	$296	$284	104%	$284	($12)	100%	
9	Sign Permit - Temporary	$74	$71	104%	$71	($3)	100%	
10	Special Event Permit	$296	$284	104%	$284	($12)	100%	
11	Temporary Use Permit	$592	$568	104%	$568	($24)	100%	
12	Tree Removal Permit	$222	$213	104%	$213	($9)	100%	
13	Wireless Use Permit Filing Fee	n/a	$1,633	n/a	$1,633		100%	[c]
14	Eligible Facility Request Permit Filing Fee	n/a	$1,207	n/a	$1,207		100%	
15	Eligible Facility Request Permit Pre-Submittal Meeting	n/a	$284	n/a	$284		100%	
16	Zoning Letter	$185	$178	104%	$178	($8)	100%	
17	Appeal (City Council)	$500	$2,059	24%	$500	$0	24%	

	Fee Description	Current Initial Deposit	Est. Cost of Service	Current Cost Recovery	Modified Deposit [d]	Increase (Decrease)	Modified Cost Recovery	Notes
	Deposit-Based Fee Services							
18	Change Plan	$2,000	$2,272	varies	$2,000	$0	100%	
19	Conditional Use Permit	$4,000	$4,083	100%	$4,000	$0	100%	
20	Development Agreement	$10,000	$18,957	100%	$10,000	$0	100%	
21	Environmental Impact Report	$10,000	varies	100%	$10,000	$0	100%	
22	General Plan Amendment	$10,000	$18,673	100%	$10,000	$0	100%	
23	Zoning Code Amendment	$10,000	$18,673	100%	$10,000	$0		
24	Initial Study/Neg. Dec./Mitigated Neg Dec.	$5,000	varies	100%	$5,000	$0		
25	Med. Marijuana Dispensary Permit - Initial	$4,000		100%	$4,000	$0	100%	
26	Sign Program	$2,500	$2,698	100%	$2,500	$0	100%	
27	Site Development Permit	$4,000	$3,976	100%	$4,000	$0	100%	
28	Specific Plan	$10,000	$18,957	100%	$10,000	$0	100%	
29	Variance	$3,500	$3,550	100%	$3,500	$0	100%	
30	Zone Change	$10,000	$16,543	100%	$10,000	$0	100%	
31	Other Services Not Identified	varies	varies	100%	varies			

Notes

[a] Film permit fee applies for major filming (production).

[b] A pass-through of any County filing fees will also be collected from the applicant.

[c] A pass-through of any noticing fees will also be collected from the applicant (e.g. mailing costs, newspaper publication).

[d] For deposit-based fees, the City intends to recover 100% of the costs of service including the actual costs of any contract service providers and internal City support.

City of Laguna Woods

Working Version of the Schedule of Encroachment Permit Fees

	Fee Description	Current Fee	Est. Cost of Service	Modified Fee Assuming Full Cost Recovery	Unit	Increase (Decrease) Amount	Modified Cost Recovery	Notes
	Minor Projects							
1	Landscape Maintenance	varies	$248	$248	flat		100%	
2	Temporary Staging	varies	$248	$248	flat		100%	
3	Traffic Control Only	varies	$330	$330	flat		100%	
4	Utilities Structure Inspection	varies	$413	$413	flat		100%	
5	Pole Replacement	varies	$413	$413	flat		100%	
	Major Projects							
6	Major Project							[a]
	a) First Day	varies	$660	$660	flat		100%	
	b) Each Additional Day	varies	$248	$248	per day		100%	
7	Projects Greater Than Two Weeks in Duration	varies	varies	$3,000	deposit			

Notes

[a] Major Projects include ground disturbing activities, projects lasting longer than three days, or projects that require permanent traffic control for the duration of the project (e.g. excavation, trenching, boring, etc.).

* The City Manager may waive encroachment permit fees for activities associated with City projects or contracts.

Master Fee Schedule

City of Laguna Woods

Schedule of Building Fees - Mechanical, Electrical, Plumbing, and Miscellaneous Items

	Fee Description	[a] Fee Assuming Full or Targeted Cost Recovery	Notes
1	Water Heater Change Out	$85	
2	Water Heater Relocation	$149	
3	Dishwasher Change Out	$85	
4	Tub to Tub Insert Only	$161	
5	Tub to Tub Tile Back Only	$218	
6	Shower to Shower Insert Only	$161	
7	Shower to Shower Tile Only	$275	
8	Tub to Shower Only	$275	
9	Water/Drain Line (Install/Alter/Repair) w/out Structural	$85	
10	Water/Drain Line (Install/Alter/Repair) with Structural	$218	
11	Line Repair (CIPP)/Svc Install - First 30 LF	$92	
12	Line Repair (CIPP)/Svc Install - Each Add'l 30 LF	$57	
13	New HVAC / HVAC Change Out (Central System) - Residential	$161	
14	New HVAC / HVAC Change Out (All Others) - Residential	$85	
15	Electrical - Fixtures and Receptacles	$92	
16	Washer/Dryer Hook Up	$114	
17	Electrical Wheelchair Lift	$447	
18	Re-Roof (Tile, Single-Ply) - First 1,000 SF	$142	[b]
19	Re-Roof (Tile, Single-Ply) - Each Add'l 1,000 SF	$28	[b]
20	Re-Roof (All Other) - First 1,000 SF	$172	[b]
21	Re-Roof (All Other) - Each Add'l 5,000 SF	$28	[b]
22	Fenestration - Skylights/Solartubes (1 Hr. Buildings)	$161	
23	Fenestration - Skylights/Solartubes (All Others)	$120	
24	Fenestration - Window Retrofit	$132	
25	Fenestration - Doors/Windows (One New - Framed)	$189	[c]
26	Structural, Drywall	$126	
27	Structural, Insulation, Drywall	$184	
28	Lath	$138	
29	Structural, Insulation, Lath	$298	
30	Structural, Insulation, Shear, Lath	$493	
31	Framing/Structural - 1 inspection	$264	[d]
32	Framing/Structural - 2 inspections	$321	[d]
33	Framing/Structural - 3 inspections	$379	[d]
34	Temporary Shade Structure (Commercial)	$264	
35	Patio/Balcony Cover/Enclosure - Standard, Open, Pre-Engineered	$184	
36	Patio/Balcony Cover/Enclosure - Standard, Enclosed, Pre-Engineered	$275	
37	Patio/Balcony Cover/Enclosure - Site Specific Engineering	$465	
38	Alteration - Residential (Res.) Kitchen	$356	

City of Laguna Woods

Schedule of Building Fees - Mechanical, Electrical, Plumbing, and Miscellaneous Items

	Fee Description	[a] Fee Assuming Full or Targeted Cost Recovery	Notes
39	Alteration - Res. Kitchen, plus HVAC OR Fenestration	$413	
40	Alteration - Res. Kitchen, plus HVAC AND Fenestration/Other	$470	
41	Alteration - Res. Kitchen, plus 1 Bath	$413	
42	Alteration - Res. Kitchen, plus 2+ Bath (Includes bathroom splits)	$470	
43	Alteration - Res. Kitchen, plus 1 Bath, plus HVAC OR Fenestration/Other	$470	
44	Alteration - Res. Kitchen, plus 2+ Bath, plus HVAC OR Fenestration/Other	$528	
45	Alteration - Res. Kitchen, plus 1 Bath, plus HVAC AND Fenestration/Other	$528	
46	Alteration - Res. Kitchen, plus 2+ Bath, plus HVAC AND Fenestration/Other	$585	
47	Alteration/Remodel - Res. 1 Bath	$241	
48	Alteration/Remodel - Res. 2+ Baths (includes bathroom splits)	$356	
49	Alteration - Res. 2+ Baths (incl. split), plus HVAC/Other	$413	
50	Room Addition	$826	
51	Alteration/Remodel w/ Room Addition	$1,170	
52	Sign (Wall) - First	$161	
53	Sign (Wall) - Each Add'l	$11	
54	Sign (Monument) - First	$264	
55	Sign (Monument) - Each Add'l	$23	
56	Antenna - Telecommunications	$505	
57	Antenna - Equipment Shelter	$241	
58	Solar - Residential Systems (Expedited Process)	$229	
59	Solar - Residential Systems (All Others)	$413	
60	Solar - Commercial Systems	$1,000	
61	Demolition - Residential Interior	$161	
62	Demolition - Residential (All Other)	$92	[e]
63	Demolition - Non-Residential	$344	
64	Certificate of Occupancy - Temporary	$85	
65	Certificate of Occupancy	$257	
66	Miscellaneous/All Other - First Inspection	$85	
67	Miscellaneous/All Other - Each Add'l Inspection	$57	
68	Miscellaneous/All Other - Plan Check (Per Hr)	$138	
69	Work Without Permit	$184	
70	Re-Inspection - Missed Appointment	$57	
71	Additional Inspections	$85	
72	Replacement Job Card	$28	
73	Cancelled Permit Refund Processing Fee	$25	
74	State Energy Form Assistance (Upon Request) (Per Page)	$4	
75	Building and Safety Appeal Application	$138	
76	Alternate Materials Method Review (Per Hr)	$138	
77	Inspection Outside of Normal Business Hours (Per Hr)	$172	

City of Laguna Woods

Schedule of Building Fees - Mechanical, Electrical, Plumbing, and Miscellaneous Items

Fee Description	[a] Fee Assuming Full or Targeted Cost Recovery	Notes

Notes

[a] The City uses specialized service providers to process certain plan review and inspection activities. These specialized services include, but are not limited to, structural engineering review services and specialized inspection services. The proposed fees are intended to reflect the estimated costs of all typical plan review and inspection services. However, for projects requiring the use of outside service providers, or projects that are more complex than typical, the City will collect fees that represent the actual costs incurred by the City.

[b] For purposes of calculating re-roof fees, fractional square footages shall be rounded up to the nearest 1,000 SF. For example 1,600 SF shall be rounded to 2,000 SF.

[c] For Installation of multiple doors or windows see Framing/Structural fees.

[d] Examples of items included in this fee include post, beam, beamtail, raftertail, corbel, shearpanel, and truss repair/replacement.

[e] Fee for ceiling scrapes, lead paint removal, floor removal, etc.

City of Laguna Woods

Schedule of Building Fees - New Construction and Non-Residential Tenant Improvements

	Description	Project Size Threshold	Plan Check [a]		Permit [a]		Total [a]	
			Assuming Full or Targeted Cost Recovery	Fee Per Add'l 100 SF	Assuming Full or Targeted Cost Recovery	Fee Per Add'l 100 SF	Assuming Full or Targeted Cost Recovery	Fee Per Add'l 100 SF
1	Shell Building New Construction	500	$1,032	$24.09	$1,032	$44.74	$2,065	$68.82
		2,000	$1,394	$15.49	$1,703	$18.93	$3,097	$34.41
		5,000	$1,858	$9.29	$2,271	$11.36	$4,129	$20.65
		10,000	$2,323	$4.30	$2,839	$12.90	$5,162	$17.21
		20,000	$2,753	varies	$4,129	varies	$6,882	varies
		> 20,000	varies		varies		varies	
2	Accessory/Utility (e.g. Private garage, gatehouse) New Construction	100	$241	$80.30	$447	$149.12	$688	$229.42
		250	$361	$48.18	$671	$89.47	$1,032	$137.65
		500	$482	$24.09	$895	$44.74	$1,376	$68.82
		1,000	$602	$11.24	$1,118	$20.88	$1,721	$32.12
		2,500	$771	varies	$1,432	varies	$2,202	varies
		> 2,500	varies		varies		varies	
3	All Other New Construction	500	$1,652	$38.54	$1,652	$71.58	$3,304	$110.12
		2,000	$2,230	$24.78	$2,725	$30.28	$4,955	$55.06
		5,000	$2,973	$14.87	$3,634	$18.17	$6,607	$33.04
		10,000	$3,717	$6.88	$4,542	$20.65	$8,259	$27.53
		20,000	$4,405	varies	$6,607	varies	$11,012	varies
		> 20,000	varies		varies		varies	
4	Tenant Improvements New Construction	250	$193	$38.54	$358	$71.58	$551	$110.12
		500	$289	$19.27	$537	$35.79	$826	$55.06
		1,000	$385	$6.42	$716	$11.93	$1,101	$18.35
		2,500	$482	$6.26	$895	$11.63	$1,376	$17.89
		5,000	$638	varies	$1,186	varies	$1,824	varies
		> 5,000	varies		varies		varies	

[a] The City uses specialized service providers to process certain plan review and inspection activities. These specialized services include, but are not limited to, structural engineering review services and specialized inspection services. The proposed fees are intended to reflect the estimated costs of all typical plan review and inspection services. However, for projects requiring the use of outside service providers, or projects that are more complex than typical, the City will collect fees that represent the actual costs incurred by the City.

City of Laguna Woods

Schedule of Building Fees

	Fee Description	Fee *	Notes
	Strong Motion Instrumentation Program (SMIP) Fee Calculation		[a]
1	Residential (1-3 Story)	$0.50 or valuation x 0.00013	
2	Commercial or Residential (4+ Story)	$0.50 or valuation x 0.00028	
	Building Standards Administration Special Revolving Fund (SB 1473) Fee Calculation		[b]
3	Valuation:		
	a) $1 - $25,000	$1	
	b) $25,001 - $50,000	$2	
	c) $50,001 - $75,000	$3	
	d) $75,001 - $100,000	$4	
	e) Every $25,000 or fraction thereof above $100,000	Add $1	

Notes

[a] Source: California Public Resources Code Section 2705

[b] Source: California Health and Safety Code Section 18931.6

* Project valuation shall be determined by project amount submitted by permit applicant, or most current International Code Council (ICC) published Building Valuation Table as published in the Building Safety Journal, or by RS Means Square Foot Costs Manual, where ICC data is not available.

City of Laguna Woods

Schedule of Planning Fees

	Fee Description	Fee Assuming Full or Targeted Cost Recovery	Notes
	Fixed Fee Services		
1	Community Facilities Yearly Sign Permit	$71	
2	Film Permit	$568	[a]
3	Med. Marijuana Dispensary Permit - Renewal	$1,850	
4	New Address Est. / Address Change Request	$355	
5	Notice of Exemption	$284	[b]
6	Outdoor Seating Permit	$355	
7	Sign Permit - Part of Sign Program	$71	
8	Sign Permit - Permanent	$284	
9	Sign Permit - Temporary	$71	
10	Special Event Permit	$284	
11	Temporary Use Permit	$568	
12	Tree Removal Permit	$213	
13	Wireless Use Permit Filing Fee	$1,633	[c]
14	Eligible Facility Request Permit Filing Fee	$1,207	
15	Eligible Facility Request Permit Pre-Submittal Meeting	$284	
16	Zoning Letter	$178	
17	Appeal (City Council)	$500	

	Fee Description	Initial Deposit	Notes
	Deposit-Based Fee Services		[d]
18	Change Plan	$2,000	
19	Conditional Use Permit	$4,000	
20	Development Agreement	$10,000	
21	Environmental Impact Report	$10,000	
22	General Plan Amendment	$10,000	
23	Zoning Code Amendment	$10,000	
24	Initial Study/Neg. Dec./Mitigated Neg Dec.	$5,000	
25	Med. Marijuana Dispensary Permit - Initial	$4,000	
26	Sign Program	$2,500	
27	Site Development Permit	$4,000	
28	Specific Plan	$10,000	
29	Variance	$3,500	
30	Zone Change	$10,000	
31	Other Services Not Identified	varies	

Notes

[a] Film permit fee applies for major filming (production).

[b] A pass-through of any County filing fees will also be collected from the applicant.

[c] A pass-through of any noticing fees will also be collected from the applicant (e.g. mailing costs, newspaper publication).

[d] For deposit-based fees, the City intends to recover 100% of the costs of service including the actual costs of any contract service providers and internal City support.

City of Laguna Woods

Schedule of Encroachment Permit Fees

	Fee Description	Fee Assuming Full Cost Recovery	Unit	Notes
	Minor Projects			
1	Landscape Maintenance	$248	flat	
2	Temporary Staging	$248	flat	
3	Traffic Control Only	$330	flat	
4	Utilities Structure Inspection	$413	flat	
5	Pole Replacement	$413	flat	
	Major Projects			
6	Major Project			[a]
	a) First Day	$660	flat	
	b) Each Additional Day	$248	per day	
7	Projects Greater Than Two Weeks in Duration	$3,000	deposit	

For service requests, which have no fees listed in this Master Fee Schedule, the City Manager or his/her designee shall determine the appropriate fee based on the following hourly rates for staff time involved in the service or activity.

	Fee Description	Fee	Unit	Notes
8	City Engineer	$165	per hour	
9	Other Staff/Outside Service Providers	100%	of actual costs, plus admin rate	

Notes

[a] Major Projects include ground disturbing activities, projects lasting longer than three days, or projects that require permanent traffic control for the duration of the project (e.g. excavation, trenching, boring, etc.).

* The City Manager may waive encroachment permit fees for activities associated with City projects or contracts.

RESOLUTION NO. 17-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING NEW AND INCREASED OR MODIFIED BUILDING AND PLANNING SERVICES FEES, AND ENCROACHMENT PERMIT FEES

WHEREAS, pursuant to applicable California law, cities may charge rates or fees that are equal to or less than the reasonably anticipated costs of providing the service, conferring a benefit, granting a privilege, performing regulatory duties, enforcing laws, or as a condition of property development; and

WHEREAS, the City of Laguna Woods retained a qualified consultant to prepare a Building, Planning, and Encroachment Permit Fee Study and Central Services Cost Allocation Study upon which to base fee calculations. Both studies are now complete, and such studies were presented to the City Council and public at the regular meeting on April 19, 2017; and

WHEREAS, the City Council conducted a duly noticed public hearing at its regular meeting on April 19, 2017 regarding the proposed adoption of new and increased or modified building, planning, and encroachment permit fees; and

WHEREAS, public noticing for the aforementioned public hearing included publication in the *Laguna Woods Globe*, posting at City Hall, and transmittal to those requesting such notification pursuant to Government Code Section 66016; and

WHEREAS, the building, planning, and encroachment permit fee schedule attached hereto as Exhibit A, the Building, Planning, and Encroachment Permit Fee Study, and the Central Services Cost Allocation Study were made available to the public at or from Laguna Woods City Hall and on the City's website beginning on April 3, 2017; and

WHEREAS, after consideration of the information provided by City staff, the information contained in the Building, Planning, and Encroachment Permit Fee Study and the Central Services Cost Allocation Study, and all public comments and testimony received, the City Council finds that it is in the best interest of the City to adopt new and increase or modify fees for building and planning services, and encroachment permitting.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The building, planning, and encroachment permit fee schedule attached hereto as Exhibit A is hereby adopted to be effective beginning on June 19, 2017. In adopting such fees, the City Council finds that the amount of the fees do not exceed the reasonable cost of providing the services for which the fees are charged, and relies in part on the Building, Planning, and Encroachment Permit Fee Study and the Central Services Cost Allocation Study in making such findings.

SECTION 2. Upon the effective date of the building, planning, and encroachment permit fee schedule attached hereto as Exhibit A, all previous building, planning, and encroachment permit fees adopted by resolution of the City Council shall be repealed.

SECTION 3. Resolution No. 17-05, which adopted previous versions of many of the building, planning, and encroachment permit fees contained herein is hereby repealed.

SECTION 4. The action set forth in this resolution is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to sections 15061(b)(3) and 15273 of the CEQA Guidelines.

SECTION 5. This resolution is not intended to and does not address the potential establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods. Adoption of this resolution shall not terminate or otherwise impact the moratorium to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study various issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods established and extended by Ordinances No. 15-03, 15-05 and 16-02.

SECTION 6. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED on this XX day of XX 2017.

_____
SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 17-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the XX day of XX 2017, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

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City of Laguna Woods

Schedule of Building Fees - Mechanical, Electrical, Plumbing, and Miscellaneous Items

	Fee Description	[a] Fee Assuming Full or Targeted Cost Recovery	Notes
1	Water Heater Change Out	$85	
2	Water Heater Relocation	$149	
3	Dishwasher Change Out	$85	
4	Tub to Tub Insert Only	$161	
5	Tub to Tub Tile Back Only	$218	
6	Shower to Shower Insert Only	$161	
7	Shower to Shower Tile Only	$275	
8	Tub to Shower Only	$275	
9	Water/Drain Line (Install/Alter/Repair) w/out Structural	$85	
10	Water/Drain Line (Install/Alter/Repair) with Structural	$218	
11	Line Repair (CIPP)/Svc Install - First 30 LF	$92	
12	Line Repair (CIPP)/Svc Install - Each Add'l 30 LF	$57	
13	New HVAC / HVAC Change Out (Central System) - Residential	$161	
14	New HVAC / HVAC Change Out (All Others) - Residential	$85	
15	Electrical - Fixtures and Receptacles	$92	
16	Washer/Dryer Hook Up	$114	
17	Electrical Wheelchair Lift	$447	
18	Re-Roof (Tile, Single-Ply) - First 1,000 SF	$142	[b]
19	Re-Roof (Tile, Single-Ply) - Each Add'l 1,000 SF	$28	[b]
20	Re-Roof (All Other) - First 1,000 SF	$172	[b]
21	Re-Roof (All Other) - Each Add'l 5,000 SF	$28	[b]
22	Fenestration - Skylights/Solartubes (1 Hr. Buildings)	$161	
23	Fenestration - Skylights/Solartubes (All Others)	$120	
24	Fenestration - Window Retrofit	$132	
25	Fenestration - Doors/Windows (One New - Framed)	$189	[c]
26	Structural, Drywall	$126	
27	Structural, Insulation, Drywall	$184	
28	Lath	$138	
29	Structural, Insulation, Lath	$298	
30	Structural, Insulation, Shear, Lath	$493	
31	Framing/Structural - 1 inspection	$264	[d]
32	Framing/Structural - 2 inspections	$321	[d]
33	Framing/Structural - 3 inspections	$379	[d]
34	Temporary Shade Structure (Commercial)	$264	
35	Patio/Balcony Cover/Enclosure - Standard, Open, Pre-Engineered	$184	
36	Patio/Balcony Cover/Enclosure - Standard, Enclosed, Pre-Engineered	$275	
37	Patio/Balcony Cover/Enclosure - Site Specific Engineering	$465	
38	Alteration - Residential (Res.) Kitchen	$356	

City of Laguna Woods

Schedule of Building Fees - Mechanical, Electrical, Plumbing, and Miscellaneous Items

	Fee Description	[a] Fee Assuming Full or Targeted Cost Recovery	Notes
39	Alteration - Res. Kitchen, plus HVAC OR Fenestration	$413	
40	Alteration - Res. Kitchen, plus HVAC AND Fenestration/Other	$470	
41	Alteration - Res. Kitchen, plus 1 Bath	$413	
42	Alteration - Res. Kitchen, plus 2+ Bath (Includes bathroom splits)	$470	
43	Alteration - Res. Kitchen, plus 1 Bath, plus HVAC OR Fenestration/Other	$470	
44	Alteration - Res. Kitchen, plus 2+ Bath, plus HVAC OR Fenestration/Other	$528	
45	Alteration - Res. Kitchen, plus 1 Bath, plus HVAC AND Fenestration/Other	$528	
46	Alteration - Res. Kitchen, plus 2+ Bath, plus HVAC AND Fenestration/Other	$585	
47	Alteration/Remodel - Res. 1 Bath	$241	
48	Alteration/Remodel - Res. 2+ Baths (includes bathroom splits)	$356	
49	Alteration - Res. 2+ Baths (incl. split), plus HVAC/Other	$413	
50	Room Addition	$826	
51	Alteration/Remodel w/ Room Addition	$1,170	
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53	Sign (Wall) - Each Add'l	$11	
54	Sign (Monument) - First	$264	
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63	Demolition - Non-Residential	$344	
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City of Laguna Woods

Schedule of Building Fees - Mechanical, Electrical, Plumbing, and Miscellaneous Items

Fee Description	[a] Fee Assuming Full or Targeted Cost Recovery	Notes

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[b] For purposes of calculating re-roof fees, fractional square footages shall be rounded up to the nearest 1,000 SF. For example 1,600 SF shall be rounded to 2,000 SF.

[c] For Installation of multiple doors or windows see Framing/Structural fees.

[d] Examples of items included in this fee include post, beam, beamtail, raftertail, corbel, shearpanel, and truss repair/replacement.

[e] Fee for ceiling scrapes, lead paint removal, floor removal, etc.

City of Laguna Woods

Schedule of Building Fees - New Construction and Non-Residential Tenant Improvements

	Description	Project Size Threshold	Plan Check [a]		Permit [a]		Total [a]	
			Assuming Full or Targeted Cost Recovery	Fee Per Add'l 100 SF	Assuming Full or Targeted Cost Recovery	Fee Per Add'l 100 SF	Assuming Full or Targeted Cost Recovery	Fee Per Add'l 100 SF
1	Shell Building New Construction	500	$1,032	$24.09	$1,032	$44.74	$2,065	$68.82
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		20,000	$2,753	varies	$4,129	varies	$6,882	varies
		> 20,000	varies		varies		varies	
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		250	$361	$48.18	$671	$89.47	$1,032	$137.65
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		1,000	$602	$11.24	$1,118	$20.88	$1,721	$32.12
		2,500	$771	varies	$1,432	varies	$2,202	varies
		> 2,500	varies		varies		varies	
3	All Other New Construction	500	$1,652	$38.54	$1,652	$71.58	$3,304	$110.12
		2,000	$2,230	$24.78	$2,725	$30.28	$4,955	$55.06
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		20,000	$4,405	varies	$6,607	varies	$11,012	varies
		> 20,000	varies		varies		varies	
4	Tenant Improvements New Construction	250	$193	$38.54	$358	$71.58	$551	$110.12
		500	$289	$19.27	$537	$35.79	$826	$55.06
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		2,500	$482	$6.26	$895	$11.63	$1,376	$17.89
		5,000	$638	varies	$1,186	varies	$1,824	varies
		> 5,000	varies		varies		varies	

[a] The City uses specialized service providers to process certain plan review and inspection activities. These specialized services include, but are not limited to, structural engineering review services and specialized inspection services. The proposed fees are intended to reflect the estimated costs of all typical plan review and inspection services. However, for projects requiring the use of outside service providers, or projects that are more complex than typical, the City will collect fees that represent the actual costs incurred by the City.

City of Laguna Woods

Schedule of Building Fees

	Fee Description	Fee *	Notes
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1	Residential (1-3 Story)	$0.50 or valuation x 0.00013	
2	Commercial or Residential (4+ Story)	$0.50 or valuation x 0.00028	
	Building Standards Administration Special Revolving Fund (SB 1473) Fee Calculation		[b]
3	Valuation:		
	a) $1 - $25,000	$1	
	b) $25,001 - $50,000	$2	
	c) $50,001 - $75,000	$3	
	d) $75,001 - $100,000	$4	
	e) Every $25,000 or fraction thereof above $100,000	Add $1	

Notes

[a] Source: California Public Resources Code Section 2705

[b] Source: California Health and Safety Code Section 18931.6

* Project valuation shall be determined by project amount submitted by permit applicant, or most current International Code Council (ICC) published Building Valuation Table as published in the Building Safety Journal, or by RS Means Square Foot Costs Manual, where ICC data is not available.

City of Laguna Woods

Schedule of Planning Fees

	Fee Description	Fee Assuming Full or Targeted Cost Recovery	Notes
	Fixed Fee Services		
1	Community Facilities Yearly Sign Permit	$71	
2	Film Permit	$568	[a]
3	Med. Marijuana Dispensary Permit - Renewal	$1,850	
4	New Address Est. / Address Change Request	$355	
5	Notice of Exemption	$284	[b]
6	Outdoor Seating Permit	$355	
7	Sign Permit - Part of Sign Program	$71	
8	Sign Permit - Permanent	$284	
9	Sign Permit - Temporary	$71	
10	Special Event Permit	$284	
11	Temporary Use Permit	$568	
12	Tree Removal Permit	$213	
13	Wireless Use Permit Filing Fee	$1,633	[c]
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16	Zoning Letter	$178	
17	Appeal (City Council)	$500	

	Fee Description	Initial Deposit	Notes
	Deposit-Based Fee Services		[d]
18	Change Plan	$2,000	
19	Conditional Use Permit	$4,000	
20	Development Agreement	$10,000	
21	Environmental Impact Report	$10,000	
22	General Plan Amendment	$10,000	
23	Zoning Code Amendment	$10,000	
24	Initial Study/Neg. Dec./Mitigated Neg Dec.	$5,000	
25	Med. Marijuana Dispensary Permit - Initial	$4,000	
26	Sign Program	$2,500	
27	Site Development Permit	$4,000	
28	Specific Plan	$10,000	
29	Variance	$3,500	
30	Zone Change	$10,000	
31	Other Services Not Identified	varies	

Notes

[a] Film permit fee applies for major filming (production).

[b] A pass-through of any County filing fees will also be collected from the applicant.

[c] A pass-through of any noticing fees will also be collected from the applicant (e.g. mailing costs, newspaper publication).

[d] For deposit-based fees, the City intends to recover 100% of the costs of service including the actual costs of any contract service providers and internal City support.

City of Laguna Woods

Schedule of Encroachment Permit Fees

	Fee Description	Fee Assuming Full Cost Recovery	Unit	Notes
	Minor Projects			
1	Landscape Maintenance	$248	flat	
2	Temporary Staging	$248	flat	
3	Traffic Control Only	$330	flat	
4	Utilities Structure Inspection	$413	flat	
5	Pole Replacement	$413	flat	
	Major Projects			
6	Major Project			[a]
	a) First Day	$660	flat	
	b) Each Additional Day	$248	per day	
7	Projects Greater Than Two Weeks in Duration	$3,000	deposit	

For service requests, which have no fees listed in this Master Fee Schedule, the City Manager or his/her designee shall determine the appropriate fee based on the following hourly rates for staff time involved in the service or activity.

	Fee Description	Fee	Unit	Notes
8	City Engineer	$165	per hour	
9	Other Staff/Outside Service Providers	100%	of actual costs, plus admin rate	

Notes

[a] Major Projects include ground disturbing activities, projects lasting longer than three days, or projects that require permanent traffic control for the duration of the project (e.g. excavation, trenching, boring, etc.).

* The City Manager may waive encroachment permit fees for activities associated with City projects or contracts.

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7.4
MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARY REGULATIONS

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager
David B. Cosgrove, City Attorney

FOR: April 19, 2017 Regular Meeting

SUBJECT: Medical and Non-Medical Marijuana Dispensary Regulations

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Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Approve the introduction and first reading of an ordinance – read by title with further reading waived – entitled.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.08.010, 13.10.020, 13.12.020, 13.13.020, AND 13.26.025 AND ADDING A NEW

SECTION 13.26.027 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARIES AND DELIVERY SERVICES

OR

6. Provide direction to staff regarding the preparation of regulations permitting the establishment, location, and operation of medical and/or non-medical marijuana dispensaries, and/or the need for further study and analysis.

Background

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

At a special meeting on September 10, 2015, the City Council adopted an urgency ordinance that imposed a moratorium on the establishment, location, or operation of medical marijuana dispensaries for a 45-day period (September 10, 2015 through October 24, 2015). At a special meeting on October 13, 2015, the City Council adopted an ordinance extending the moratorium through September 8, 2016. Then, at a regular meeting on August 17, 2016, the City Council adopted an ordinance extending the moratorium through September 8, 2017. Pursuant to state law, the moratorium may not be extended beyond September 8, 2017.

During the moratorium, all operation of Section 13.26.025 of the Laguna Woods Municipal Code is suspended and the City may not issue regulatory permits in furtherance of the establishment, location, or operation of a medical marijuana dispensary within the City. The agenda reports from the meetings on September 10, 2015, October 13, 2015, and August 17, 2016, as well as the ordinance adopted on August 17, 2016, are included as attachments A, B, C, and D, respectively, and incorporated herein by reference.

For reasons, and in light of findings, set forth in the ordinances, and in accordance with applicable sections of state law, the moratorium was deemed necessary for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the City is considering or intends to study within a reasonable time.

As described in the ordinances, the moratorium is intended to provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

Discussion

In addition to medical marijuana dispensaries, and due to California voters' recent approval of Proposition 64 (Control, Regulate, and Tax Adult Use of Marijuana Act), today's meeting has been noticed in a manner that allows for consideration of both medical and non-medical marijuana dispensaries.

Since August 17, 2016, staff has continued the investigations requested by the City Council with a focus on analyzing the impact of Proposition 64, as well as public safety and land use implications related to any prospective establishment, location, or operation of medical marijuana dispensaries in Laguna Woods. With the recent change in presidential administrations, staff has also reviewed the administration's public statements related to marijuana. A brief summary of federal and state law, and the results of staff's investigations are organized under the subheadings below.

A. Federal Law

Without question, marijuana (both medical and non-medical) is, and remains, illegal under federal law. It remains classified as a Schedule 1 controlled substance under the Controlled Substances Act (21 USC §§ 801 *et seq*). As indicated in the agenda reports dated September 10, 2015, October 13, 2015, and August 17, 2016, the California Supreme Court has held that bans on medical marijuana dispensaries are permissible under a city's inherent zoning power, but it has, thus far, declined to reach the issue whether permitting such dispensaries would violate the Controlled Substances Act or California Government Code Section 37100[1].

Notwithstanding federal illegality, a majority of states and the District of Columbia have legalized or decriminalized certain marijuana-related activity. Such actions have been a contributing factor in the promulgation of revised federal enforcement

[1] California Government Code Section 37100, which relates broadly to cities' legislative powers, provides: "The legislative body may pass ordinances not in conflict with the Constitution and laws of the State or the United States." The City Council may, therefore, not pass an ordinance directly in conflict with either federal or state law.

policies. Specifically, on August 29, 2013, Deputy Attorney General James J. Cole issued a directive to all United States Attorneys entitled *Guidance Regarding Marijuana Enforcement*. The Cole Memorandum reaffirms the federal illegality of marijuana, but also indicates that the United States Department of Justice is committed to using its limited investigative and prosecutorial resources to address what it has determined to be "priority threats," including:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or illegal activity;
- Preventing violence and use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public land; and
- Preventing marijuana possession or use on federal property.

The aforementioned priorities were further referenced in a memorandum from the United States Department of Treasury, Financial Crimes Enforcement Network, dated February 14, 2014. The Treasury Memorandum provides guidance to various financial institutions that might deal with medical marijuana dispensaries operating under state law, and requires different forms of "suspicious activity reports" depending upon individual facts and circumstances relating to the individual medical marijuana dispensary customers of financial institutions.

From those memoranda, one might infer that the current risk of federal enforcement against, at least, medical marijuana dispensaries operating consistent with state law, and cities that adopt enabling regulations, is diminished, particularly if local regulatory efforts are directed at avoiding the priority federal threats identified above. It should be noted, however, that the aforementioned limitations on federal enforcement do not change congressional legislative policy under the Controlled Substances Act, nor do they confer immunity on any party from any federal criminal

prosecution or forfeiture action. (See, e.g., *United States v. McIntosh* 833 F.3d 1163, 1179 n. 5 (9th Cir. 2016.)). Further, federal enforcement policies may change at any time. While it can reasonably be inferred that the formal and public definition of enforcement priorities for medical marijuana-related activities undertaken pursuant to state law signal at least a recent federal intention to eschew strict enforcement, recent public statements from the White House[2] and United States Department of Justice[3] indicate that a more aggressive enforcement posture is likely to be taken with respect to, at least, non-medical marijuana-related activities, irrespective of whether such activities are undertaken pursuant to state law.

Regarding federal enforcement, it should be noted that in 2014, the United States Congress passed a budget amendment that eliminated all funding for investigations and prosecutions conducted by the United States Department of Justice related to state medical marijuana laws (the Rohrabacher–Farr Amendment), which effectively ended the federal government's enforcement of medical marijuana-related laws. That budget amendment has been passed several times since 2014, but is currently set to expire on April 28, 2017, absent continuing legislation (P.L. 114-254, § 101(1).).

Federal legislators have introduced several pieces of legislation intended to support medical marijuana use, including H.R. 714 and H.R. 715 (which would both move marijuana off of the Controlled Substances Act's Schedule 1), as well as H.R. 975, which would exempt certain activities from punitive enforcement if undertaken in concert with State law. A more complete list of legislation under consideration can be found on the National Organization for the Reform of Marijuana Laws' website (www.norml.org). While the rescheduling of marijuana, or the establishment of protections from federal law, would likely represent a dramatic reduction in exposure to potential liability by cities considering a regulatory approach to medical and/or non-medical marijuana dispensaries, no such legislation has been signed into law.

In short, federal policy on marijuana remains murky. The Controlled Substance Act's classification of marijuana as a Schedule 1 controlled substance remains the

[2] At a press briefing on February 23, 2017, White House Press Secretary Spicer stated "I do believe that you'll see greater enforcement of it" in response to a question regarding whether the federal government will take action related to states legalizing marijuana for recreational purposes.

[3] A memorandum from United States Attorney General Sessions dated April 5, 2017 states that the Department of Justice's Task Force on Crime Reduction and Public Safety's Violent Crime Reduction Strategy Development Subcommittee will review "existing policies in the areas of charging, sentencing, and marijuana to ensure consistency with the Department's overall strategy on reducing violent crime and with Administration goals and priorities."

controlling law of the land, and federal enforcement policies have varied in response to evolving permissive treatment of both medical and non-medical uses under state laws. Nothing in those enforcement policies contradicts applicable federal law, however, and reliance on them in no way serves to insulate anyone from potential federal prosecution, and its rather dire consequences, if federal enforcement priorities change. A comprehensive analysis of the unclear nature of federal policy in this field was recently issued by the Congressional Research Service[4], entitled, "The Marijuana Policy Gap and the Path Forward" (Attachment E). That report details gaps in policies between the federal government and the states, frames many of the issues that the United States Congress has yet to decide upon, and provides helpful background on both social and legal implications of the present tensions between the various levels of government on this issue.

B. State Law – Medical Marijuana

Staff's previous agenda reports have provided background regarding the California Compassionate Use Act (Health and Safety Code Section 11362.5), the Medical Marijuana Program Act (Health and Safety Code Section 11362.7), and the Medical Marijuana Regulation and Safety Act (MMRSA). The MMRSA has initiated a major reworking of the regulatory scheme enacted by earlier statutes.

Currently, all three State licensing agencies (Department of Food and Agriculture, and Department of Public Health, and Bureau of Medical Cannabis Regulation) plan to complete their rule-making processes by the end of 2017, and begin accepting applications for medical marijuana dispensary licenses on January 1, 2018. While the City Council does not have the ability to extend its existing moratorium on the establishment, location, or operation of medical marijuana dispensaries beyond September 8, 2017, it could adopt regulations to be effective at a later date.

C. State Law – Proposition 64

On November 8, 2016, approximately 57% of California voters voted to approve Proposition 64 (Control, Regulation, and Tax Adult Use of Marijuana Act) which, among other things, decriminalized certain forms of non-medical marijuana-related

[4] According to its website, "The Congressional Research Service (CRS) works exclusively for the United States Congress, providing policy and legal analysis to committees and Members of both the House and Senate, regardless of party affiliation. As a legislative branch agency within the Library of Congress, CRS has been a valued and respected resource on Capitol Hill for more than a century." (https://www.loc.gov/crsinfo/)

activities under state law. Those same activities remain illegal under federal law. In Laguna Woods, Proposition 64 failed with approximately 51% of voters opposed.

Table 1: Proposition 64 Election Results – Laguna Woods

Registration	Ballots Cast	Turnout	Yes	No
13,912	12,235	87.9%	5,516 (≈49%)	5,826 (≈51%)

Laguna Woods turnout for the Proposition 64 election was high at nearly 88% of registered voters. The fairly evenly divided results on whether to legalize the use of marijuana by adults for non-medical purposes suggests to staff that Laguna Woods is not the appropriate location for an early foray into the newly approved and soon-to-be regulated non-medical marijuana industry.

With respect to non-medical marijuana dispensaries, Proposition 64 neither currently allows their establishment, nor requires cities to permit their future establishment. Non-medical marijuana dispensaries will continue to be illegal under state law, until the State implements the licensing program envisioned by Proposition 64. At that time, which is expected to be January 1, 2018, non-medical marijuana dispensaries will be required to obtain a license from the State. If a city elects to prohibit non-medical marijuana dispensaries, the State will not issue licenses. Any operation of non-medical marijuana dispensaries without a State license would be illegal.

While the approval of Proposition 64 primarily affects the use of marijuana by adults for non-medical purposes, it also exempts medical marijuana from sales and use tax unless the qualified patient or primary caregiver fails to present both a valid Medical Marijuana Identification Card issued by the Department of Public Health and a valid government-issued identification card at the time of purchase. As a result, the City's only new, business-generated sources of revenue to offset new costs associated with providing law enforcement and other City services for, or as a result of, prospective medical marijuana dispensaries, would be: 1) sales and use tax from purchases where insufficient identification is presented to qualify for exemption, 2) a nominal amount of property tax, 3) regulatory fees to recover reasonably quantifiable costs, 4) a voter-approved business license tax, and/or 5) individual development agreements with applicants. The latter would be voluntary and is not something that the City could require of applicants in the normal course of processing development applications.

Staff does not believe that the City has adequate financial means to provide any level of reasonable assurance that enforcement costs associated with medical or non-medical marijuana dispensaries could be accommodated within the City's budget,

absent some additional level of taxation or other financial arrangement. The Orange County Registrar of Voters estimates the cost of a holding a special election to seek voter-approval of such a tax at $85,832 to $93,507. The City would also incur other costs related to preparing and filing a ballot measure with no certainty of outcome. As an alternative, the City could wait to consolidate a ballot measure with the next general election in November 2018 for significant savings.

In January 2017, staff met with Orange County Sheriff Hutchens and members of her command staff to discuss the approval of Proposition 64 and the Orange County Sheriff's Department's perspective on medical and non-medical marijuana in light of that voter-approved change in state law. Sheriff Hutchens expressed continuing concerns, which are detailed in her letter dated January 30, 2017 (Attachment F).

D. State Law – Impact on Medical Marijuana Collectives and Cooperatives

Under the Medical Marijuana Program Act, medical marijuana patients and primary caregivers were allowed to "...associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes" (Health and Safety Code Section 11362.775). The MMRSA includes a new licensing scheme for medical marijuana cultivation, manufacturing, transportation, and dispensing, but does not appear to contemplate the continuation of non-profit collectives and cooperatives, at least as they operate currently. Such collectives and cooperatives will have one year from the date that the Department of Consumer Affairs begins to issue licenses under the MMRSA to bring their operations into compliance with state law, and will have to determine what permitted segment of the medical marijuana supply chain they seek to obtain permission to conduct. They will also be required to obtain corresponding necessary permits from applicable cities, which reserve the right under state law to prohibit such activities.

Regarding medical marijuana cultivation, the City presently allows qualified patients and primary caregivers to cultivate medical marijuana for non-commercial purposes, in accordance with applicable provisions of the MMRSA[5]. Those allowances will not be affected by the State-mandated changes to collectives and cooperatives.

[5] For qualified patients, this generally includes a limit of 100 square feet of cultivated area. For primary caregivers, this generally includes a limit of 500 square feet of cultivated area and a limit of five specified qualified patients for whom he or she is the primary caregiver. For additional information, see Section 13.26.026 of the Laguna Woods Municipal Code. Separately, Proposition 64 allows individuals to grow up to six marijuana plants at their home for personal use, regardless of whether the use is medical or non-medical.

E. Law Enforcement Deployment Study

One of the studies requested by the City Council at the meeting on October 13, 2015, was a "deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly." In light of the recent, significant increases in the City's law enforcement costs, which have been driven, in large part, by an overextension of locally assigned law enforcement personnel, staff continues to believe that it is imperative to consider carefully the availability of deputies to handle a potentially increased call volume, as well as the fiscal ramifications thereof. A reemergence of equity concerns on the part of surrounding cities that would be required to provide law enforcement personnel to augment the City's assigned personnel, if unavailable or insufficient, could have dramatic and deeply impactful fiscal consequences.

The City contracted with the Center for Public Safety Management (CPSM) to complete the deployment study. CPSM is the exclusive provider of public safety technical assistance for the International City/County Management Association (ICMA) and has conducted more than 240 law enforcement studies for jurisdictions throughout the country, ranging in size from much smaller than Laguna Woods to as large as Indianapolis, Indiana. Other California clients have included the cities of Alameda, Carlsbad, El Centro, Hermosa Beach, Santa Ana, and Santa Clara.

CPSM analyzed calls for service and the activities of deputies assigned to the City for a 10 month period from September 1, 2015 through June 30, 2016. During that time, there were 4,330 calls for service which, when combined with non-call activity (e.g., report writing, briefings, equipment check-in/out, meal breaks, and commute time between Laguna Woods and the Aliso Viejo substation) resulted in findings of the hourly deployment workloads shown in Table 2.

Table 2: Hourly Deployment Workloads – September 2015 through June 2016

Shift	Weekday Workload	Weekend Workload
Day	59%	53%
Night	51%	52%
Swing	61%	58%
Average (All Shifts)	57%	54%

While there is no single standard for optimal law enforcement workload, the City and the Orange County Sheriff's Department agree that 60% is an optimal level of

reactive versus proactive time (meaning that a workload of up to 60% allows for an adequate amount of time to be spent providing crime prevention services).

Staff has reached the following conclusions:

1. Current deployment has resulted in an optimal workload that allows for timely responses to calls for service, as well as availability to work proactively. That workload would be imperiled by any significant increase in call volume. Staff cannot say with certainty that call volume would or would not increase as a result of medical or non-medical marijuana dispensaries, but in light of the significant financial challenges posed by existing law enforcement costs, staff recommends an extremely conservative view of that particular possibility.

2. Current deployment has resulted in approximate equity with cities that have previously raised concerns regarding its adequacy. Equity concerns could be exacerbated by any significant increase in call volume, particularly due to 1) the City's regular deployment of no more than two deputies at a given time, and 2) the Sheriff's Department's policy of responding to calls for service at marijuana dispensaries with a minimum of two deputies. In almost every foreseeable instance, the unknown, but potentially increased, call volume that medical or non-medical marijuana dispensaries may generate would require supplemental coverage from deputies assigned to cities other than Laguna Woods, either to respond to those calls directly or to handle unrelated calls that occur when Laguna Woods deputies are responding to dispensary calls. Staff is unable to quantify the impact that would have on equity or budgets.

F. Recommended Action

As staff advised on September 10, 2015, October 13, 2015, and August 17, 2016, the City's legally safest course, and the one followed by most Orange County cities, would be to prohibit medical and non-medical marijuana dispensaries. An ordinance to that effect is included as Attachment G. Such bans have been authorized by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729. They are also specifically authorized under both the MMRSA and Proposition 64.

Prohibiting dispensaries would place the City on well-defined legal ground, help insulate against the adverse secondary effects that the City is advised such uses may generate, and allow the City to monitor the development of state law, and developing

federal enforcement policies, with a minimum of legal risk. It is the only option that staff can confirm, with any degree of certainty, that the City has sufficient resources to implement.

Presently, the City's regulations do not address medical marijuana deliveries. Staff is advised that medical marijuana delivery services, acting colorably in compliance with existing state law, have provided medical marijuana to Laguna Woods residents for some time, without any known incidence of crime. In deference to concerns that qualified patients and primary caregivers have access to well-regulated medical marijuana products, staff's recommendation includes specific language that would allow medical marijuana dispensaries operating in compliance with state law at locations outside of Laguna Woods to make deliveries to addresses in Laguna Woods. Beginning in 2018, medical marijuana products that are sold in dispensaries or provided for delivery will be subject to the same stringent, statewide testing, manufacturing, and packaging/labeling standards mandated by the MMRSA. Many, if not most, medical marijuana dispensaries that offer delivery services also offer telephone consultations to aid in product selection for individuals who are unable to travel to the dispensary. Under staff's recommendation, therefore, licensed dispensaries in other cities would be able to deliver medical marijuana to qualified patients and primary caregivers in Laguna Woods, but the dispensaries themselves could not be located here. That approach would differentiate Laguna Woods from surrounding cities such as Aliso Viejo, Irvine, Laguna Beach, Laguna Hills, and Lake Forest that have prohibited medical marijuana deliveries.

As of January 1, 2018, non-medical marijuana cultivation, dispensary, and transport activities are also scheduled to come under state regulation. This raises the prospect of state-qualified, non-medical marijuana dispensaries offering delivery services. Staff has considered recommending that the local allowance of marijuana deliveries be limited to medical users only, but is concerned with the likely difficulties involved in enforcement given the lack of any bright line distinction between the two types as relates to delivery to end users. Staff believes that making such a distinction would likely generate more enforcement challenges, and costs, than simply relying on the state scheme to determine what deliveries would be permitted, whether they consist of medical or non-medical marijuana. As such, the proposed ordinance does not draw a distinction between delivery to medical or non-medical marijuana users, and instead merely requires that any delivery service that purports to deliver to locations in Laguna Woods must do so in a manner consistent with state law.

Staff has also been asked about potential preferences in regulations that would allow existing Laguna Woods-based medical marijuana collectives and cooperatives to continue to operate. Unfortunately, the State Legislature, through its enactment of the MMRSA, has mandated that those entities modify their operations in the coming years, to conform to the new state licensing scheme. As staff understands it, those pending state regulations will put collectives and cooperatives on an even regulatory footing with, and in competition with, all other marijuana retailers. The City is unable to adopt land use regulations that seek to protect the interests of certain medical marijuana dispensaries to the detriment or exclusion of others. Permitting dispensaries under current state laws would necessarily permit all retailers to open businesses in Laguna Woods, consistent with applicable regulations. It would also not guarantee that any particular dispensary is able to secure real property to operate in Laguna Woods, as those decisions would be made by private property owners and be market-driven. Staff's recommendation does nothing to prevent collectives and cooperatives without dispensary presences to continue to operate in Laguna Woods, provided that they can do so in a manner consistent with state law, until such time as the new state licensing scheme may compel changes to their manner of operation.

In summary, staff's recommendation WOULD:

1. Prohibit the establishment, location, or operation of medical and non-medical marijuana dispensaries – none of which currently exist in Laguna Woods

2. Allow the delivery of medical or non-medical marijuana to qualified patients, primary caregivers, or customers by medical or non-medical marijuana dispensaries operating in compliance with state law at locations outside of Laguna Woods, including those located in Santa Ana and San Diego

3. Allow medical marijuana collectives and cooperatives without dispensary presences to continue to operate in Laguna Woods, in a manner consistent with state law, until such time as state law prohibits their doing so

    - At the point at which medical marijuana collectives and cooperatives can no longer operate, medical marijuana dispensaries and delivery services will be subject to the same stringent, statewide testing, manufacturing, and packaging/labeling standards mandated by the MMRSA.

4. Direct staff to re-agendize a City Council discussion of potential regulations permitting the establishment, location, and operation of medical and/or non-

medical marijuana dispensaries should marijuana be moved off of the Controlled Substances Act's Schedule 1

Staff's recommendation WOULD NOT:

1. Change the City's existing regulations related to marijuana cultivation. The City's existing regulations 1) expressly prohibit the commercial cultivation of medical marijuana, 2) implicitly prohibit the commercial cultivation of non-medical marijuana, and 3) expressly allow the cultivation of medical marijuana by qualified patients and primary caregivers, provided that such cultivation qualifies for the exemption set forth in subdivision (g) of Section 11362.777 of California Health and Safety Code and is otherwise conducted in accordance with State and local laws.

2. Implement any local legislative change regarding the operation of medical marijuana collectives and cooperatives without dispensary presences (but, to the extent that coming state law regulations call for such operations to become dispensaries, such dispensaries would need to be located outside of Laguna Woods; deliveries from such dispensaries to qualified patients and primary caregivers located in Laguna Woods would be permitted)

3. Prevent the City Council from reconsidering potential regulations permitting the establishment, location, and operation of medical and/or non-medical marijuana dispensaries if circumstances change in the future

If the City Council takes the recommended action at today's meeting, the proposed ordinance would be agendized for a second reading and consideration of adoption at an upcoming meeting. The ordinance would take effect 30 days after adoption. Until then, the existing moratorium would remain in effect.

G. Other Potential Action

If the City Council is interested in considering potential regulations that would permit the establishment, location, and operation of medical and/or non-medical marijuana dispensaries, such a discussion could be agendized for as early as the next regularly scheduled City Council meeting on May 17, 2017.

The City Council may also request additional information from staff, direct staff to prepare alternate ordinances for future consideration, or provide other direction.

Environmental Review

Neither the adoption of the proposed ordinance, nor study and analysis relative to the moratorium, are projects under the requirements of the California Environmental Quality Act (CEQA). The adoption of this ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to sections 15061(b)(3), 15321, and 15378 of the CEQA Guidelines. The adoption of the Zoning Code amendments present no possibility that the activity in question will pose a significant effect on the environment, since there are no commercial dispensary or cultivation facilities present within the City, and this ordinance will continue that baseline condition; the ordinance relates to enforcement actions in connection with permits and permitted activities, and relates to general policy and procedure making of the City.

Fiscal Impact

The recommended action could be accommodated in the City's existing budget, which includes $35,090 for medical marijuana-related studies and analysis services. If the City Council chooses to continue further study and analysis, additional funds may be required. If that is the case, a resolution adopting an amended budget would be agendized for City Council consideration at a future meeting.

Attachments:
- A – Agenda Report from September 10, 2015
- B – Agenda Report from October 13, 2015
- C – Agenda Report from August 17, 2016
- D – Ordinance No. 16-02
- E – "The Marijuana Policy Gap and the Path Forward", Congressional Research Service, March 10, 2017
- F – Letter from Orange County Sheriff (January 30, 2017)
- G – Proposed Ordinance

City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager
David B. Cosgrove, City Attorney

FOR: September 10, 2015 Special Meeting

SUBJECT: Medical Marijuana Dispensaries Ordinance

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, ADOPTING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES

Previous Meeting

Background

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

Discussion

1. The City's Medical Marijuana Dispensary Ordinance.

The regulatory ordinance permitting medical marijuana dispensaries requires an applicant to undergo a background check from the Police Chief, and requires the Police Chief's input with respect to the acceptability of the applicant's background, suitability of the proposed location, format and location of security cameras, and other matters as may be determined appropriate by the Police Chief. The ordinance also provides that in the event that an applicant is not the legal owner of a property, an application must be accompanied by a notarized acknowledgement from the applicable property owner that a medical marijuana dispensary will be operated on the property. City staff believes that latter provision has proven to be a significant hurdle to past parties interested in locating dispensaries in Laguna Woods.

To date, the City has not received a completed application for a medical marijuana dispensary. With the medical marijuana dispensary bans that exist in almost all other Orange County cities, as well as the interest in permitted medical marijuana dispensary facilities currently experienced by the City of Santa Ana and others; recovery in the local real estate market since the regulatory ordinance was originally enacted in 2008; and, information that City staff has received that one or more properties in the City are being marketed for sale for purchase by prospective medical marijuana dispensary permit applicants, City staff believes that renewed interest in locating a medical marijuana dispensary within Laguna Woods will result in one or more applications being received soon.

2. The City's Land Use Regulatory Review Process.

The City is in the process of updating its overall land use regulatory structure. On April 16, 2014, the City Council adopted an update of the General Plan Safety Element. On December 17, 2014, the City Council adopted a Climate Adaptation Plan. On July 29, 2015, the City Council adopted an update of the General Plan Conservation Element. On May 20, 2015 the City Council adopted an update of the Building & Planning Services Fee Schedule.

Previous Meeting

The City's land use regulatory analysis is ongoing. On June 24, 2015, City Council included within its budget and work plan for Fiscal Year 2015-16, a General Plan Comprehensive Update Project and a Commercial Zoning Code Uses and Parking Standards Update Project. Staff is presently working to advance those directives.

3. Communication from the Orange County Sheriff's Department.

Realizing that local conditions pointed to the probability of a medical marijuana dispensary seeking to locate in Laguna Woods, and in analyzing how the present regulatory climate for medical marijuana dispensaries fits within a broader scheme of the City's review of land uses generally, City staff consulted with the Sheriff's Department regarding its contemplated role in the medical marijuana dispensary permitting process. That consultation resulted in a letter from the Sheriff's Department dated August 24, 2015 (Attachment A).

In the aforementioned letter, the Sheriff's Department makes clear its position that medical marijuana dispensaries are inconsistent with federal law and often operated in a manner that is inconsistent with state law. The Sheriff's Department further indicates a lack of support for any municipal code provision that would allow the establishment of medical marijuana dispensaries for reasons including described "adverse secondary effects" and conditions compromising the "health and welfare of the community and negatively [impacting] the residents' quality of life." Accordingly, the Sheriff's Department urges repeal of the City's regulatory ordinance and, likewise, recommends that the City consult with the cities of Dana Point, Laguna Hills, and Lake Forest, all of which have had prior experience with medical marijuana dispensaries and their effects.

The Sheriff's Department states that while it will conduct a LiveScan background check that it believes is consistent with its contractual obligations under the City's law enforcement services contract, it will not "review or approve any security plan of a dispensary, and will not determine the 'acceptability' of any applicant and the 'suitability' of the proposed location."

4. Federal and California Law regarding Medical Marijuana.

The adverse secondary effects alleged by the Sheriff's Department arise against a developing but still somewhat uncertain legal background regarding a city's ability to permit medical marijuana dispensaries.

Previous Meeting

The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal. 4th 729, noted that under the federal Controlled Substances Act, marijuana is considered as a drug, without accepted medical use and treatment, and without any medical necessity exception to prosecution and conviction under federal law. Notwithstanding, California has had medical marijuana legislation for some time. In 1996, the electorate enacted the Compassionate Use Act, Health and Safety Code Section 11362.5. That Act decriminalized possession and cultivation of marijuana for medical purposes, under specified circumstances. In 2004, the California Legislature adopted the Medical Marijuana Program, Health and Safety Code Section 11362.7, which expanded the Compassionate Use Act, provided for identification cards for qualified patients and their caregivers, and decriminalized collective cultivation and various possession, processing, transportation and distribution prohibitions.

Despite the broad legislative statements of intent in the Compassionate Use Act and Medical Marijuana Program, courts have taken a more limited view of their practical impact. The California Supreme Court has specifically denied that either ensures Californians of a right to obtain and use marijuana for medical purposes, and has upheld the authority of cities to regulate, and even ban, medical marijuana dispensaries, under their traditional local zoning power (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, *supra*; 56 Cal. 4th 729, 749.).

Although the law is clear that a city can ban medical marijuana dispensaries, it is significantly less clear how, and whether, a city may permit them. In the *Riverside* case, the California Supreme Court specifically declined to pass on the City of Riverside's argument that, if the Compassionate Use Act and Medical Marijuana Program were construed to require local jurisdictions to accommodate medical marijuana dispensaries, they would be pre-empted by federal law. The California Supreme Court likewise refused to consider whether Government Code Section 37100 forbids a city from adopting ordinances authorizing local land use for medical marijuana dispensaries, as being potentially in conflict with federal law.

The cities of Long Beach and Santa Ana both have enacted medical marijuana dispensary permit regulations, based on a lottery assignment of eligible locations. The Long Beach ordinance was overturned by the appellate court in *Pack v. Superior Court of Los Angeles*, (2011) 199 Cal. App. 4th 1070, indicating it was inconsistent with, and pre-empted by, Federal law (the opinion has subsequently been de-published). Santa Ana's lottery system is currently the subject of litigation, *Dillon, et al. v. City of Santa Ana*, Orange County Superior Court Case No. 30-

Previous Meetings

2015-00786940. In the *Dillon* case, a preliminary injunction was denied on June 19, 2015, which would have prevented the City from permitting medical marijuana dispensaries that won the lottery. The case is now proceeding through pleading and discovery phases and is being monitored by City staff.

5. The Potential Moratorium for Further Study of Dispensary Uses.

City staff believes that the overall situation described herein leaves the City in an uncertain and compromised position with respect to its medical marijuana dispensary permitting regulations. As a practical matter, without the cooperation of the Sheriff's Department, the City cannot fulfill the portions of its regulatory ordinance that call for participation of the Police Chief. It is uncertain the extent to which the City could privately contract with investigative or other public safety consultants for similar services, and whether the information gleaned from such private consultants would yield the same level of efficacy and safety in terms of reviews that might otherwise be conducted by the Sheriff's Department. The result raises the prospect of incomplete reviews of medical marijuana dispensaries, which is particularly troubling given the roster of adverse secondary effects that the Sheriff's Department alleges such medical marijuana dispensaries pose.

There are a number of other practical land use questions that also arise regarding the establishment, location, and operation of medical marijuana dispensaries in Laguna Woods. It is City staff's understanding that medical marijuana dispensaries that formerly operated in other South Orange County cities received significant amounts of traffic, which could reasonably be expected to be compounded if a lone South Orange County permitted medical marijuana dispensary were to arise within Laguna Woods. As such, City staff believes that it needs to undertake analysis of parking and traffic demands from those types of operations, to avoid unsafe traffic turning movements, parking or stopping, and to assure that adequate parking and access to such facilities is required, to avoid negative effects on surrounding uses.

City staff would also like to pursue the Sheriff's Department's recommendation of discussion with neighboring cities regarding their experiences with the municipal service and public safety demands attendant to medical marijuana dispensaries. Issues such as appropriate lighting; hours of operation; distance from potentially sensitive surrounding uses; the nature, format, and availability of security camera monitoring; and, the balance between patient privacy and the safety of medical marijuana dispensary patrons and surrounding uses, all require further study.

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At today's meeting, City staff is recommending adoption of an urgency ordinance adopting a moratorium on the establishment, location, or operation of medical marijuana dispensaries (Attachment B). Such moratoria are authorized under Government Code Section 65858, which requires a finding that there is a current and immediate threat to public health, safety, or welfare, and that the approval of use permits or entitlements for use otherwise required in order to comply with the ordinance would result in that threat to public health, safety, or welfare.

Here, City staff believes that the required findings are met for the reasons stated in this agenda report, and as further elaborated on in the proposed urgency ordinance. Under present statements from the Sheriff's Department regarding its level of participation with respect to the City's regulatory ordinance, the City would have to apply either a truncated or amended permit application review process that would likely result in a review less thorough than that originally contemplated as required under the regulatory ordinance. The adverse secondary effects alleged by the Sheriff's Department certainly pose the types of threat to public health, safety, or welfare contemplated under the urgency ordinance, and City staff requires time to investigate the background information upon which the Sheriff's Department's letter has been issued, as well as to investigate the experience of other cities.

If the City Council chooses to adopt the urgency ordinance, the moratorium would be in effect for a period of 45 days. City staff would be required to provide a report to the City Council on measures taken to alleviate the conditions leading to the urgency ordinance 10 days before it expires. If conditions warrant, the moratorium could be extended for up to 10 months and 15 days, upon a regular noticed public hearing otherwise consistent with standard zoning measure requirements. Should the conditions that led to the initial enactment of the urgency ordinance persist, the moratorium could be extended for up to another year beyond that.

City staff is aware that there are strong and deeply-held opinions on all sides of the medical marijuana dispensaries issue; however, the City's land use policies must deal with the legal uncertainty on the subject, the uncertainty with respect to the City's regulatory ordinance and the role of its Police Chief, and the prospect of adverse secondary effects that have been raised by the City's law enforcement services provider. City staff believe that a moratorium would allow further study, discussion with other cities that have experience with medical marijuana dispensaries, and further development of the City's updated land use regulatory structure, in order to determine whether or how medical marijuana dispensaries might compatibly be integrated into the City's land use.

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Environmental Review

The adoption of the proposed urgency ordinance and moratorium is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15601(b)(3) of the CEQA Guidelines.

Fiscal Impact

Fiscal impacts associated with the proposed urgency ordinance and moratorium are uncertain at this time. For City staff to take measures to alleviate the conditions leading to the urgency ordinance, and provide associated reporting, it is anticipated that costs would be incurred for services including legal, planning, and traffic engineering, as well as potential public safety services and public noticing. City staff would seek to accommodate such costs in the City's budget.

Attachments: A – Orange County Sheriff's Department Letter
B – Proposed Ordinance

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager
David B. Cosgrove, City Attorney

FOR: October 13, 2015 Special Meeting

SUBJECT: Medical Marijuana Dispensaries Ordinance

Previous Meeting

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Take one of the following actions:

   A. Adopt an ordinance – read by title with further reading waived – entitled:

   AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA

GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF PURSUING PROHIBITION THEREOF

OR

B. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF FURTHER STUDY AND ANALYSIS

Background

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

At a special meeting on September 10, 2015, the City Council adopted an urgency ordinance that imposed a moratorium on the establishment, location, or operation of medical marijuana dispensaries for a 45-day period (September 10, 2015 through October 24, 2015). During the moratorium, all operation of Section 13.26.025 of the Laguna Woods Municipal Code is suspended and the City may not issue regulatory permits in furtherance of the establishment, location, or operation of a medical marijuana dispensary within the City. The agenda report from the meeting on September 10, 2015, a letter from the Orange County Sheriff that was attached thereto, and the urgency ordinance are included as attachments A, B, and C.

For reasons, and in light of findings, set forth in the ordinance, and in accordance with applicable sections of State law, the moratorium was deemed necessary for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the City is considering or intends to study within a reasonable time.

As described in the ordinance, the moratorium was intended to provide the City time to study the effect of medical marijuana dispensaries on the community, and to

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assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

Discussion

Since September 10, 2015, staff has undertaken a number of investigations related to medical marijuana dispensaries, including reviewing federal law and enforcement policies, examining California's proposed Medical Marijuana Regulation and Safety Act (which, at the time of this writing, is currently on the Governor's desk for signature or veto), discussing medical marijuana dispensary experiences and policies with a number of other cities, meeting with the Orange County Sheriff's Department, meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs), and conducting preliminary research on the availability and types of testing of marijuana products for potential use in medicinal contexts. The results of staff's investigations are organized under the subheadings below.

A. Federal Law

Without question, marijuana is, and remains, illegal under federal law. It remains classified as a Schedule 1 controlled substance under the Controlled Substances Act (21 USC §§ 801 *et seq*). As indicated in the agenda report dated September 10, 2015, the California Supreme Court has held that bans on medical marijuana dispensaries are permissible under a city's inherent zoning power, but it has, thus far, declined to reach the issue whether permitting such dispensaries would violate the Controlled Substances Act or California Government Code Section 37100[1].

Notwithstanding federal illegality, some 20 states and the District of Columbia have legalized or decriminalized certain marijuana-related activity. Such action has been a contributing factor in the promulgation of revised federal enforcement policies.

Specifically, on August 29, 2013, Deputy Attorney General James J. Cole issued a directive to all United States Attorneys entitled *Guidance Regarding Marijuana Enforcement*, which is included as Attachment D. The Cole Memorandum reaffirms the federal illegality of marijuana, but also indicates that the Department of Justice

[1] California Government Code Section 37100, which relates broadly to cities' legislative powers, provides: "The legislative body may pass ordinances not in conflict with the Constitution and laws of the State or the United States." The City Council may, therefore, not pass an ordinance directly in conflict with either federal or State law.

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is committed to using its limited investigative and prosecutorial resources to address what it has determined to be "priority threats," including:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or illegal activity;
- Preventing violence and use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public land; and
- Preventing marijuana possession or use on federal property.

The aforementioned priorities were further referenced in a memorandum from the Department of Treasury, Financial Crimes Enforcement Network, dated February 14, 2014, which is included as Attachment E. The Treasury Memorandum provides guidance to various financial institutions that might deal with medical marijuana dispensaries operating under state law and requires different forms of "suspicious activity reports" depending upon individual facts and circumstances relating to the individual dispensary customers of financial institutions.

From those memoranda, one might infer that the current risk of federal enforcement against both medical marijuana dispensaries operating consistent with state law, and cities that adopt enabling regulations, is diminished, particularly if local regulatory efforts are directed at avoiding the priority federal threats identified above. It should be noted, however, that the aforementioned limitations on federal enforcement do not change congressional legislative policy under the Controlled Substances Act, nor do they confer immunity on any party from any federal criminal prosecution or forfeiture action. Further, federal enforcement policies may change at any time, potentially with the impending shift in presidential administrations.

The formal and public definition of enforcement priorities for marijuana-related activities undertaken pursuant to state law signals at least a present federal intention

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to eschew strict enforcement, perhaps to see how state law and experiences with medical marijuana dispensing and usage develop.

Staff contacted the local Unites States Attorney's Office to inquire whether the Cole Memorandum was still in effect, and to solicit any guidance federal enforcement authorities had with respect to medical marijuana dispensaries. The United States Attorney's Office confirmed that the Cole Memorandum is still applicable, but (not surprisingly) declined to provide further guidance.

B. California Medical Marijuana Law

Staff's agenda report dated September 10, 2015 provided background regarding the California Compassionate Use Act (Health and Safety Code Section 11362.5) and the Medical Marijuana Program (Health and Safety Code Section 11362.7). A major reworking of those statutes appears to be in the making with the potential enactment of the Medical Marijuana Regulation and Safety Act ("MMRSA").

The MMRSA actually consists of three different pieces of legislation, Assembly Bill 243 (Wood), Assembly Bill 266 (Bonta), and Senate Bill 643 (McGuire). Each of the bills has passed the California Legislature and, as of the time of this writing, are on the Governor's desk for signature or veto. The bills are joined, meaning that all must be signed or all will fail. City staff understands that the Governor is expected to sign each of the bills, which is the action endorsed by the League of California Cities, California Police Chiefs Association, and Cannabis Industry Association. The California State Sheriffs' Association has taken a neutral position.

If signed into law, the MMRSA would provide for comprehensive state licensing and regulation of medical marijuana cultivation, transportation, and distribution. It would place the Department of Food and Agriculture in charge of licensing indoor and outdoor cultivation sites, mandate the Department of Pesticide Regulation to develop pesticide standards for cultivation, and require the Department of Public Health to develop standards for the production and labeling of edible products.

The MMRSA would also create a Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. It contemplates a dual licensing system, with the State issuing licenses and local governments issuing permits for medical marijuana dispensaries, beginning in 2018. It would require the Department of Consumer Affairs to license dispensaries, distributors, and transport entities dealing with medical marijuana, and provide restrictions on holding more than one such license in the medical marijuana cultivation and distribution chain. It would also

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enact medical marijuana testing standards and tie the validity of state licenses to local permits (i.e., a state license becomes invalid if a local permit is denied or revoked). Under the MMRSA, local governments would retain the right to choose whether to permit or prohibit medical marijuana dispensaries.

The MMRSA looks to be a bit of game-changer for California law. It would provide a comprehensive state licensing and oversight authority for medical marijuana, from grower to patient. Regulations would include uniform requirements related to security, health, and safety, as well as quality assurance and testing protocols. It would also specifically authorize local governments to regulate medical marijuana dispensaries, including the ability to charge taxes and fees.

In many respects, for local governments favoring allowance of medical marijuana dispensaries, the systems contemplated under the MMRSA would take much of the guesswork out of how to tailor local regulations to comply with State law. Those systems would offer a defined regulatory framework within which local regulations and revenue measures are specifically contemplated and authorized. With current federal enforcement policies drawing heavily on whether local medical marijuana activities comply with state law, those systems would also afford some additional predictability on exposure under federal law.

C. Communications with Other Jurisdictions

Staff has spent a substantial amount of time since September 10, 2015 interviewing and communicating with other cities having experience in medical marijuana issues. Staff reached out to both cities that permit medical marijuana dispensaries (Santa Ana, San Diego) and those that do not (Dana Point, Lake Forest). In addition, staff met with Orange County Sheriff Sandra Hutchens.

A number of common themes emerged from the communications conducted. Taken together, this information indicates to staff that if the City Council is interested in maintaining a regulatory approach to medical marijuana dispensaries, significant additional study would be required to develop regulations to protect the public health, safety, and welfare of residents, patients, and other affected parties, alike. It is staff's opinion that the City's existing regulatory ordinance is not only at an impasse due to the Orange County Sheriff's Department's unwillingness to be fully involved, but also inadequate, having not benefitted from the significant body of knowledge and practical experience garnered by other jurisdictions since its initial adoption in 2008, as medical marijuana dispensaries have become increasingly common.

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The following are some of the recurring themes of the comments that staff received:

1. Dispensaries Are Highly-Funded, Cash-Based Businesses

It is clear to staff that while the particulars may vary amongst individual medical marijuana dispensaries, medical marijuana is a highly funded and growing industry. The demand for medical marijuana, coupled with restrictions on federally-chartered banking and credit card companies, results in large numbers of transactions of a primarily cash basis. That means that dispensaries frequently have large amounts of cash on-site, and patients travelling to dispensaries can be expected to do so with cash in-hand. Reports were that some dispensaries handled upwards of $100,000 each week, with cash stored both on-site and at associated off-site locations.

The prevalence and influx of cash presents a number of security challenges, which are further evidenced by the reportedly frequent presence of armed guards and weapons at medical marijuana dispensaries. While armed guards and weapons can be lawfully present, the practice nevertheless speaks to a potential recognition of, and perceived susceptibility to, robbery and other crime. As a result, staff believes that if the City Council is interested in maintaining a regulatory approach, limitations should be placed on the amount of cash permitted to be on-site at any given time, and the proximity of dispensaries to banks and automatic teller machines where patients may obtain cash, thus creating potential secondary targets for robbery.

2. Unpermitted Dispensaries Tend to Congregate, which May Be Indicative of Tendencies that would Also Attend Permitted Dispensaries

Multiple jurisdictions advised that once a single, unpermitted medical marijuana dispensary opened in a specific neighborhood or location, other nearby dispensaries soon followed. One city indicated that it had as many as seven dispensaries operating on a single commercial property at one point. Whether related to convenience for patients, or a perception that a particular jurisdiction was "friendly" to dispensaries, the presence of a single dispensary tended to be a catalyst for others. This appeared to be more common in jurisdictions without permitting ordinances, which indicates that factors such as patient convenience, location, and market may drive dispensary siting decisions more than considerations of permissible zoning or permitting.

If the City Council is interested in maintaining a regulatory approach, staff believes that consideration should be given to limiting the maximum number of dispensaries and evaluating the compatibility of dispensaries relative to zoning districts, in order to promote land use balance in the city.

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3. Dispensaries Are Reported to Generate Substantial Adverse Secondary Effects, though Empirical Support for this Perception is Thin

Medical marijuana dispensaries are widely regarded amongst government agencies as having the potential to generate adverse secondary effects. While it should be noted that no jurisdiction with whom staff spoke had specific statistical support for an increase in crime directly attributable to dispensaries, the anecdotal and personal experiences of the professionals with whom staff spoke were unequivocal. There is a lack of significant history with jurisdictions *explicitly* permitting dispensaries in Orange County and, as a result, most of the anecdotal and personal experiences shared related to unpermitted dispensaries. Still, all parties that staff interviewed, including Law Enforcement Against Prohibition, acknowledged that if unregulated, dispensaries raised the prospect of generating adverse secondary effects

In addition to robberies, which are believed to be underreported, a common adverse secondary effect cited was illegal transactions involving eligible medical marijuana patients transferring product to others, frequently in a dispensary's parking lot. On-site use of medical marijuana products was reportedly prevalent and some incidents of drugged-driving were reported in the immediate vicinity of dispensaries.

Staff concurs with the notion that some level of adverse secondary effects are likely to occur in Laguna Woods, from even lawfully operating medical marijuana dispensaries. Those effects may occur for reasons sometimes beyond the control of dispensary operators, including the actions of patients once medical marijuana has been purchased. Staff also believes that significant traffic could be expected at any Laguna Woods dispensary, because surrounding jurisdictions have enacted bans, and in some cases, have a demonstrated history of strict enforcement against any such uses. This higher level of expected traffic could correlate to higher levels of monitoring and enforcement efforts for the City[2].

What remains unresolved is the City's ability to mitigate potential adverse secondary effects through some application of State law and local regulation. If the City Council is interested in maintaining a regulatory approach, staff would anticipate an intensive effort to draft regulations that would include additional outreach to public and private parties regarding best practices. It would also be informative to monitor experiences with permitted dispensaries in Santa Ana (first permitted dispensary

[2] Even lawfully operating dispensaries would involve periodic monitoring, to assure compliance with conditions of approval and operations that maintain compliance with State law.

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opened in August 2015) and San Diego (first permitted dispensary opened in March 2015), as well as other cities with more mature permit processes (e.g., Berkeley, Oakland, Richmond, West Hollywood).

While the Orange County Sheriff's Department has indicated that the need for law enforcement services will not automatically increase as a result of the permitting of one or more medical marijuana dispensaries, the potential for adverse secondary effects raises the distinct potential for a future escalation in staffing levels that could strain or exceed the City's financial resources absent a commensurate reduction in service levels elsewhere in the organization. Depending on the nature of the effects generated, a strain could also be placed on Orange County Sheriff's Department deputies assigned to the cities of Aliso Viejo, Laguna Hills, and other nearby cities, if the City's regular staffing proves insufficient to respond.

If the City Council is interested in maintaining a regulatory approach, the unknown extent to which potential adverse secondary effects may occur and the associated financial challenges that could be posed by increased enforcement activity, lead staff to recommend that the City Council consider pursing a ballot measure to impose a supplemental tax on dispensaries (Santa Ana's Measure BB allows for an up to 10% business license tax on gross receipts, which is currently being collected at 5%), as well as a deployment study to most effectively align permitted hours of operations for dispensaries with available law enforcement resources.

4. Traffic and Parking Require Additional Study

The observable demand for medical marijuana dispensaries, coupled with feedback from other jurisdictions regarding local traffic and parking impacts and the lack of permitted dispensaries in South Orange County, leads to a staff concern about the adequacy of the limited traffic and parking standards contained in the City's existing regulatory ordinance. If the City Council is interested in maintaining a regulatory approach, staff recommends that a traffic and parking demand analysis be undertaken, including on-site traffic and parking counts at permitted dispensaries, in order to establish standards to mitigate potential adverse secondary effects.

5. Product Accessibility to Minors Is a Particular Concern

Regardless of individual opinions on the worth of marijuana for medicinal purposes, demand for its recreational use is undeniable. Jurisdictions frequently cited concerns with the perceived ease with which medical marijuana patient identification cards can be obtained (a factor beyond the control of medical marijuana dispensaries) and

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the transfer of products from eligible medical marijuana patients to others, including minors. Those concerns exacerbated with dispensaries located near high schools (Laguna Hills High School is located just south of Laguna Woods). One jurisdiction's local school district reported a dramatic drop in drug-related school expulsions and suspensions following the closure of unpermitted dispensaries.

While the regulations adopted by the City Council in 2008 sought to limit the sale of medical marijuana to Laguna Woods residents, that provision was subsequently removed from the regulatory ordinance in the interest of constitutionality. The City Attorney advises that it remains unadvisable to consider such a territorial limit.

D. Testing Availability and Protocols

At the meeting on September 10, 2015, a concern was raised about the dispensing of medical marijuana products whose potency and purity is unknown to the patient. Staff conducted preliminary research of the types of testing commercially available, to see if it would make sense to require such testing as a part of potentially revised City regulations. It appears that such testing includes the following:

1. Potency Testing

Potency testing informs patients about the concentration of active cannabinoids. Testing for THC, as well as other chemical components, is available, which medical users claim helps direct appropriate dosage for appropriate symptoms.

2. Pesticide Testing

Pesticides are used in both indoor and outdoor growing operations. Pesticide testing permits identification of both the types and levels of pesticides, to test insecticide or fungicide constituents that may harm health.

3. Microbiological Screening

The climate conditions that foster the cultivation of cannabis can also germinate bacteria and fungi. Microbiological screening can be performed to identify yeasts, molds, coliforms, and bacteria, such as salmonella.

4. Terpene Analysis

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Different strains of cannabis have different aromatic compounds that are said to produce different physical effects. Terpene analysis allows for characterization to distinguish various strains, said to be used for treatment of various symptoms.

5. Residual Solvent Testing

Solvents are sometimes used in preparation of concentrated forms of cannabis (wax, hash or other oils, etc.), where after the concentrated product is produced, solvents (acetone, hexane, butane, propane, isopropanol, and others) are removed using heat or vacuum processes. Residual solvent testing can detect both the quality of solvents used and the effectiveness of the solvent removal efforts.

To date, staff has not generated information about the costs of those various tests, or analyzed what impact they might have on the accessibility of medical marijuana to patients. One concern staff has with potentially requiring medical marijuana product testing is that it would effectively dictate a violation of federal law (i.e., transport of medical marijuana for ultimate use). Securing the benefits of laboratory testing therefore poses legal risk[3]. That risk might be shielded, somewhat, with potential passage and implementation of the Medical Marijuana Regulation and Safety Act, which specifically requires the establishment of quality assurance testing protocols prior to transporting a product. Unless and until that State law becomes effective, however, any regulations requiring laboratory testing would entail some risk.

E. Potential Actions

As staff advised on September 10, 2015, the City's legally safest course, and the one followed by most Orange County cities, would be to prohibit medical marijuana dispensaries. In the City's case, that would take the form of a repeal of the medical marijuana dispensary regulatory ordinance. Such bans have been authorized by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729. Repealing the regulatory ordinance would place the City on well-defined legal ground, help insulate against the adverse secondary effects that the City is advised such uses may generate, and allow the City to monitor the development of State law, and developing federal enforcement policies, with a minimum of legal risk. If this is the City Council's direction, staff requests that the existing moratorium be extended to allow for consideration and

[3] This was one of the factors that led to the prior invalidation of the Long Beach medical marijuana dispensary regulations. The court found that by mandating laboratory testing, the city effectively compelled transportation of marijuana products, in contravention of federal law.

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adoption of an appropriate ordinance (Attachment F). The operation of medical marijuana delivery services and personal cultivation for use as provided for in the Compassionate Use Act would not be affected by such a prohibition; only physical dispensaries – none of which currently exist – would be prohibited.

If it is the City Council's preference to continue to maintain a regulatory approach, staff believes that significant additional study is still required. That study would be consistent with the pursuit of regulations that seek to mitigate local concerns and potential adverse secondary effects, with an eye toward protecting public health, safety, and welfare, as well as quality of life and patient access. In this scenario, staff recommends that the existing moratorium be extended for a period of 10 months and 15 days (Attachment G). The moratorium could be shortened or lifted in advance of that date, should the additional study be completed and regulations adopted by the City Council. Such moratorium extension could be accompanied by direction to staff to undertake the following actions, all of which are recommended:

1. Review and thorough analysis of the provisions of the California Medical Marijuana Regulation and Safety Act, if enacted, including monitoring the activities of the departments of Consumer Affairs, Food and Agriculture, Pesticide Regulation, and Public Health, as they develop a more comprehensive statewide scheme for medical marijuana licensing, permitting, and control.

2. Analysis of traffic and parking for operating, permitted medical marijuana dispensaries, to help assess accessibility, parking demand, and traffic flow characteristics, to help staff determine what land use designations, zoning districts, and surrounding uses, would most compatibly allow medical marijuana dispensaries to integrate with the City's existing uses.

3. Review of the zoning designations in which existing permitting jurisdictions permit medical marijuana dispensaries, and their distance requirements from potentially sensitive uses.

4. Gathering of information on the availability and cost of laboratory services for testing the potency and purity of medical marijuana products, and the feasibility, desirability, and effectiveness of limiting permitted medical marijuana dispensaries to the sale of certified or otherwise tested products.

5. Monitoring of developments in federal enforcement practices on medical marijuana dispensaries operating under color of state law.

Previous Meeting

6. Investigation of the operating hours of medical marijuana dispensaries in other jurisdictions, along with similar medically-related businesses (including pharmacy counters), to help strike a balance between convenient access to medical marijuana and the prevention of sales to minors or recreational users.

7. Completion of a deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly.

8. Negotiation of processes and standards for in-depth background checks of potential medical marijuana dispensaries with the Orange County Sheriff's Department and/or potential private investigative services.

9. Assessment and analysis of the City's ability to implement a business license tax or other charge on medical marijuana dispensaries, at least in part to help fund oversight and enforcement efforts, and the procedural requirements (including potential Proposition 218 voter approval) for same.

10. Development of regulations and fees for City Council consideration, informed by the preceding studies and investigations, and intended to adequately mitigate potential adverse secondary effects resultant of the primarily cash basis of medical marijuana dispensaries, traffic and parking demand, and other public health, safety, and welfare concerns, while preserving quality of life and patient access. (The City Council would be under no obligation to adopt permitting regulations.)

Environmental Review

The adoption of either proposed ordinance and extension of the moratorium is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Fiscal Impact

Prohibition of medical marijuana dispensaries could be accommodated in the City's existing budget.

It is estimated that the development of regulations for City Council consideration, including all of the associated actions recommended by staff, would require one-time expenditures of $35,090 for planning, deployment, legal, and fee study-related

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services over the next 10 months and 15 days. If that is the action taken, a resolution adopting an amended budget would be brought before the City Council at a future meeting. The cost of a potential ballot measure related to taxation of dispensaries has not yet been calculated.

Attachments: A – Agenda Report from September 10, 2015
B – Orange County Sheriff's Department Letter
C – Urgency Ordinance, Ordinance No. 15-03
D – United States Attorney's Office "Cole Memorandum"
E – Department of Treasury, Financial Crimes Enforcement Network Memorandum
F – Proposed Ordinance for Pursuit of Prohibition
G – Proposed Ordinance for Further Study and Analysis

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager
David B. Cosgrove, City Attorney

FOR: August 17, 2016 Regular Meeting

SUBJECT: Medical Marijuana Dispensaries Ordinance

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Take one of the following actions:

   A. Adopt an ordinance – read by title with further reading waived – entitled:

   AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA

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GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF PURSUING PROHIBITION THEREOF

OR

B. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF FURTHER STUDY AND ANALYSIS

Background

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

At a special meeting on September 10, 2015, the City Council adopted an urgency ordinance that imposed a moratorium on the establishment, location, or operation of medical marijuana dispensaries for a 45-day period (September 10, 2015 through October 24, 2015). Then, at a special meeting on October 13, 2015, the City Council adopted an ordinance extending the moratorium through September 8, 2016. During the moratorium, all operation of Section 13.26.025 of the Laguna Woods Municipal Code is suspended and the City may not issue regulatory permits in furtherance of the establishment, location, or operation of a medical marijuana dispensary within the City. The agenda reports from the meetings on September 10, 2015 and October 13, 2015, as well as the ordinance adopted on October 13, 2015, are included as attachments A, B, and C, respectively.

For reasons, and in light of findings, set forth in the ordinances, and in accordance with applicable sections of State law, the moratorium was deemed necessary for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the City is considering or intends to study within a reasonable time.

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As described in the ordinances, the moratorium is intended to provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

Discussion

Since September 10, 2015, staff has undertaken a number of investigations related to medical marijuana dispensaries, including reviewing federal law and enforcement policies, examining the Medical Marijuana Regulation and Safety Act, discussing medical marijuana dispensary experiences and policies with a number of other cities, meeting with the Orange County Sheriff's Department, meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs), and conducting preliminary research on the availability and types of testing of marijuana products for potential use in medicinal contexts. Earlier results of many of those investigations were reported in the October 13, 2015 agenda report.

Since October 13, 2015, staff has continued the investigations requested by the City Council with a particular focus on analyzing pending and potential changes in State law related to medical marijuana, as well as public safety and land use implications related to any prospective future establishment, location, or operation of medical marijuana dispensaries within Laguna Woods. A summary of federal law, and the results of staff's investigations follow.

A. Federal Law

Without question, marijuana is, and remains, illegal under federal law. It remains classified as a Schedule 1 controlled substance under the Controlled Substances Act (21 USC §§ 801 *et seq*). As indicated in the agenda reports dated September 10, 2015 and October 13, 2015, the California Supreme Court has held that bans on medical marijuana dispensaries are permissible under a city's inherent zoning power, but it has, thus far, declined to reach the issue whether permitting such dispensaries would violate the Controlled Substances Act or California Government Code Section 37100[1].

[1] California Government Code Section 37100, which relates broadly to cities' legislative powers, provides: "The legislative body may pass ordinances not in conflict with the Constitution and

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Notwithstanding federal illegality, some 20 states and the District of Columbia have legalized or decriminalized certain marijuana-related activity. Such actions have been a contributing factor in the promulgation of revised federal enforcement policies. Specifically, on August 29, 2013, Deputy Attorney General James J. Cole issued a directive to all United States Attorneys entitled *Guidance Regarding Marijuana Enforcement*. The Cole Memorandum reaffirms the federal illegality of marijuana, but also indicates that the United States Department of Justice is committed to using its limited investigative and prosecutorial resources to address what it has determined to be "priority threats," including:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or illegal activity;
- Preventing violence and use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public land; and
- Preventing marijuana possession or use on federal property.

The aforementioned priorities were further referenced in a memorandum from the United States Department of Treasury, Financial Crimes Enforcement Network, dated February 14, 2014. The Treasury Memorandum provides guidance to various financial institutions that might deal with medical marijuana dispensaries operating under state law, and requires different forms of "suspicious activity reports" depending upon individual facts and circumstances relating to the individual medical marijuana dispensary customers of financial institutions.

From those memoranda, one might infer that the current risk of federal enforcement against both medical marijuana dispensaries operating consistent with state law,

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laws of the State or the United States." The City Council may, therefore, not pass an ordinance directly in conflict with either federal or State law.

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and cities that adopt enabling regulations, is diminished, particularly if local regulatory efforts are directed at avoiding the priority federal threats identified above. It should be noted, however, that the aforementioned limitations on federal enforcement do not change congressional legislative policy under the Controlled Substances Act, nor do they confer immunity on any party from any federal criminal prosecution or forfeiture action. Further, federal enforcement policies may change at any time, potentially with the impending shift in presidential administrations. Still, it can reasonably be inferred that the formal and public definition of enforcement priorities for medical marijuana-related activities undertaken pursuant to state law signals at least a present federal intention to eschew strict enforcement, perhaps to see how state law and experiences with medical marijuana dispensing and usage develop.

In fall 2015, staff contacted the local United States Attorney's Office to inquire whether the Cole Memorandum was still in effect, and to solicit any guidance federal enforcement authorities had with respect to medical marijuana dispensaries. The United States Attorney's Office confirmed that the Cole Memorandum is still applicable, but (not surprisingly) declined to provide further guidance.

B. State Law

Staff's agenda report dated September 10, 2015 provided background regarding the California Compassionate Use Act (Health and Safety Code Section 11362.5) and the Medical Marijuana Program (Health and Safety Code Section 11362.7). A major reworking of the regulatory scheme enacted by those statutes is underway as a result of the Medical Marijuana Regulation and Safety Act ("MMRSA").

The MMRSA actually consists of three different pieces of legislation, Assembly Bill 243 (Wood), Assembly Bill 266 (Bonta), and Senate Bill 643 (McGuire). Each of the bills was chaptered into law and supported by the League of California Cities, California Police Chiefs Association, and Cannabis Industry Association. The California State Sheriffs' Association took a neutral position.

The MMRSA provides for comprehensive state licensing and regulation of medical marijuana cultivation, transportation, and distribution. It places the Department of Food and Agriculture in charge of licensing indoor and outdoor cultivation sites, mandates the Department of Pesticide Regulation to develop pesticide standards for cultivation, and requires the Department of Public Health to develop standards for the production and labeling of edible products.

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The MMRSA also creates a Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. It contemplates a dual licensing system, with the State issuing licenses and local governments issuing permits for medical marijuana dispensaries, beginning in 2018. It requires the Department of Consumer Affairs to license dispensaries, distributors, and transport entities dealing with medical marijuana, and provides restrictions on holding more than one such license in the medical marijuana cultivation and distribution chain. It also enacts medical marijuana testing standards and ties the validity of state licenses to local permits (i.e., a state license becomes invalid if a local permit is denied or revoked). Under the MMRSA, local governments retain the right to choose whether to permit or prohibit medical marijuana dispensaries.

The MMRSA is a game-changer for California law. It provides a comprehensive state licensing and oversight authority for medical marijuana, from grower to patient. Regulations include uniform requirements related to security, health, and safety, as well as quality assurance and testing protocols. It also specifically authorizes local governments to regulate medical marijuana dispensaries, including the ability to charge taxes and fees. Taxes remain subject to voter-approval.

In many respects, for local governments favoring allowance of medical marijuana dispensaries, the systems that will be established under the MMRSA take much of the guesswork out of how to tailor local regulations to comply with State law. Those systems offer a defined regulatory framework within which local regulations and revenue measures are specifically contemplated and authorized. With current federal enforcement policies drawing heavily on whether local medical marijuana activities comply with state law, those systems also afford some additional predictability on exposure under federal law.

That being said, there is still much work to be done at the State level to implement the MMRSA. In its "Overview of the Governor's Proposals to Implement the Medical Marijuana Regulation and Safety Act" dated February 18, 2016 (Attachment D), the State Legislative Analyst's Office candidly admitted:

> "The scope and complexity of new state-level activities required by the act, however, are significant. Undertaking such activities requires considerable coordination among agencies and affects multiple areas of statewide importance—including public health, public safety, and environmental protection. Moreover, there remains uncertainty regarding the ultimate size of the regulated medical marijuana industry and other unknown factors, such as

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whether voters will opt to legalize recreational marijuana in the coming years. Given these potential challenges and uncertainties, we believe close monitoring over the status, pace, and effectiveness of MMRSA implementation will be an important task for the Legislature in the coming years."

Obviously, the "important task" the Legislative Analyst's Office identified for the Legislature is equally (or more) important for local entities such as the City, who are on the front line not only of the implementation of the State regulatory scheme, but also the land use and financial impacts of this emerging industry. The City still does not have a complete picture of how the State regulatory structure will look, or operate.

C. Proposition 64 (Control, Regulate, and Tax Adult Use of Marijuana Act)

On June 30, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act qualified as a statewide ballot measure for the November 8, 2016 General Election. It was later designated Proposition 64 and is described as follows:

"Legalizes marijuana and hemp under state law. Designates state agencies to license and regulate marijuana industry. Imposes state excise tax on retail sales of marijuana equal to 15% of sales price, and state cultivation taxes on marijuana of $9.25 per ounce of flowers and $2.75 per ounce of leaves. **Exempts medical marijuana from some taxation.** Establishes packaging, labeling, advertising, and marketing standards and restrictions for marijuana products. Allows local regulation and taxation of marijuana. Prohibits marketing and advertising marijuana to minors. Authorizes resentencing and destruction of records for prior marijuana convictions. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Net reduced costs ranging from tens of millions of dollars to potentially exceeding $100 million annually to state and local governments related to enforcing certain marijuana-related offenses, handling the related criminal cases in the court system, and incarcerating and supervising certain marijuana offenders. Net additional state and local tax revenues potentially ranging from the high hundreds of millions of dollars to over $1 billion annually related to the production and sale of marijuana. Most of these funds would be required to be spent for specific purposes such as substance use disorder education, prevention, and treatment." (California Secretary of State)

While Proposition 64 relates primarily to the legalization of marijuana for adults for non-medicinal purposes, its passage would also newly exempt medical marijuana from sales and use tax. In that scenario, other than a nominal amount of property tax, the City's only new sources of revenue to offset new costs associated with providing law enforcement and other City services for or as a result of prospective medical marijuana dispensaries, would be: 1) regulatory fees, 2) a voter-approved tax, and/or 3) individual development agreements with applicants.

Staff does not believe that the City has adequate financial means to provide any level of reasonable assurance that the costs associated with medical marijuana dispensaries could be accommodated within the City's budget, absent some additional level of taxation or other financial arrangement. The passage of Proposition 64 would have a material impact on staff's analysis of the financial viability of potential medical marijuana dispensary regulations. It is a present unknown element that inhibits staff's ability to offer a cogent, strategic, and long-term plan for the role of medical marijuana in the City's overall land uses. Staff, therefore, recommends that the City Council refrain from committing the City to any specific affirmative action prior to the time that the outcome of the statewide vote on Proposition 64 is known.

D. Law Enforcement Deployment Study

One of the studies requested by the City Council at the meeting on October 13, 2015, was a "deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly." The deployment study will, in many ways, be a foundational document for the other studies requested by the City Council, as well as the potential development of medical marijuana dispensary regulations. In light of the recent, significant increases in the City's law enforcement costs, which were driven, in large part, by an overextension of locally assigned law enforcement personnel, staff believes that it is imperative to consider carefully the availability of deputies to handle a potentially increased call volume, as well as the fiscal ramifications thereof. A reemergence of equity concerns on the part of the surrounding cities that would be required to provide law enforcement personnel to augment the City's assigned personnel, if unavailable or insufficient, could have dramatic and deeply impactful fiscal consequences.

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The City's deployment of law enforcement personnel was modified effective July 1, 2015, to include an additional patrol shift and two additional full-time deputies. That deployment schedule was not fully implemented until September 2015, while the Orange County Sheriff's Department undertook a recruitment to fill the new positions. Accordingly, the City was not able to begin the deployment study until a sufficient amount of time had passed to generate data adequate to analyze under the modified deployment schedule. In July 2016, the City awarded a contract to the Center for Public Safety Management ("CPSM") to complete a deployment study using data from September 2015 through June 2016 (10 months).

CPSM is a highly qualified, independent consultant. CPSM is the exclusive provider of public safety technical assistance for the International City/County Management Association and has conducted more than 240 law enforcement studies for jurisdictions throughout the country, ranging in size from much smaller than Laguna Woods to as large as Indianapolis, Indiana. Other California clients have included the cities of Alameda, Carlsbad, Hermosa Beach, Santa Ana, and Santa Clara. The deployment study is scheduled for completion in November 2016.

E. Traffic and Parking Analysis

Another of the studies requested by the City Council at the meeting on October 13, 2015, was an "analysis of traffic and parking for operating, permitted medical marijuana dispensaries, to help assess accessibility, parking demand, and traffic flow characteristics, to help staff determine what land use designations, zoning districts, and surrounding uses, would most compatibly allow medical marijuana dispensaries to integrate with the City's existing uses." Staff has gathered a variety of information related to traffic and parking, and has also crafted a scope of work for parking surveys at Orange County-based medical marijuana dispensaries. Parking surveys are being conducted by Michael Baker International, a planning and engineering firm.

Staff anticipates that the parking surveys will be complete by the end of October 2016. This process was slowed by complications in obtaining permission to survey parking conditions at medical marijuana dispensaries operating within the City of San Diego. Staff had originally pursued surveying locations within the City of San Diego, largely because San Diego has more established, lawfully permitted medical marijuana dispensaries than currently exist in Orange County. (The first permitted medical marijuana dispensary opened in San Diego in March 2015, as opposed to August 2015 in the City of Santa Ana.) Unfortunately, the logistics of a

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shared effort with San Diego did not come to fruition, and ultimately, staff chose to conduct the parking surveys in Santa Ana, at lawfully permitted medical marijuana dispensaries that have been operational for at least 10 months.

F. Zoning and Distance Requirements

The City Council requested that staff review "zoning designations in which existing permitting jurisdictions permit medical marijuana dispensaries, and their distance requirements from potentially sensitive uses." Staff has substantially completed that review and has preliminarily determined that the Community Commercial district ("CC") would most appropriately accommodate medical marijuana dispensaries, given the nature of the operation and high level of anticipated demand for lawfully permitted medical marijuana dispensaries in South Orange County. The CC district is the largest and highest intensity non-residential district. This approach would be consistent with the approach taken in the City's existing ordinance.

The MMRSA requires that medical marijuana dispensaries be located "beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code." For the purpose of that requirement, the term "school" means "any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes" (Health and Safety Code Section 11362.768(h)).

The MMRSA distance requirement is substantially less restrictive than the City's current ordinance, which prohibits medical marijuana dispensaries within 1,000 feet of another medical marijuana dispensary, any school, daycare, nursery, playground, or property zoned planned, or otherwise designated for such use, or any youth-oriented establishment. Staff has not completed its review of distance requirements from all potentially sensitive uses, but has preliminarily determined that deference to the State's standard for distance requirements from schools would be acceptable, in the absence of compelling evidence that an additional 400 feet is necessary.

G. Other Studies and Activities

The City Council has also requested that staff investigate "the operating hours of medical marijuana dispensaries in other jurisdictions, along with similar medically-

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related businesses (including pharmacy counters), to help strike a balance between convenient access to medical marijuana and the prevention of sales to minors or recreational users." Staff has surveyed medical marijuana dispensaries operating in the City of Santa Ana, as well as pharmacies in and around Laguna Woods, for their regular hours of operation, and has secured preliminary information on this topic. In isolation, however, this information is only partially helpful. The results of this survey still have to be compared and evaluated in light of the findings of the Law Enforcement Deployment Study, to place operations hours within the context of probable requests for police services.

Staff also met with a representative from HdL's Medical Marijuana Management Program to discuss revenue implications, fiscal accountability, the calculation and establishment of regulatory fees, and taxation issues related to medical marijuana dispensaries. Staff has had several similar conversations with staff from Clear Source Financial Consulting, particularly with respect to regulatory cost recovery.

H. Potential Actions

1. Potential Prohibition.

As staff advised on September 10, 2015, and again on October 13, 2015, the City's legally safest course, and the one followed by most Orange County cities, would be to prohibit medical marijuana dispensaries. In the City's case, that would take the form of a repeal of the medical marijuana dispensary regulatory ordinance. Such bans have been authorized by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729. They are also specifically authorized under the MMRSA. Repealing the regulatory ordinance would place the City on well-defined legal ground, help insulate against the adverse secondary effects that the City is advised such uses may generate, and allow the City to monitor the development of State law, and developing federal enforcement policies, with a minimum of legal risk. If this is the City Council's direction, staff requests that the moratorium be extended to allow for consideration and adoption of an appropriate ordinance (Attachment E).

It is important to note that the operation of medical marijuana delivery services and personal cultivation for use as provided for in the Compassionate Use Act would not be affected by such a prohibition. Only physical medical marijuana dispensaries – none of which currently exist – would be prohibited.

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2. Continued Regulatory Approach.

If it is the City Council's preference to continue to maintain a regulatory approach, staff believes that additional study is still required, and that the potential development of regulations must logically follow both the evolution of the State's regulatory mechanisms under the MMRSA, and the outcome of voter action on Proposition 64. The regulatory issues, and the City's ability to respond to medical marijuana dispensing operations, will also be heavily informed by the outcome of the City's Law Enforcement Deployment Study. The additional studies are more specifically outlined in Resolution No. 15-05 and supplemented by discussion in this agenda report. Such action would be consistent with the pursuit of regulations that seek to mitigate local concerns and potential adverse secondary effects, with an eye toward protecting public health, safety, and welfare, as well as quality of life and patient access.

In this scenario, staff recommends that the existing moratorium be extended for approximately six months, through March 17, 2017 (Attachment F). While State law permits a moratorium extension of up to another year, staff believes that six months would effectively allow for a four-month period following the November 8, 2016 election for the City Council to either adopt regulations or prohibit medical marijuana dispensaries. Pursuant to State law, the moratorium could be shortened or lifted in advance of that date, but it could not be extended again. No extension of the moratorium would obligate the City Council to adopt permitting regulations.

Environmental Review

The adoption of either proposed ordinance and extension of the moratorium is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Fiscal Impact

Prohibition of medical marijuana dispensaries could be accommodated in the City's existing budget.

On October 28, 2015, the City Council appropriated $35,090 for medical marijuana-related studies and analysis services. If the City Council chooses to extend the moratorium for further study and analysis, additional funds may be

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required. If that were the case, a resolution adopting an amended budget would be agendized for City Council consideration at a future meeting.

Attachments: A – Agenda Report from September 10, 2015
B – Agenda Report from October 13, 2015
C – Ordinance No. 15-05
D – State MMRSA Implementation Status Document
E – Proposed Ordinance for Pursuit of Prohibition
F – Proposed Ordinance for Further Study and Analysis

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ORDINANCE NO. 16-02

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF FURTHER STUDY AND ANALYSIS

WHEREAS, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City's community commercial (CC) and professional and administrative office (PA) zoning districts; and

WHEREAS, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

WHEREAS, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City's regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City's Police Chief (provided under contract with the Orange County Sheriff's Department) to approve components of the applicant's "security plan", make a determination as to the "acceptability" of the applicant's background, and make a determination as to the "suitability" of the proposed location of the dispensary; and

WHEREAS, in a letter dated August 24, 2015, the Orange County Sheriff's Department advised the City that it does not believe that the tasks assigned to it under the City's medical marijuana dispensary permitting ordinance are included within the City's law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

WHEREAS, the Orange County Sheriff Department's letter also advised that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

WHEREAS, in 2013, the California Supreme Court ruled in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* that cities can prohibit medical marijuana dispensaries in their jurisdictions as part of their "broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders" (56 Cal.4th 729, 738); and

WHEREAS, the California Supreme Court's decision in *City of Riverside* did not address the extent to which State and Federal law "forbid[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would 'conflict with the ... laws of ... the United States'" (*Id.*, at 762, fn. 14); and

WHEREAS, to date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in its jurisdiction; and

WHEREAS, in October of 2015, the Governor of California signed three bills into law (collectively titled the "Medical Marijuana Regulation and Safety Act" or the "MMRSA") that substantially reworked existing State laws relating to medical marijuana (i.e., the Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program [Health and Safety Code Section 11362.7]); and

WHEREAS, although the MMRSA took effect January 1, 2016, the State anticipates it will need until January of 2018 to set up the necessary agencies, information systems, and regulations to implement and administer many aspects of the MMRSA (such as issuing State licenses for dispensary and cultivation operations); and

WHEREAS, on June 30, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act (later designated as "Proposition 64") qualified as a statewide ballot measure for the November 8, 2016 General Statewide Election, which primarily relates to the statewide legalization of marijuana for adults for non-medicinal (*i.e.*, recreational) purposes; and

WHEREAS, if adopted by the voters, Proposition 64 will also exempt medical marijuana from sales and use tax; and

WHEREAS, the City is in the process of a broad analysis and updating of its General Plan, zoning, and land use regulations, which has included adoption of a Safety Element, a Climate Adaptation Plan, a Conservation Element, and a Building

and Planning Services Fee Schedule. In addition, City Council has included in the Fiscal Year 2015-16 Budget and Work Plan a comprehensive update of the General Plan and Commercial Zoning Code Uses and Parking Standards Update; and assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City, or at all, is timely given the revisions and analysis the City is undertaking with respect to other land uses in its jurisdiction; and

WHEREAS, in light of the foregoing, among other issues, on September 10, 2015, the City Council adopted Ordinance No. 15-03 as an urgency ordinance imposing a 45-day moratorium to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study various issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods; and

WHEREAS, on October 13, 2015, the City Council adopted Ordinance No 15-05 extending the moratorium through September 8, 2016; and

WHEREAS, in Ordinances Nos. 15-03 and 15-05, the City Council found and declared there is a current and immediate threat to the public health, safety, or welfare that calls for a temporary moratorium on any allowance or permitting of medical marijuana dispensaries within the City's jurisdiction; and

WHEREAS, the moratorium established by adoption of Ordinances Nos. 15-03 and 15-05 are set to expire on their own terms on September 8, 2016; and

WHEREAS, Government Code Section 65858 authorizes the extension of an urgency ordinance by adoption, after a public hearing, of another urgency ordinance to prohibit uses of land which may conflict with a contemplated zoning proposal which the legislative body, planning commission, or planning department is considering or studying, or intends to study, within a reasonable time; and

WHEREAS, on August 17, 2016, the City Council held a duly noticed public hearing concerning an extension of the moratorium established by Ordinances Nos. 15-03 and 15-05; and

WHEREAS, on August 17, 2016, the City Council received and considered a report prepared by staff, and as required pursuant to Government Code Section 656858(d), describing the measures that have been taken and progress made to date

to alleviate the conditions which led to the imposition of the moratorium by adoption of Ordinances Nos. 15-03 and 15-05; and

WHEREAS, as set forth in the report prepared by staff, which was considered by the City Council, during the period since the adoption of Ordinances Nos. 15-03 and 15-05, City staff has undertaken a number of investigations related to medical marijuana dispensaries, including reviewing federal law and enforcement policies, examining California's "Medical Marijuana Regulation & Safety Act," examining Proposition 64, discussing medical marijuana dispensary experiences and policies with a number of other cities, meeting with the Orange County Sheriff's Department, meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs), conducting preliminary research on the availability and types of testing of marijuana products for potential use in medicinal contexts, commissioning a deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly (the "Law Enforcement Deployment Study"), commissioning traffic and parking analysis, and others; and

WHEREAS, staff needs additional time to complete the Law Enforcement Deployment Study and investigate many other issues relating to the potential establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods including, but not limited to, the compatibility of dispensaries relative to zoning districts, financial challenges that could be posed by increased enforcement activity, and traffic and parking demand; and

WHEREAS, after consideration of all of the information, evidence, and testimony presented at the public hearing held on August 17, 2016, the City Council finds and declares that the current and immediate threat to the public health, safety, or welfare described in the findings adopted pursuant to Ordinances Nos. 15-03 and 15-05 still exist and it is therefore necessary to extend the moratorium as additional time is needed to address the current and immediate threat that prompted the moratorium adopted by Ordinances Nos. 15-03 and 15-05 and to complete the tasks set forth in the report prepared by staff; and

WHEREAS, extension of the moratorium will allow City staff to effectively study, and City staff intends to study in the near future and within a reasonable time, the issues set forth in Ordinances Nos. 15-03 and 15-05 and the report prepared by staff.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In adopting this Ordinance, the City Council finds and determines that each of the recitals to this Ordinance and Ordinances Nos. 15-03 and 15-05 are true and correct, are adopted herein as findings, and that the adoption of this Ordinance is necessary to protect the public safety, health and welfare, as those terms are defined in Government Code Sections 36937(b) and 65858(a) in at least the following respects:

A. In 1996, California voters approved Proposition 215 (Health and Safety Code section 11362.5, et. seq.), entitled "The Compassionate Use Act of 1996" ("Act"), to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances.

B. In 2003, the State legislature enacted Senate Bill 420 to clarify the provisions of the Act and empower local governments to adopt and enforce regulations consistent with Senate Bill 420 in this field.

C. In 2008, the City adopted a permitting process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which allows medical marijuana dispensaries in the City's community commercial (CC) and professional and administrative office (PA) zoning districts, subject to the issuance of a regulatory permit.

D. Under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City cannot issue a permit to operate a medical marijuana dispensary unless the Orange County Sheriff's Department, acting as the City's Police Chief, has approved components of the applicant's "security plan", made a determination as to the "acceptability" of the applicant's background, and made a determination as to the "suitability" of the proposed location of the dispensary. In a letter dated August 24, 2015, the Orange County Sheriff's Department advised the City that it "will not review or approve any security plan of a dispensary, and will not determine the 'acceptability' of any applicant and the 'suitability' of the proposed location."

E. The Orange County Sheriff Department's letter also indicated that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities.

F. While the City has made a conscientious effort to plan for specific uses within all zone districts and to anticipate conflicts between competing land uses in order to protect the public's health, safety and welfare, the City Council is concerned that the City's current permitting process for medical marijuana dispensaries may not be effective without the contemplated participation of the Orange County Sheriff's Department, and may not provide sufficient development regulations for the establishment, location, or operation of medical marijuana dispensaries.

G. In 2013, the California Supreme Court ruled that cities and counties can ***prohibit*** medical marijuana dispensaries in their jurisdictions as part of their "broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders." (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738.)

H. The California Supreme Court did not address the extent to which State and Federal law may "*forbid*[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would 'conflict with the ... laws of ... the United States.'" (*City of Riverside*, *supra*, at 762, fn. 14.)

I. To date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in their jurisdiction.

J. Effective January 1, 2016, the Medical Marijuana Regulation and Safety Act substantially reworks existing State laws relating to medical marijuana (i.e., the Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program [Health and Safety Code Section 11362.7]).

K. The State anticipates it will need until January of 2018 to set up the necessary agencies, information systems, and regulations to implement and administer many aspects of the MMRSA (such as issuing State licenses for dispensary and cultivation operations).

L. If adopted by the voters at the General Statewide Election on November 8, 2016, Proposition 64 will, among other things, legalize non-medical (i.e., recreational) marijuana for adults for under State law and exempt and exempt medical marijuana from sales and use tax.

M. The City Council finds that allowing the establishment, location, and operation of medical marijuana dispensaries without the ability to implement existing security

safeguards in the Laguna Woods Municipal Code, and in the face of assertions that permitting such facilities could result in the creation of adverse secondary effects.

N. Among other issues, City staff needs additional time to continue to study the issues identified in Ordinances Nos. 15-03 and 15-05 and the report prepared by staff, which include without limitation:

1. Review and thorough analysis of the provisions of the California Medical Marijuana Regulation and Safety Act, including monitoring the activities of the departments of Consumer Affairs, Food and Agriculture, Pesticide Regulation, and Public Health, as they develop a more comprehensive statewide scheme for medical marijuana licensing, permitting, and control.

2. Review and thorough analysis of the provisions of the proposed Proposition 64, including analyzing whether and, if so, how the City can generate revenue to offset new costs associated with providing law enforcement and other City services for or as a result of prospective established medical marijuana dispensaries if it is not permitted to tax the sale of medical marijuana.

3. Analysis of traffic and parking for operating, permitted medical marijuana dispensaries, to help assess accessibility, parking demand, and traffic flow characteristics, to help staff determine what land use designations, zoning districts, and surrounding uses, would most compatibly allow medical marijuana dispensaries to integrate with the City's existing uses.

4. Review of the zoning designations in which existing permitting jurisdictions permit medical marijuana dispensaries, and their distance requirements from potentially sensitive uses.

5. Gathering of information on the availability and cost of laboratory services for testing the potency and purity of medical marijuana products, and the feasibility, desirability, and effectiveness of limiting permitted medical marijuana dispensaries to the sale of certified or otherwise tested products.

6. Monitoring of developments in federal enforcement practices on medical marijuana dispensaries operating under color of state law.

7. Investigation of the operating hours of medical marijuana dispensaries in other jurisdictions, along with similar medically-related businesses (including pharmacy counters), to help strike a balance between convenient access to medical marijuana and the prevention of sales to minors or recreational users.

8. Completion of the Law Enforcement Deployment Study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly.

9. Negotiation of processes and standards for in-depth background checks of potential medical marijuana dispensaries with the Orange County Sheriff's Department and/or potential private investigative services.

10. Assessment and analysis of the City's ability to implement a business license tax or other charge on medical marijuana dispensaries, at least in part to help fund oversight and enforcement efforts, and the procedural requirements (including potential Proposition 218 voter approval) for same.

11. Development of regulations and fees for City Council consideration, informed by the preceding studies and investigations, and intended to adequately mitigate potential adverse secondary effects resultant of the primarily cash basis of medical marijuana dispensaries, traffic and parking demand, and other public health, safety, and welfare concerns, while preserving quality of life and patient access.

O. In order to allow the City consider, study, and adopt any appropriate regulations for medical marijuana dispensaries, it is necessary to continue to suspend the operation and effectiveness of Section 13.26.025 of the Laguna Woods Municipal Code, and to continue to temporarily prohibit the establishment, location, and operation of medical marijuana dispensaries within the City's jurisdiction.

P. Extending the moratorium will provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

SECTION 2. The moratorium established by Ordinance No. 15-05 expires on September 8, 2016. Commencing upon the expiration of Ordinance No. 15-05, the moratorium established by Ordinance No. 15-05 is hereby extended and shall continue for a period of the earlier of [A] August 16, 2017, or [B] the effective date of an ordinance adopted by the City Council amending the Zoning Code to address the potential establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods.

SECTION 3. The penalties that are set forth in the Laguna Woods Municipal Code shall apply to violations of the provisions of this Ordinance.

SECTION 4. This Ordinance is declared to be an urgency ordinance by authority conferred on the City Council of the City of Laguna Woods by Government Code sections 36934, 36937, and 65858, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 5. At least ten (10) days prior to the expiration of the moratorium as extended by this Ordinance, staff shall prepare, and the City Council shall consider and receive and file, a written report pursuant to Government Code Section 65858(d) describing the measures taken to alleviate the condition or conditions which led to the adoption of this Ordinance.

SECTION 6. The City Council finds and determines that the adoption of this Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 7. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 8. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED this 17th day of August 2016.

NOEL HATCH, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 16-02** was duly adopted and passed at a regular meeting of the City Council on the 17th day of August 2016 by the following vote to wit:

AYES: COUNCILMEMBERS: Conners, Hack, Hatch, Horne, Moore
NOES: COUNCILMEMBERS: -
ABSENT: COUNCILMEMBERS: -

YOLIE TRIPPY, Deputy City Clerk

The Marijuana Policy Gap and the Path Forward

Lisa N. Sacco, Coordinator
Analyst in Illicit Drugs and Crime Policy

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March 10, 2017

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CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Under federal law, the cultivation, possession, and distribution of marijuana are illegal, except for the purposes of sanctioned research. States, however, have established a range of laws and policies regarding marijuana's medical and recreational use. Most states have deviated from an across-the-board prohibition of marijuana, and it is now more so the rule than the exception that states have laws and policies allowing for some cultivation, sale, distribution, and possession of marijuana—all of which are contrary to the federal Controlled Substances Act (CSA). As of March 2017, nearly 90% of the states, as well as Puerto Rico and the District of Columbia, allow for the *medical use* of marijuana in some capacity. Also, eight states and the District of Columbia now allow for some *recreational use* of marijuana. These developments have spurred a number of questions regarding their potential implications for federal law enforcement activities and for the nation's drug policies as a whole.

Thus far, the federal response to state actions to decriminalize or legalize marijuana largely has been to allow states to implement their own laws on marijuana. The Department of Justice (DOJ) has nonetheless reaffirmed that marijuana growth, possession, and trafficking remain crimes under federal law irrespective of states' positions on marijuana. Rather than targeting individuals for drug use and possession, federal law enforcement has generally focused its counterdrug efforts on criminal networks involved in the drug trade.

While the majority of the American public supports marijuana legalization, some have voiced apprehension over possible negative implications. Opponents' concerns include, but are not limited to, the potential impact of legalization on (1) marijuana use, particularly among youth; (2) road incidents involving marijuana-impaired drivers; (3) marijuana trafficking from states that have legalized it into neighboring states that have not; and (4) U.S. compliance with international treaties. Proponents of legalization have been encouraged by potential outcomes that could result from marijuana legalization, including a new source of tax revenue for states and a decrease in marijuana-related arrests. Many of these potential implications are yet to be fully measured.

Given the current marijuana policy gap between the federal government and many of the states, there are a number of issues that Congress may address. These include, but are not limited to, issues surrounding availability of financial services for marijuana businesses, federal tax treatment, oversight of federal law enforcement, allowance of states to implement medical marijuana laws and involvement of federal health care workers, and consideration of marijuana as a Schedule I drug under the CSA. The marijuana policy gap has widened each year for some time. It has only been a few years since states began to legalize recreational marijuana, but over 20 years since they began to legalize medical marijuana. In addressing state-level legalization efforts and considering marijuana's current placement on Schedule I, Congress could take one of several routes. It could elect to take no action, thereby upholding the federal government's current marijuana policy. It may also decide that the CSA must be enforced in states and not allow them to implement conflicting laws on marijuana. Alternatively, Congress could choose to reevaluate marijuana's placement as a Schedule I controlled substance.

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Introduction

Marijuana is the most commonly used illicit drug in the United States.[1] It is a psychoactive drug that generally consists of leaves and flowers of the cannabis sativa plant. Its history dates back thousands of years, but in the United States, it became popular as a recreational drug in the early 20th century.[2] The THC[3] content of marijuana is dependent on both the variety of the cannabis plant and the part used.[4] Under federal law, cannabis and its derivatives are classified as Schedule I controlled substances—thus prohibiting their possession, cultivation, or distribution—under the Controlled Substances Act (CSA), regardless of its THC content, unless specifically exempted or listed in another schedule (see "Controlled Substances Act").

The percentage of the population 12 and older currently using (past month use of) marijuana has generally increased over the last several years—from 6.9% in 2010 to 8.3% in 2015.[5] The rate of past-month marijuana use among youth (aged 12-17), however, has remained relatively unchanged over this period (7.0%).[6] Youth also generally perceive that obtaining marijuana—if they desire it—is relatively easy.[7] Indeed, marijuana is available throughout the United States; 34% of state and local law enforcement agencies that were surveyed by the Drug Enforcement Administration (DEA) reported an increase in availability over the last year, and 62% reported that availability had remained the same.[8]

This report provides a background on federal marijuana policy and an overview of state trends with respect to marijuana decriminalization and legalization—for both medical and recreational

[1] In 2015, an estimated 22.2 million individuals in the United States aged 12 or older (8.3% of this population) were current (past month) users of marijuana. See Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Results from the 2015 National Survey on Drug Use and Health: Detailed Tables*, September 2016, Tables 1.1A and 1.1B, http://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015.htm. Hereinafter, *Results from 2015 NSDUH*.

[2] David F. Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed. (New York: Oxford University Press, 1999), p. 219.

[3] THC stands for delta-9-tetrahydrocannabinol, the primary psychoactive chemical compound, or cannabinoid, in marijuana.

[4] Industrial hemp is a variety of the cannabis plant that has low THC content and is cultivated for use in the production of a wide range of products. THC levels for hemp are generally less than 1%. For further information about hemp, see CRS Report RL32725, *Hemp as an Agricultural Commodity*, by Renée Johnson. While hemp is mentioned in this report, it largely focuses on marijuana.

[5] For each year from 2010 to 2014, the estimated percentage of the population currently using marijuana was 6.9%, 7.0%, 7.3%, 7.5%, and 8.4% respectively. The difference between each year's estimate (2010 – 2013) and the 2014 estimate (8.4%) is statistically significant at the .05 level. For 2014 to 2015, however, the percentage dropped from 8.4% to 8.3%; this change is not statistically significant at the .05 level. See Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Results from 2015 NSDUH*; and *Results from the 2014 National Survey on Drug Use and Health: Summary of National Findings*, September 2015, p. 6 (hereinafter, *Results from 2014 NSDUH*). Of note, some warn of potential bias in drug usage survey data because of misreporting by respondents. See Beau Kilmer, Jonathan P. Caulkins, and Gregory Midgette, et al., *Before the Grand Opening: Measuring Washington State's Marijuana Market in the Last Year Before Legalized Commercial Sales*, RAND Drug Policy Research Center, 2013.

[6] Results from *2015 NSDUH*, Table 1.2B; and *Results from 2014 NSDUH*.

[7] Nearly half of surveyed youth indicated that marijuana would be "fairly easy" or "very easy" to obtain if desired. *Results from the 2015 NSDUH*, Table 3.1B.

[8] Based on assessments from 1,444 local, state, and tribal law enforcement agencies that responded to the DEA's 2016 National Drug Threat Survey. U.S. Drug Enforcement Administration, *2016 National Drug Threat Assessment Summary*, DEA-DCT-DIR-001-17, November 2016 (hereinafter, *2016 National Drug Threat Assessment Summary*).

uses. It then analyzes relevant issues for federal law enforcement and the implications of state marijuana legalization. The report also outlines a number of related policy questions that Congress may confront, including legalization in the District of Columbia, financial services for marijuana businesses, the medical nature of marijuana, oversight of federal law enforcement, and evaluation of marijuana as a Schedule I drug.

Controlled Substances Act

Marijuana is currently listed as a Schedule I controlled substance under the CSA.[9] This indicates that the federal government has determined that

> (A) The drug or other substance has a high potential for abuse.
>
> (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
>
> (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.[10]

Controlled Substances Act (CSA)

The CSA was enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.[11] It regulates the manufacture, possession, use, importation, and distribution of certain drugs, substances, and precursor chemicals. Under the CSA, there are five schedules under which substances may be classified—Schedule I being the most restrictive. Substances placed onto one of the five schedules are evaluated on

- actual or relative potential for abuse;
- known scientific evidence of pharmacological effects;
- current scientific knowledge of the substance;
- history and current pattern of abuse;
- scope, duration, and significance of abuse;
- risk to public health;
- psychic or physiological dependence liability; and
- whether the substance is an immediate precursor of an already scheduled substance.

U.S. federal drug control policies—specifically those positions relating to marijuana—continue to generate debates among policymakers, law enforcement officials, scholars, and the public. Even before the federal government's move in 1970 to criminalize the manufacture, distribution, dispensation, and possession of marijuana,[12] there were significant discussions over marijuana's place in American society.

Evolution of Public Opinion

Changes in state and local marijuana laws are coupled with a general shift in public attitudes toward the substance. In 1969, 12% of the surveyed population supported legalizing marijuana;

[9] For more information on the CSA, see the text box, "Controlled Substances Act (CSA)."

[10] 21 U.S.C. §812(b)(1).

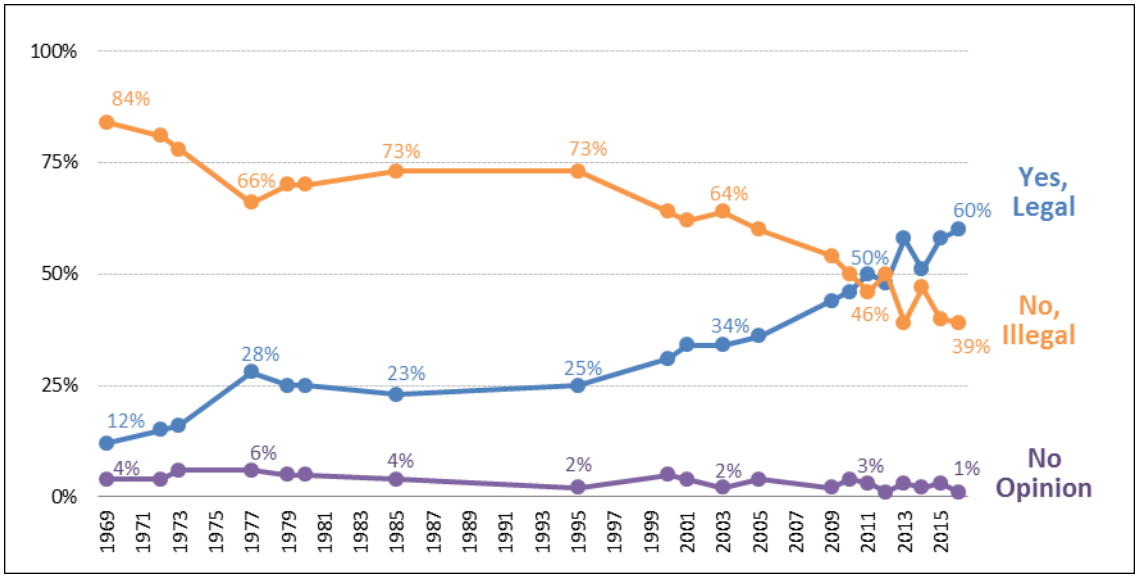
[11] P.L. 91-513; 21 U.S.C. §801 et. seq. For additional information on the CSA, see CRS Report RL34635, *The Controlled Substances Act: Regulatory Requirements*, by Brian T. Yeh; and CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws*, by Brian T. Yeh.

[12] 21 U.S.C. §§812 and 841.

today, 60% of surveyed adults feel that marijuana should be legalized.[13] Support for legalization has more than doubled over the last 20 years. In addition, nearly 60% of respondents indicate that the federal government should not enforce federal marijuana prohibition laws in those states that allow for its use.[14]

Figure 1. Views on Legalization of Marijuana

Percentage of Americans who support or are against legalizing marijuana, 1969-2016



Source: CRS presentation of Gallup data. Gallup News Service, *Gallup Poll Social Series: Crime*, http://www.gallup.com.

Notes: Question: "Do you think marijuana should be made legal or not?" Sample sizes vary from year to year. 2016 data are based on telephone interviews conducted October 5-9, 2016, with a random sample of 1,017 adults aged 18 and older living in the United States.

Marijuana as Medicine

As mentioned, marijuana's placement on Schedule I of the CSA means that it has no currently accepted medical use according to the federal government. Under federal law, marketing a drug as medicine requires approval from the Food and Drug Administration (FDA).[15] While most states have laws allowing for medicinal use of marijuana, the FDA has not approved marijuana, any drug containing marijuana, or any drug containing a plant-derived chemical constituent of marijuana for medicinal use. The FDA has, however, approved two drugs containing synthetic

[13] The poll question is "Do you think marijuana should be made legal or not?" See Art Swift, *Support for Legal Marijuana Use Up to 60% in U.S.*, Gallup, October 19, 2016 (based on poll data from October 2016). For purposes of this question, it does not distinguish between medical and recreational marijuana. Of note, in August 2016, the Pew Research Center found similar levels of support for marijuana legalization among American adults. See Abigail Geiger, *Support for marijuana legalization continues to rise*, Pew Research Center, article based on Aug. 23-Sept. 2 Pew Research Center survey, October 12, 2016, http://www.pewresearch.org.

[14] Pew Research Center for the People & the Press, *In Debate Over Legalizing Marijuana, Disagreement Over Drug's Dangers*, April 14, 2015 (based on poll data from March 2015).

[15] Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. §§301 et seq.). For more information CRS Report R41983, *How FDA Approves Drugs and Regulates Their Safety and Effectiveness*, by Susan Thaul.

THC.[16] In addition, drugs containing plant-derived THC and/or cannabidiol (CBD, a nonpsychoactive chemical component of marijuana) are in the drug development and approval process.[17] See **Appendix A** for further discussion of these drugs.

Individuals use marijuana to treat medical issues such as lack of appetite, nausea, chronic pain, spasticity, anxiety, and other maladies; however, the efficacy of this treatment is unclear from available scientific evidence.[19] While some individuals report (both anecdotally and in scientific studies) benefits and alleviation of symptoms from use of marijuana, reports are inconsistent. Some have argued that the scientific field has been unable to robustly determine the medicinal value and merits of marijuana due to regulatory restrictions on quality, quantity, and use of marijuana in scientific research.[20]

Risks Associated with Marijuana Use

The FDA's eight-factor analysis includes an assessment of risks associated with marijuana use. Marijuana is known to affect the central nervous system, the cardiovascular system, the respiratory system, and the immune system. Its effects may vary according to how it is consumed (e.g., inhaled or ingested), how much of it is consumed, how often it is consumed, and over what time frame it is consumed.

Some of marijuana's most widely recognized effects are among the reasons people use it recreationally: it can reduce inhibition, improve mood, enhance sensory perception, and heighten imagination (among other effects). Some common effects are more problematic: it can cause dizziness, confusion, ataxia (i.e., uncoordinated movements), delusions, and agitation (among other effects). Marijuana's acute effects can impair an individual's ability to perform daily activities, such as studying or driving. Chronic use of marijuana can lead to abuse or dependence and, in the case of heavy chronic use, the potential for withdrawal (with symptoms like insomnia, weight loss, and irritability).[18]

Scientific Evaluations of Medical Marijuana Effects

Recent evaluations conducted separately by the FDA and the National Academies of Sciences, Engineering, and Medicine (the National Academies) illustrate the challenge of meeting the required standard of evidence for demonstrating effective medical use. While taking different approaches to their evaluations, both the FDA and the National Academies have found that the current evidence base falls short. According to the FDA, "no published studies conducted with marijuana meet the criteria of an adequate and well-controlled efficacy study," and "the criteria for adequate safety studies [have] also not been met."[21] According to the National Academies,

[16] These drugs are Nabilone, an antiemetic (to reduce nausea or prevent vomiting) for patients receiving chemotherapy for cancer, and Dronabinol, both an antiemetic for patients on chemotherapy and an appetite stimulant for patients with AIDS-related weight loss. See **Appendix A** for additional information regarding FDA-approved drugs.

[17] Department of Health and Human Services, Food and Drug Administration, *FDA and Marijuana: Questions and Answers*, http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm421168.htm#determinations. For an explanation of the FDA's drug development and approval process, see http://www.fda.gov/Drugs/DevelopmentApprovalProcess/default.htm.

[18] Department of Justice, Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53687-53766 and 53767-53845, August 12, 2016.

[19] Penny F. Whiting, Robert F. Wolff, and Sophan Deshpande, et al., "Cannabinoids for Medical Use," *Journal of the American Medical Association*, vol. 313, no. 24 (June 2015), pp. 2456-2473.

[20] See, for example, Chapter 15 of National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*, Washington, DC, 2017, p. S-1, doi: 10.17226/24625.

[21] Department of Justice, Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53687-53766 and 53767-53845, August 12, 2016. The criteria for adequate and well-controlled studies are defined under 21 C.F.R. §314.126.

"conclusive evidence regarding the short- and long-term health effects (harms and benefits) of cannabis use remains elusive."[22] These studies are discussed in more detail in **Appendix A**.

Federal Regulation of Marijuana Research

Individuals who seek to conduct research on any controlled substance must do so in accordance with the CSA and other federal laws.[23] For all controlled substances, individuals must obtain a registration issued by the Attorney General, as delegated to the DEA[24] in accordance with associated rules and regulations issued by the Attorney General.[25] Also, DEA regulations require *all* registrants to comply with strict storage requirements for controlled substances.[26]

Some have argued that federal regulation of marijuana research unnecessarily impedes the clinical trials that are required for FDA approval, and the Obama Administration simplified some small steps within the larger process. In recent years, the federal government has attempted to make marijuana research easier.

- In June 2015, HHS eliminated one step in obtaining research-grade marijuana for research that is not funded by the National Institutes of Health.[27]
- In December 2015, the DEA announced a waiver to make it easier for researchers conducting clinical trials with CBD to modify their research protocols and obtain more CBD than was initially approved.[28]
- In August 2016, the DEA announced a new policy intended to increase the number of approved sources of research-grade marijuana.[29]

Prior to the August 2016 change, some contended that marijuana provided to researchers was "both qualitatively and quantitatively inadequate."[30] The DEA's recent policy change

[22] National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*, Washington, DC, 2017, p. S-1, doi: 10.17226/24625.

[23] For regulatory requirements under the CSA, see CRS Report RL34635, *The Controlled Substances Act: Regulatory Requirements*, by Brian T. Yeh.

[24] As authorized under 21 U.S.C. §871, the Attorney General may delegate any of his/her control and enforcement functions under the CSA to any officer or employee of the Department of Justice—many of these functions are performed by the DEA.

[25] See 21 U.S.C. §822. This requirement is also described under 21 CFR 1301.11(a): Every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration unless exempted by law or pursuant to §§1301.22 through 1301.26.

[26] For the purposes of ensuring the secure storage and distribution of *all* controlled substances, all applicants and registrants must generally "provide effective controls and procedures to guard against theft and diversion of controlled substances." See 21 C.F.R. §1301.71.

[27] Department of Health and Human Services, "Announcement of Revision to the Department of Health and Human Services Guidance on Procedures for the Provision of Marijuana for Medical Research as Published on May 21, 1999," 80 *Federal Register* 35960-35961, June 23, 2015.

[28] Department of Justice, Drug Enforcement Administration, "DEA Eases Requirements for FDA-Approved Clinical Trials on Cannabidiol," press release, December 23, 2015.

[29] Department of Justice, Drug Enforcement Administration, "Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the U.S.," 81 *Federal Register* 53846-53848, August 12, 2016.

[30] Marc Kaufman, "Federal Marijuana Monopoly Challenged," *Washington Post*, December 12, 2005; and Department of Justice, Drug Enforcement Administration, "Lyle E. Craker; Denial of Application," 74 *Federal Register* 2101, January 14, 2009.

may appease those researchers seeking better quality and quantity of marijuana. For broader discussion of this issue, see **Appendix A**.

Current Federal Status of Marijuana and the Policy Gap with States

While the federal government maintains marijuana's current placement as a Schedule I controlled substance, states have established a range of laws and policies regarding its medical and recreational use. These developments have spurred a number of questions regarding potential implications for federal drug enforcement activities and for the nation's drug policies as a whole. In 1970, the CSA placed the control of marijuana under federal jurisdiction *regardless* of state regulations and laws, and its status has remained unchanged under federal law for nearly 50 years. For more background on federal marijuana policy and the history of how marijuana came to be illegal in the United States, see **Appendix B**.

Select Consequences of Marijuana Use Under Federal Law

Marijuana use may subject an individual to a number of consequences under federal law regardless of whether that individual has been convicted of a marijuana-related offense. For example, marijuana users may lose their ability to purchase and possess a firearm, or be barred from living in public housing. Under the Gun Control Act, it is unlawful to possess, ship, transport, receive, or dispose of any firearm or ammunition to any person "who is an unlawful user of or addicted to any controlled substance" as defined by the CSA.[31] In addition, federal law also establishes that "illegal drug users" are ineligible for federally assisted housing.[32] The law requires public housing agencies and owners of federally assisted housing to establish standards that would allow the agency or owner to prohibit admission to, or terminate the tenancy or assistance of, any such applicant or tenant.[33]

DEA Rejection of Petitions to Reschedule

There has been mounting public pressure for the DEA to reevaluate marijuana as a Schedule I controlled substance. Over the years, several entities have submitted petitions to reschedule marijuana.[34] In August 2016, after a five-year evaluation process done in conjunction with the Food and Drug Administration (FDA), the DEA rejected two petitions submitted by two state governors and a New Mexico health provider, respectively, to move marijuana to a less-restrictive schedule under the CSA.[35] Consistent with past practice,[36] the rejections were based on a conclusion by both the FDA and DEA that marijuana continues to meet the criteria for inclusion

[31] See 18 U.S.C. §§922(g)(3), 924(a)(2) and 27 C.F.R. §478.11.

[32] 42 U.S.C. §§13661-13662.

[33] For a broader discussion of legal consequences of marijuana use, see CRS Report R43435, *Marijuana: Medical and Retail—Selected Legal Issues*, by Todd Garvey, Charles Doyle, and David H. Carpenter.

[34] Any interested party may petition the Administrator of the DEA to initiate rulemaking proceedings to reschedule a controlled substance. See 21 U.S.C. §811(a) and 21 C.F.R. §1308.43(a) for relevant rules and regulations.

[35] In 2011, the governors of Rhode Island and Washington petitioned the DEA to have marijuana and "related items" removed from Schedule I of the CSA and rescheduled as medical cannabis in Schedule II. In 2009, Bryan Krumm, a health provider in New Mexico, petitioned the DEA to have marijuana removed from Schedule I of the CSA and rescheduled in any schedule other than Schedule I.

[36] The DEA has previously denied petitions to reschedule marijuana. For example, in 2002 a petition was filed to have marijuana removed from Schedule I and rescheduled as cannabis in Schedule III, IV, or V. In 2011, the DEA rejected the petition. See Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 76 *Federal Register* 40552-40589, July 8, 2011.

on Schedule I—namely that it has a high potential for abuse, has no currently accepted medical use, and lacks an accepted level of safety for use under medical supervision.[37]

It is important to note that both Congress and the Administration have the power to alter marijuana's status as a Schedule I substance. Congress could amend the CSA to move marijuana to a lower schedule or remove it entirely from control. The Administration could also make such changes on its own, though it is bound by the CSA to evaluate a substance prior to altering its scheduling status.[38]

Trends in States

Over the past few decades, most states have deviated from an across-the-board prohibition of marijuana, and as of March 2017, nearly 90% of the states, as well as Puerto Rico and the District of Columbia, allowed for the *medical use* of marijuana in some capacity.[39] Also, eight states and the District of Columbia now allow for the *recreational use* of marijuana.[40] It is now more so the rule than the exception that states have laws and policies allowing for some manufacturing, sale, distribution, and possession of marijuana—all of which are contrary to the CSA, except for the purposes of sanctioned research.[41] Evolving state-level positions on marijuana include decriminalization initiatives, legal exceptions for medical use, and legalization of certain quantities for recreational use. See **Figure 2** at the end of this section for the various marijuana policies of states.

Decriminalization and legalization initiatives in the states reflect growing public support for the legalization of marijuana. As mentioned, just prior to passage of the CSA in 1970, 12% of surveyed individuals aged 18 and older felt that marijuana should be made legal. In 2016, more than half (60%) of surveyed U.S. adults expressed that marijuana should be legalized.[42]

Decriminalization

Marijuana *decriminalization* differs markedly from *legalization*. A state decriminalizes conduct by removing the accompanying criminal penalties; however, civil penalties remain. If, for instance, a state decriminalizes the possession of marijuana in small amounts,[43] possession of it

[37] See Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53767-53845, August 12, 2016; and Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53687-53766, August 12, 2016.

[38] Federal rulemaking proceedings to add, delete, or change the schedule of a drug or substance may be initiated by the Attorney General (through the DEA), by the Secretary of Health and Human Services, or by petition from any interested person; 21 U.S.C. §811(a). Congress may change the scheduling status of a drug or substance through legislation.

[39] National Conference of State Legislatures, *State Medical Marijuana Laws*, November 2016. Some states allow broad access to medical marijuana while others have more narrow conditions under which access is granted. For example, in Alabama medical marijuana may only be dispensed by the University of Alabama and only to treat a person with an epileptic condition under certain conditions. Also, some states allow cannabidiol (CBD)-only medical marijuana. CBD is a chemical compound of marijuana.

[40] States have established rules surrounding marijuana use—see "Recreational Legalization" for a discussion of state regulations.

[41] The notable exception is the distribution of marijuana for research purposes.

[42] Art Swift, *Support for Legal Marijuana Use Up to 60% in U.S.*, Gallup, October 19, 2016 (based on poll data from October 2016).

[43] Typically one ounce or less, but the amount varies from state to state.

still violates state law, but possession of quantities within the specified *small amount* is considered a civil offense and subject to a civil penalty, not criminal prosecution. By decriminalizing possession of marijuana in small amounts, states are *not legalizing* its possession. In addition, as these initiatives generally relate to the *possession* (rather than the manufacture or distribution) of small amounts of marijuana, decriminalization initiatives do not impede federal law enforcement's priority of targeting high-level drug offenders, or so-called "big fish," rather than individual users.

Decriminalization initiatives by the states do not appear to be at odds with the CSA because both maintain that possessing marijuana is in violation of the law. For example, individuals in possession of small amounts of marijuana in Nebraska—a state that has decriminalized possession of small amounts—are in violation of both the CSA and Nebraska state law. The difference lies in the associated penalties for these federal and state violations. Under the CSA, a person convicted of simple possession (first offense) of marijuana may be punished with up to one year imprisonment and/or fined not more than $1,000.[44] Under Nebraska state law, a person in possession (first offense) of an ounce or less of marijuana is subject to a civil penalty of not more than $300.[45]

In recent years, several states have decriminalized the possession of small amounts of marijuana; however, some of these states continue to treat possession of small amounts of marijuana as a criminal offense under specific circumstances. In New York, for example, the possession of small amounts of marijuana is still considered a crime when it is "open to public view."[46] In 2015, just over 21,000 individuals in New York were arrested for criminal possession of marijuana in the fifth degree, a misdemeanor.[47]

Decriminalization in Cities

Several cities have officially or unofficially decriminalized marijuana possession regardless of what has occurred at the state level. In November 2014, New York City (NYC) Mayor de Blasio and NYC Police Commissioner Bratton announced a change in marijuana enforcement policy; individuals found to be in possession of marijuana (25 grams or less)[48] *may* be eligible to receive a summons instead of being arrested.[49] The New York City Police Department (NYPD) issues so-called "pot tickets" for those in possession of 25 grams or less. In 2016, however, preliminary data indicated that marijuana possession arrests were increasing in NYC compared to 2015—this increase could be the result of changes in NYPD arrest policies; this remains unclear.[50]

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[44] 21 U.S.C. §844.

[45] Also, the judge may order the offender to attend a drug use and abuse education course. See §28-416 of the Nebraska Revised Statutes.

[46] NY Pen. Law §221.10.

[47] State-level arrest data provided to CRS by the New York State Department of Criminal Justice Services.

[48] Under NY Pen. Law §221.10, a person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses "1. marihuana in a public place ... and such marihuana is burning or open to public view; or 2. one or more preparations, compounds, mixtures or substances containing marihuana and... are of an aggregate weight of more than twenty-five grams."

[49] City of New York, *Transcript: Mayor de Blasio, Police Commissioner Bratton Announce Change in Marijuana Policy*, November 10, 2014.

[50] City-level arrest data provided to CRS by the New York State Department of Criminal Justice Services. Also see Jennifer Fermino, John Annese, and Ginger Adams Otis, "NYPD cracks down on marijuana possession in NYC, sees big uptick in arrests for carrying pot," *New York Daily News*, June 2, 2016.

Just as there are disparities in state and federal laws and policies, some cities' decriminalization initiatives run contrary to the laws and policies of the states. In Pennsylvania, the state government has not decriminalized marijuana possession, but Pittsburgh, Philadelphia, State College, and Harrisburg have all decriminalized possession in some form. In 2016, Harrisburg's city council unanimously voted to make possession of 30 grams or less of marijuana punishable by a $75 fine and public use punishable by a $150 fine.[51]

Medical Marijuana Exceptions

In 1996, California became the first state to amend its drug laws to allow for the medicinal use of marijuana. As of March 2017, over half of the states, the District of Columbia, Puerto Rico, and Guam have comprehensive policies allowing for the medicinal use of marijuana.[52] Seventeen additional states allow for so-called "limited access medical marijuana," which refers to cannabis with low THC content or CBD oil.[53]

As noted, the CSA does not distinguish between the medical and recreational use of marijuana. Under the CSA, marijuana has "no currently accepted medical use in treatment in the United States,"[54] and states' allowance of its use for medical purposes is at odds with the federal position. Federal law enforcement has investigated, arrested, and prosecuted individuals for medical marijuana-related offenses regardless of whether they are in compliance with state law; however, federal law enforcement emphasizes the investigation and prosecution of growers and dispensers over individual users of medical marijuana. Federal enforcement priorities are discussed further in "Federal Response to State Divergence."

Recreational Legalization

In contrast to marijuana *decriminalization* initiatives wherein civil penalties remain for violations involving marijuana possession, marijuana *legalization* measures remove all state-imposed penalties for specified activities involving marijuana. Until 2012, the recreational use of marijuana had not been legal in any U.S. state since prior to the passage of the CSA in 1970. In November 2012, citizens of Colorado and Washington voted to legalize, regulate, and tax small amounts of marijuana for recreational use.[55] In November 2014, legalization initiatives also passed in Alaska, Oregon, and the District of Columbia (DC), further expanding the disparities between federal and state marijuana laws. Later, in November 2016, recreational legalization initiatives passed in Massachusetts, California, Maine, and Nevada.

These recreational legalization initiatives all legalized the possession of specific quantities of marijuana by individuals aged 21 and over and (with the exception of DC) set up state-administered regulatory schemes for the sale of marijuana;[56] however, there are variations among

[51] Christine Vendel, "It's official: Harrisburg council reduces penalties for pot possession," *Penn Live*, July 5, 2016; and City of Harrisburg, City Council.

[52] Several states are implementing recently enacted laws. National Conference of State Legislatures, *State Medical Marijuana Laws*, November 2016.

[53] As previously mentioned, CBD is a chemical compound in marijuana. Unlike THC, it does not have a psychoactive component.

[54] 21 U.S.C. §812(b)(1).

[55] For more detail regarding both Washington Initiative 502 and Colorado Amendment 64, see CRS Report R43034, *State Legalization of Recreational Marijuana: Selected Legal Issues*, by Todd Garvey and Brian T. Yeh

[56] Regulatory schemes include restrictions and requirements for licensing the production, processing, and retail of marijuana, and procedures for the issuance of licenses.

the initiatives. For example, Colorado, Alaska, Oregon, Massachusetts, Nevada, Maine, California, and DC allow for individuals to grow their own marijuana plants while Washington does not. These legalization initiatives also specify that many actions involving marijuana remain crimes. For example, in Washington, as well as other states, the operation of a motor vehicle while under the influence of marijuana remains a crime.[57] In some states such as Colorado, individuals over the age of 21 may grow small amounts of marijuana for personal use, but marijuana may not be consumed "openly and publicly or in a manner that endangers others."[58] In an example of city-level initiatives breaking from state-level policies, in November 2016, the city of Denver voted to allow designated areas where public consumption of marijuana would be allowed.[59] **Figure 2** highlights the status of marijuana laws by state.

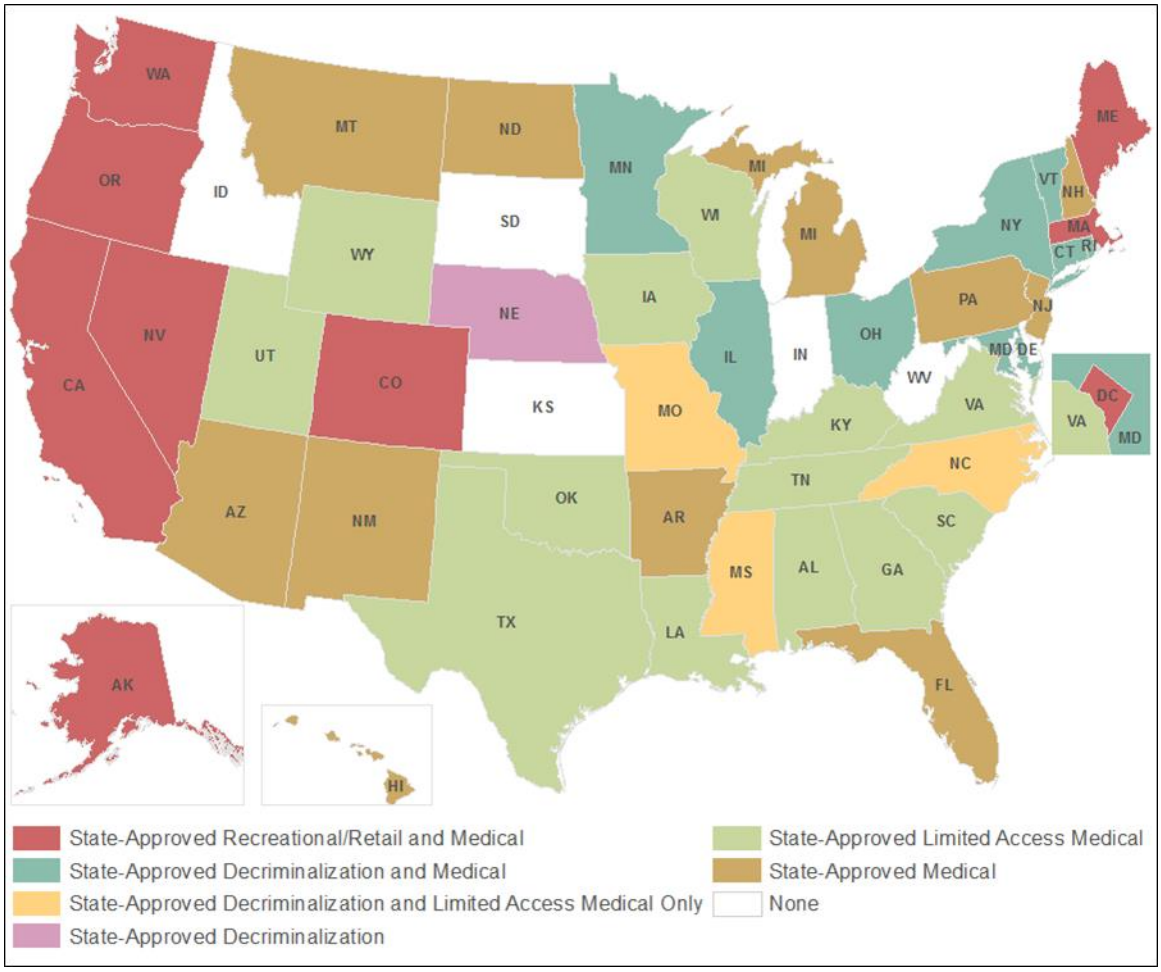
[57] Washington Initiative 502, http://sos.wa.gov/_assets/elections/initiatives/i502.pdf.

[58] Colorado Amendment 64, http://www.leg.state.co.us/LCS/Initiative%20Referendum/1112initrefr.nsf/c63bddd6b9678de787257799006bd391/cfa3bae60c8b4949872579c7006fa7ee/$FILE/Amendment%2064%20-%20Use%20&%20Regulation%20of%20Marijuana.pdf. For information on the Colorado regulatory system, see the website of the Colorado Department of Revenue, Marijuana Enforcement Division: https://www.colorado.gov/pacific/enforcement/marijuanaenforcement.

[59] Denver Initiated Ordinance 300, https://www.denvergov.org/content/dam/denvergov/Portals/778/documents/VoterInfo/Sample_Ballot/2016GeneralComboSampleBallotWatermark.pdf.

Figure 2. Map of State Marijuana Laws

March 2017



Source: CRS presentation of data from the National Conference of State Legislatures and the Drug Enforcement Administration.

Notes: Limited-access medical marijuana refers to cannabis with low THC content or cannabidiol (CBD) oil. "State-approved" refers to either state laws that (1) allow for recreational and/or medical marijuana and/or (2) decriminalize the possession of marijuana in small amounts.

Federal Response to State Divergence

Enforcement Focused on Traffickers

Rather than targeting individuals for drug use and possession, federal law enforcement has generally focused its counterdrug efforts on criminal networks involved in the drug trade. Notably, federal policing efforts on marijuana enforcement appear consistent with this position. Federal marijuana enforcement efforts have largely been focused on *traffickers and distributors* of illicit drugs, rather than the low-level users; rather, arrests for marijuana *possession* offenses are largely made by state and local police.[60] President Obama once noted that "[it] would not

[60] For a discussion of drug enforcement in the United States, see CRS Report R43749, *Drug Enforcement in the United* (continued...)

make sense from a prioritization point of view for us to focus on recreational drug users in a state that has already said that under state law that's legal."[61] While it is not yet clear how the Trump Administration will proceed with drug enforcement priorities, the White House press secretary indicated there may be increased enforcement against recreational marijuana, and stated that there is a "big difference" between medical and recreational marijuana.[62]

Department of Justice Guidance Memos for U.S. Attorneys

After some states began to legalize the medical use of marijuana, the Department of Justice (DOJ) reaffirmed that marijuana growth, possession, and trafficking remain crimes under federal law irrespective of how individual states may change their laws and positions on marijuana.[63] DOJ has clarified federal marijuana policy through several memos providing direction for U.S. Attorneys in states that allow the medical use of marijuana. In the so-called "Ogden Memo" of 2009, former Deputy Attorney General David Ogden reiterated that combating major drug traffickers remains a central priority and stated:

> [t]he prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the [Justice] Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.[64]

In a follow-up memorandum to U.S. Attorneys, former Deputy Attorney General James Cole restated that enforcing the CSA remained a core priority of DOJ, even in states that had legalized medical marijuana. He clarified that "[t]he Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law."[65]

In his memo, Deputy Attorney General Cole warned those who might assist medical marijuana dispensaries in any way. He stated that "[p]ersons who are in the business of cultivating, selling or distributing marijuana, *and those who knowingly facilitate such activities* [emphasis added], are in violation of the Controlled Substances Act, regardless of state law."[66] This has been interpreted by some to mean, for example, that building owners and managers are in violation of

(...continued)

States: History, Policy, and Trends, by Lisa N. Sacco.

[61] "Marijuana Not High Obama Priority," *ABC Nightline*, December 14, 2012.

[62] The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sean Spicer, 2/23/2017, #15*, February 22, 2017, https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15.

[63] United States Attorney's Office, "Statement From U.S. Attorney's Office on Initiative 502," press release, December 5, 2012.

[64] Deputy Attorney General David W. Ogden, *Memorandum for Selected United States Attorneys*, U.S. Department of Justice, Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana, Washington, DC, October 19, 2009, pp. 1-2.

[65] Deputy Attorney General James M. Cole, *Memorandum for United States Attorneys*, U.S. Department of Justice, Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use, Washington, DC, June 29, 2011, p. 2.

[66] Ibid.

the CSA by allowing medical marijuana dispensaries to operate in their buildings.[67] Deputy Attorney General Cole further warned that "[t]hose who engage in transactions involving the proceeds of such activity [cultivating, selling, or distributing of marijuana] may be in violation of federal money laundering statutes and other federal financial laws."[68] This warning may be one reason why medical marijuana dispensaries have had difficulty accessing bank services.[69] In an August 2013 memorandum, Deputy Attorney General Cole stated that while marijuana remains an illegal substance under the CSA, DOJ would focus its resources on the "most significant threats in the most effective, consistent, and rational way."[70] The memo outlined eight enforcement priorities for DOJ:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.[71]

In a February 2014 memorandum, Deputy Attorney General Cole further reinforced these enforcement priorities, specifically as they relate to the prosecution of marijuana-related financial crimes. The memo directed the U.S. Attorneys that "in determining whether to charge individuals or institutions with ... [certain financial] offenses based on marijuana-related violations of the CSA, prosecutors should apply the eight enforcement priorities described in the August 29 guidance."[72]

In October 2014, DOJ released another memo to the U.S. Attorneys that reiterated the applicability of the eight enforcement priorities to their marijuana efforts in Indian country.[73] It

[67] Jennifer Medina, "U.S. Attorneys in California Set Crackdown on Marijuana," *New York Times*, October 8, 2011, p. 10.

[68] Deputy Attorney General James M. Cole, *Memorandum for United States Attorneys*, U.S. Department of Justice, Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use, Washington, DC, June 29, 2011, p. 2.

[69] John Ingold, "Last Bank Shuts Doors on Colorado Pot Dispensaries," *The Denver Post*, October 1, 2011; Jonathan Martin, "Medical-Marijuana Dispensaries Run Into Trouble at the Bank," *The Seattle Times*, April 29, 2012.

[70] Deputy Attorney General James M. Cole, *Memorandum for all United States Attorneys*, U.S. Department of Justice, Guidance Regarding Marijuana Enforcement, Washington, DC, August 29, 2013, p. 1.

[71] Ibid., pp. 1-2.

[72] Deputy Attorney General James M. Cole, *Memorandum for All United States Attorneys*, U.S. Department of Justice, Guidance Regarding Marijuana Related Financial Crimes, Washington, DC, February 14, 2014, p. 2.

[73] Executive Office for United States Attorneys, *Policy Statement Regarding Marijuana Issues in Indian Country*, (continued...)

responded to the American Indian tribes' requests for guidance on CSA enforcement on tribal lands. DOJ reiterated that the August 2013 Cole memo does not prohibit the federal government from enforcing federal law in Indian Country, and adds the following:

> The eight priorities in the Cole Memorandum will guide United States Attorneys' marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the *cultivation or use* of marijuana in Indian Country [emphasis added].[74]

Unlike the Cole memo, DOJ did not specifically refer to *distribution* and regulation of marijuana. It was unclear whether distribution of marijuana would be tolerated on tribal lands should tribal governments seek to legalize and distribute marijuana. Despite the lack of clarity, some tribes moved forward with plans to grow and sell marijuana at tribe-owned stores on tribal lands.[75] Since the memo was released, the DEA has led marijuana enforcement actions on tribal lands,[76] but it remains unclear whether legal marijuana will be tolerated on tribal land as it has been tolerated in states.

Monitoring Enforcement Priorities

In a review of the DOJ memoranda, the Government Accountability Office (GAO) concluded that "DOJ has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Rather, DOJ has left such lower-level or localized marijuana activity to state and local law enforcement authorities through enforcement of their own drug laws."[77] GAO has recommended that DOJ monitor the effects of state-level marijuana legalization initiatives relative to the eight DOJ enforcement priorities. This evaluation noted that DOJ has used a number of tools to help assess these effects. For instance, DOJ indicated to GAO that U.S. Attorneys were in contact with officials in states such as Colorado and Washington that had legalized marijuana. In addition, DOJ reported that it relies upon information from sources such as "federal surveys on drug use; state and local research; and feedback from federal, state, and local law enforcement."[78] Notably, DOJ has reportedly not been documenting its specific monitoring process, and GAO has recommended that DOJ develop a "clear plan" for how it will monitor and document the effects of state marijuana legalization on federal enforcement priorities.[79]

(...continued)

October 28, 2014.

[74] Monty Wilkinson, *Memorandum*, U.S. Department of Justice, Policy Statement Regarding Marijuana Issues in Indian Country, Washington, DC, October 28, 2014.

[75] "Native American Tribes Approve Plan to Grow and Sell Marijuana in Oregon," *The New York Times*, December 19, 2015; Noelle Crombie, "Warm Springs Tribes Launch Ambitious Pot Venture, Hope for Economic Windfall," *The Oregonian - Oregon Live*, April 29, 2016; John Gillie, "Two Marijuana Retailers Opening Soon in City that Still Bans Cannabis Sales," *The News Tribune*, January 28, 2017; and Jackie Valley, "Las Vegas Paiutes' Newest Venture: Medical Marijuana," *Las Vegas Sun*, March 1, 2016.

[76] Steven Nelson, "DEA Raid on Tribe's Cannabis Crop Infuriates and Confuses Reformers," *U.S. News & World Report*, October 26, 2015; and Cary Spivak, "Milwaukee Journal Sentinel," November 18, 2015.

[77] U.S. Government Accountability Office, *State Marijuana Legalization: DOJ Should Document Its Approach to Monitoring the Effects of Legalization*, GAO-16-1, December 2015, p. 9.

[78] Ibid., p. 27.

[79] Ibid.

Federal Enforcement in States: Directives through Federal Appropriations[80]

Over the past several years, Congress has included provisions in appropriations acts that prohibit DOJ from using appropriated funds to prevent certain states and the District of Columbia[81] from "implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."[82] The current appropriations provision is in effect until April 28, 2017.[83] Courts have interpreted the appropriation provision to restrict DOJ from using appropriated funds (1) to take legal action directly against states and (2) to initiate criminal prosecutions of state officials for any action related to the implementation of a state medical marijuana law.[84] Several federal courts also have interpreted the provision as prohibiting DOJ from prosecuting individuals who, while strictly complying with the laws of one of the states covered by the appropriations provisions, have allegedly distributed, possessed, or cultivated medical marijuana in violation of *federal* law.[85] Although the appropriations provision restricts DOJ's ability to expend funds to enforce federal law, at least one court has made clear that the provision "does not provide immunity from prosecution for federal marijuana offenses."[86]

[80] This section was contributed by Todd Garvey, Legislative Attorney, Congressional Research Service. For a more detailed analysis of this issue, see CRS Legal Sidebar WSLG1451, *District Court Holds Appropriations Language Limits Enforcement of Federal Marijuana Prohibition*, by Todd Garvey.

[81] The provision specifically lists 43 jurisdictions: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming, the District of Columbia, Guam, and Puerto Rico.

[82] See, for example, P.L. 113-235, §538 (2014) and P.L. 114-113, §542 (2015).

[83] P.L. 114-254, §101(1).

[84] See, for example, United States v. Marin All. for Med. Marijuana, 139 F. Supp. 3d 1039, 1044 (E.D. Cal. 2015) (citing the DOJ's interpretation that the appropriation provision prohibits "federal actions that interfere with a state's promulgation of regulations implementing its statutory provisions, or with its establishment of a state licensing scheme.").

[85] See, for example, United States v. McIntosh, 833 F.3d 1163, 1177 (9th Cir. 2016) (holding that the 2015 appropriations restriction "prohibits DOJ from spending funds from relevant appropriations for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws [of California, Oregon, and Washington] and who fully comply with such laws); United States v. Daleman, No. 1:11-CR-00385-DAD-BAM, 2017 U.S. Dist. LEXIS 23213 (E.D. Cal. Feb. 17, 2017) (denying defendant's motion to enjoin the Department of Justice from using funds for his prosecution because defendant failed to establish that he "*strictly* complied with all relevant conditions imposed by state law on the use, distribution, possession, and cultivation of medical marijuana.") (emphasis in original); *Marin All. for Med. Marijuana*, 139 F. Supp. at 1040 (holding that the 2015 appropriations provision bars DOJ from using appropriated funds to enforce an injunction prohibiting a medical marijuana dispensary from engaging in activities that are compliant with California's medical marijuana law).

[86] *McIntosh*, 833 F.3d at 1179, n. 5 ("The CSA prohibits the manufacture, distribution, and possession of marijuana. Anyone in any state who possesses, distributes, or manufactures marijuana for medical or recreational purposes (or attempts or conspires to do so) is committing a federal crime. The federal government can prosecute such offenses for up to five years after they occur.... Congress could restore funding tomorrow, a year from now, or four years from now, and the government could then prosecute individuals who committed offenses while the government lacked funding. Moreover, a new president will be elected soon, and a new administration could shift enforcement priorities to place greater emphasis on prosecuting marijuana offenses."). See also United States v. Nixon, 839 F.3d 885, 886 (9th Cir. 2016) (per curiam) (holding that the appropriations provision does not "impact[] the ability of a federal district court to restrict the use of a medical marijuana as a condition of probation.").

Financial Services for Marijuana Businesses[87]

As explained below, so long as marijuana remains classified as a Schedule I controlled substance under federal law, financial institutions and their directors, officers, employees, and owners could be subject to severe criminal and administrative sanctions[88] for providing financial services to marijuana businesses, even if those businesses are operating in compliance with state law.[89] A consequence of these legal risks is that many financial institutions reportedly have been unwilling to provide financial services to state-authorized marijuana businesses.[90]

Bank Secrecy Act[91] and Federal Anti-Money Laundering Laws

Federal law classifies marijuana as a Schedule I controlled substance.[92] As a result, it is a federal crime to grow, sell, or merely possess the drug.[93] In addition to facing the prospect of a federal criminal prosecution, imprisonment, and criminal fines, those who violate the federal CSA may suffer a number of additional adverse consequences under federal law.[94] For example, federal authorities may confiscate any property used to grow marijuana or facilitate its sale or use, as well as all proceeds derived from the sale of marijuana.[95] When financial institutions provide financial services to business customers, they generally are not directly involved in the sale, possession, or distribution of their customers' products. However, financial institutions commonly acquire the *proceeds* from the sale of their customers' products. To the extent that a bank acquires such proceeds with the knowledge that they are derived from the sale of marijuana in violation of federal law, the proceeds potentially could be confiscated by federal authorities,[96] even when the underlying actions are permissible under state law.[97] For example, if a bank originates a loan to a

[87] This section was contributed by David H. Carpenter, Legislative Attorney, Congressional Research Service.

[88] See, for example, United States v. HSBC Bank USA, N.A., No. 12-CR-763, 2013 U.S. Dist. LEXIS 92438, 31-38 (E.D. N.Y. July 1, 2013) (approving a deferred prosecution agreement with a financial institution for, among other things, "fail[ing] to implement an effective [anti-money laundering] program to monitor suspicions transactions ... [which] permitted Mexican and Colombian drug traffickers to launder at least $881 million in drug trafficking proceeds through HSBC Bank USA undetected"; the agreement "imposes upon HSBC significant, and in some respect extraordinary, measures," including the forfeiture of $1.256 billion, remedial measures, and the admission of criminal violations).

[89] *McIntosh*, 833 F.3d at 1179, n. 5.

[90] Steve Leblanc, "Can Sen. Elizabeth Warren help fix banking issues for the cannabis industry?," *Associated Press*, January 3, 2017, available at http://www.thecannabist.co/2017/01/03/elizabeth-warren-marijuana-banking/70517/; Lisa Lambert, "Got bank? Election could create flood of marijuana cash with no place to go," *Reuters*, October 31, 2016, available at http://www.reuters.com/article/us-usa-marijuana-banks-idUSKBN12V0D5.

[91] The "Bank Secrecy Act" is commonly used to refer to Titles I and II of the Act of October 26, 1970, P.L. 91-508, 84 Stat. 1114–24 (1970).

[92] 21 U.S.C. §812(c), Sch.I(c)(10).

[93] Ibid. §§841-890.

[94] Ibid. For a detailed description of the CSA's civil and criminal provisions, see CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws*, by Brian T. Yeh.

[95] 18 U.S.C. §§981(a)(1)(A), 982(a)(1). For information on the procedural requirements and potential defenses associated with asset forfeiture, see CRS Report 97-139, *Crime and Forfeiture*, by Charles Doyle.

[96] Ibid. §981(a)(1)(C) ("The following property is subject to forfeiture to the United States ... (C) Any property, real or personal, which constitutes or is derived from proceeds traceable to ... any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title) [i.e., the list of predicate offenses for money laundering (18 U.S.C. §1956)], or a conspiracy to commit such offense.").

[97] *McIntosh*, 833 F.3d at 1179, n. 5.

business openly operating as a state-authorized medical marijuana dispensary, then the principal and interest payments earned by the bank on that loan could be subject to forfeiture, if the bank knew that those payments derived from the sale of marijuana in violation of federal law.[98]

In addition to the risk of asset forfeiture, federal anti-money laundering laws (i.e., Sections 1956 and 1957 of the criminal code) criminalize the handling of proceeds that are known to be derived from certain unlawful activities,[99] including the sale and distribution of marijuana.[100] Violators of these anti-money laundering laws may be subject to fines and imprisonment,[101] and any real or personal property involved in or traceable to prohibited transactions is subject to criminal or civil forfeiture.[102] For example, a bank employee could be subject to a 20-year prison sentence and criminal money penalties under Section 1956 for knowingly engaging in a financial transaction involving marijuana-related proceeds that is conducted with the intent to promote a further offense (e.g., withdrawing marijuana-generated funds in order to pay the salaries of medical marijuana dispensary employees).[103] Similarly, a bank officer could face a 10-year prison term and criminal money penalties under Section 1957 for knowingly depositing or withdrawing $10,000 or more in cash that is derived from the distribution and sale of marijuana.[104]

Furthermore, Congress has crafted laws that affirmatively enlist financial institutions[105] to aid in the investigation and prosecution of those who violate federal laws, including the CSA.[106] For example, financial institutions generally must file suspicious activity reports (SARs)[107] with the

[98] See, for example, United States v. Funds Held ex rel. Wetterer, 210 F.3d 96, 104 (2d Cir. 2000) ("In this Circuit, the government's burden is to show a nexus between the illegal conduct and the seized property. Once the government establishes that there is probable cause to believe that a nexus exists between the seized property and the predicate illegal activity, the burden shifts to the claimant to show by a preponderance of the evidence (1) that the defendant property was not in fact used unlawfully, or (2) that the predicate illegal activity was committed without the knowledge of the owner-claimant, 18 U.S.C. § 981(a)(2), that is, that the claimant is an 'innocent owner.'") (internal citations and quotations omitted).

[99] 18 U.S.C. §§1956(c)(7), 1957(f)(3). For a full list of predicate offenses, see the "Specified Unlawful Activities" section of CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

[100] 18 U.S.C. §§1956, 1957. For a detailed analysis of federal anti-money laundering laws, see CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

[101] Section 1956 violations are punishable by imprisonment for not more than 20 years and fines of up to $500,000 or twice the value of the property involved, whichever is greater. 18 U.S.C. §1956(a)(1). Section 1957 violations are punishable by imprisonment for not more than 10 years and fines of up $250,000 (or $500,000 for organizations) or twice the value of the property involved in the transaction, whichever is greater. Ibid. §§1957(b), 1957(h), 3571, 3559. Conspiracy to violate either section carries the same maximum penalties, as does aiding and abetting the commission of either offense. Ibid. §§2, 1956(h). See, for example, United States v. Lyons, 740 F.3d 702, 715 (1st Cir. 2014). For a detailed description of the penalties for violating these laws, see CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws*, by Brian T. Yeh.

[102] 18 U.S.C. §§981(a)(1)(A), 982(a)(1).

[103] Ibid. §1956(a)(1)(A)(i). See for example, Department of Justice, "Man Sentenced to 35 Months Imprisonment for Bank Fraud and Money Laundering," Press Release, July 19, 2013, available at https://www.justice.gov/usao-edwi/pr/man-sentenced-35-months-imprisonment-bank-fraud-and-money-laundering (announcing the sentence of an individual who pled guilty to violating 18 U.S.C. §1956 and other criminal laws while working as a bank officer).

[104] Ibid. §1957(a), (d).

[105] For the purposes of the Bank Secrecy Act and anti-money laundering laws, the term "financial institution" is defined broadly to include banks, savings associations, credit unions, broker dealers, insurance companies, pawnbrokers, automobile dealers, casinos, cash checkers, travel agencies, and precious metal dealers, among others. 31 U.S.C. §5312(a)(2).

[106] See, for example, 12 U.S.C. §§1951-59; 31 U.S.C. §§5311-32.

[107] Filing SARs are mandatory under certain circumstances, but financial institutions may file SARs even when not (continued...)

Treasury Department's Financial Crimes Enforcement Network (FinCEN) regarding financial transactions[108] suspected to be derived from specified illegal activities,[109] including the sale of marijuana.[110] Depository institutions[111] and certain other financial institutions[112] also must establish and maintain anti-money laundering programs, designed to ensure that the institutions' officers and employees will have sufficient knowledge of their customers and of the businesses of those customers to identify the circumstances under which filing SARs is appropriate.[113] Even in the absence of suspicion, financial institutions must file currency transaction reports (CTRs) with FinCEN relating to transactions involving $10,000 or more in cash or other "currency."[114] The failure to comply with these reporting requirements can result in fines and imprisonment.[115]

Additionally, financial institutions, their employees, and certain other affiliated parties could be subject to administrative enforcement actions by federal regulators for violating the Bank Secrecy Act or anti-money laundering laws.[116] For example, the federal banking regulators[117] may utilize

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(...continued)

mandated by law. See, for example, 12 C.F.R. §§1020.320(a) (banks); 1022.320(a) (money services businesses).

[108] "Transaction":

> means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

31 C.F.R. §1010.100(bbb).

[109] 18 U.S.C. §§1956(c)(7), 1957(f)(3). For a full list of predicate offenses, see the "Specified Unlawful Activities" section of CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

[110] 21 U.S.C. §§841-890; 31 U.S.C. §5318(g); 31 C.F.R. §1020.320.

[111] There are several different types of depository institutions, including banks, savings associations, and credit unions. A depository charter can be issued by either a state or federal chartering authority.

[112] Some financial institutions are exempt from establishing anti-money laundering programs. 31 U.S.C. §5318(h)(2); 31 C.F.R. §1010.205.

[113] See generally 31 U.S.C. §5318(h)(1); 31 C.F.R. §§1020.200-1020.220. See also 12 U.S.C. §1786(q)(1) (credit unions); 12 U.S.C. §1818(s) (banks and savings associations). See also CRS Legal Sidebar WSLG1515, *Wake Up Call for Financial Institution Management: Anti-Money Laundering Program Is Your Personal Responsibility*, by M. Maureen Murphy.

[114] 31 U.S.C. §5313; 31 C.F.R. subpt.1020C; 31 C.F.R. subpt.1010C. "Currency" is defined as:

> The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

31 C.F.R. §1010.100(m).

[115] 31 U.S.C. §5322. The willful failure to file SARs and CTRs is punishable by imprisonment for not more than five years or not more than 10 years in cases of a substantial pattern of violations or transactions involving other illegal activity. Ibid. Structuring a transaction to avoid the reporting requirement exposes the offender to the same maximum terms of imprisonment. Ibid. §5324(d). For a detailed description of penalties for violations of Bank Secrecy Act reporting and monitoring requirements, see CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

[116] See, for example, 12 U.S.C. §§1786, 1818, 1831o.

[117] For these purposes, the federal banking regulators are: the Office of the Comptroller of the Currency (OCC) for national banks and federal savings associations; the Board of Governors of the Federal Reserve System for domestic (continued...)

administrative enforcement powers against depository institutions and their directors, officers, controlling shareholders, employees, agents, and affiliates that engage in unlawful, marijuana-related activities.[118] The banking regulators have the legal authority, for instance, to issue cease and desist orders, impose civil money penalties, and issue removal and prohibition orders that temporarily or permanently ban individuals from working for any depository institution.[119] The banking regulators also have the authority, under certain circumstances, to revoke an institution's federal deposit insurance coverage and to take control of and liquidate a depository institution.[120] In fact, a criminal conviction for violating the Bank Secrecy Act or anti-money laundering laws is an explicit ground for the appointment of the Federal Deposit Insurance Corporation "as receiver [to] place the insured depository institution in liquidation."[121]

FinCEN and DOJ Guidance to Financial Institutions

In response to state marijuana legalization efforts, FinCEN issued guidance with respect to marijuana-related financial crimes on February 14, 2014.[122] This guidance appears to provide a roadmap for financial institutions seeking to comply with suspicious activity reporting requirements when providing financial services to state-authorized marijuana businesses, while also alerting FinCEN to transactions that might trigger federal enforcement priorities.[123]

The guidance notes that:

> [b]ecause federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law) in accordance with this guidance and [FinCEN regulations].[124]

FinCEN advised financial institutions that, in providing services to a marijuana business, they must file one of three types of special SARs:

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operations of foreign banks and state-chartered banks that are members of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC) for state savings associations and state-chartered banks that are not members of the Federal Reserve System; and the National Credit Union Administration (NCUA) for federally insured credit unions. Ibid. §§1766, 1813(q).

[118] See, for example, ibid. §1786 (credit unions); ibid. §§1818, 1831o (banks and savings associations). See also Office of the Comptroller of the Currency, "OCC Assesses $2.5 Million Civil Money Penalty Against Gibraltar Private Bank and Trust Company for Bank Secrecy Act Violations, Press Release, February 25, 2016, available at https://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-20.html (ordering the payment of a civil money penalty and remedial actions for allegedly "fail[ing] to maintain an effective Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance program.").

[119] Ibid.

[120] See, for example, ibid. §§1786, 1787 (credit unions); ibid. §§1818, 1821, 1831o (banks and savings associations).

[121] 12 U.S.C. §1821(c)(5)(M), (d)(2)(E).

[122] Department of the Treasury, *Financial Crimes Enforcement Network, BSA Expectations Regarding Marijuana-Related Business*, FIN-2014-G001, February 14, 2014, available at https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses. The Administration could reverse or otherwise make significant changes to its enforcement priorities and policies. See generally CRS Report R43708, *The Take Care Clause and Executive Discretion in the Enforcement of Law*, by Todd Garvey.

[123] Ibid.

[124] Ibid., p. 3.

1. A marijuana limited SAR: The marijuana limited SAR is seen to be appropriate when the bank determines, after the exercise of due diligence, that a customer is not engaged in any activities that violate state law or implicate the investigation and prosecution priorities in the 2014 Cole Memorandum (see "Department of Justice Guidance Memos for U.S. Attorneys");[125]
2. A marijuana priority SAR: A marijuana priority SAR must be filed when the financial institution believes a customer is engaged in activities that implicate DOJ's investigation and prosecution priorities;[126] and
3. A marijuana termination SAR: A financial institution is instructed to file a marijuana termination SAR when it finds it necessary to sever its relationship with a customer to maintain an effective anti-money laundering program.[127]

FinCEN also provides examples of "red flags" that may indicate that a marijuana priority SAR is appropriate.[128] The FinCEN guidance does not impact financial institutions' obligations to file currency transaction reports.[129]

Select Implications of State Marijuana Legalization

While the majority of the American public supports marijuana legalization, some have voiced concern over possible negative implications, particularly with respect to *recreational* legalization. Some concerns were outlined as enforcement priorities by DOJ in monitoring state legalization.[130] These implications include, but are not limited to, the potential impact of legalization on (1) use of marijuana, particularly among youth; (2) traffic-related incidents involving marijuana-impaired drivers; (3) trafficking of marijuana from states that have legalized it into neighboring states that have not; and (4) U.S. compliance with international treaties. On the other hand, some have been encouraged by the potential outcomes from marijuana legalization, including new tax revenue for states and a potential decrease in marijuana-related arrests.

Not all potential implications are discussed in this report, and some are yet to be fully measured. Of note, data on potential effects of marijuana legalization should be interpreted with caution, as they are fairly limited, and not all factors are presented when reporting changes in statistics since state legalization. Further, conclusions about the impact of marijuana legalization would be premature without broader inclusion of both historical data and additional years of post-legalization data, as well as consideration of other factors aside from legalization.

U.S. Demand for Marijuana

As discussed, marijuana is the most commonly used illicit drug in the United States. In 2015, an estimated 22.2 million individuals aged 12 or older were current (past month) users of marijuana.

[125] Ibid., pp. 3-4.

[126] Ibid., p. 4.

[127] Ibid., pp. 4-5.

[128] Ibid., pp. 5-7. Some examples of "red flags" noted in the guidance are: "[t]he business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law"; and "[a] customer seeks to conceal or disguise involvement in marijuana-related business activity." Ibid.

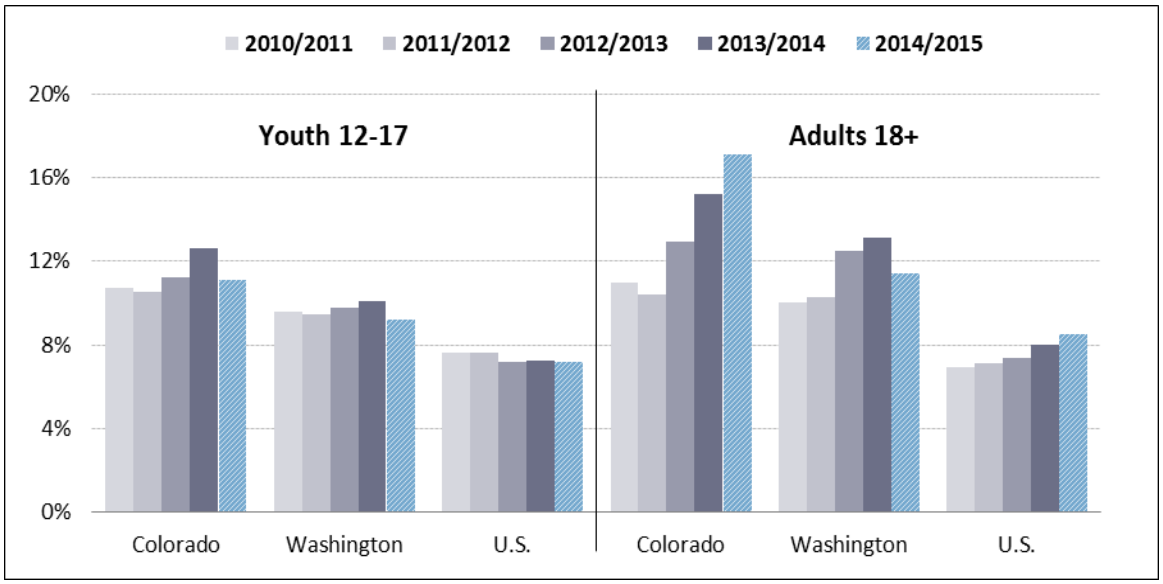
[129] Ibid., p. 7. For a discussion of currency transaction reporting requirements, see *supra* notes 114-115 and surrounding text.

[130] See James M. Cole, *Memorandum for all United States Attorneys*, U.S. Department of Justice, Guidance Regarding Marijuana Enforcement, Washington, DC, August 29, 2013, pp. 1-2.

The percentage of users has gradually increased over the last several years—from 6.9% in 2010 to 8.3% in 2015.[131] The rate of past-month marijuana use among youth (aged 12 to 17), however, has remained fairly unchanged over this period (7.0%).[132]

Figure 3. Estimates of Current Marijuana Use in Colorado, Washington, and the United States, 2010-2015

Percentages Among Youth (Ages 12-17) and Adults (18 and Older)



Source: Created by the Congressional Research Service (CRS) based on available population data from the Substance Abuse and Mental Health Services Administration (SAMHSA), *National Survey on Drug Use and Health (NSDUH)*, State Data, 2010/2011, 2011/2012, 2012/2013, 2013/2014, and 2014/2015, http://www.samhsa.gov/data/.

Notes: This figure presents yearly estimates of marijuana use in Colorado, Washington, and the United States and does not show statistical changes in these data. To review year-to-year, statistically significant changes, if any, see the NSDUH state data reports. The 2015/2016 state data are not yet available from SAMHSA. Annual state-level estimates are based on 2 calendar years of pooled NSDUH data, so two consecutive sets of estimates have a one-year overlap. For more information on the NSDUH methodology, see 2014-2015 National Survey on Drug Use and Health: Guide to State Tables and Summary of Small Area Estimation Methodology. Current use of marijuana is defined as use in the past 30 days.

In the states that legalized recreational marijuana in November 2012 (Washington and Colorado), the percentages of youth (aged 12-17) and adults (aged 18 and older) who are current users have changed in various ways over the 2010-2015 period according to survey data. For adults, the changes generally match national trends over the same time period (see **Figure 3**). Colorado and Washington have higher percentages of use for adults and youth compared to national estimates—both before and after recreational legalization began. Of note, the 2014/2015 percentages of marijuana use among youth are fairly similar to the percentages reported in 2010/2011, while adult percentages are higher than those reported in 2010/2011.[133] Rates of drug use may be

[131] *Results from 2015 NSDUH*, Tables 1.1A and 1.1B.

[132] Results from *2015 NSDUH*, Table 1.2B and *Results from the 2014 National Survey on Drug Use and Health: Summary of National Findings*.

[133] Substance Abuse and Mental Health Services Administration (SAMHSA), *National Survey on Drug Use and Health (NSDUH)*, State Data, 2010/2011, 2011/2012, 2012/2013, 2013/2014, and 2014/2015, http://www.samhsa.gov/data/. The observed differences between estimates were not evaluated in terms of statistical significance—the probability that (continued...)

influenced by many possible factors including availability of the drug, family, peers, school, economic status, and community variables.[134]

Of note, some state government officials in states that have legalized marijuana have monitored changes in drug use patterns and emerging research on the health effects of marijuana. For example, the Colorado Department of Public Health and Environment (CDPHE) was given the responsibility to "monitor changes in drug use patterns, broken down by county and race and ethnicity, and the emerging science and medical information relevant to the health effects associated with marijuana use."[135]

Marijuana-Related Traffic Incidents

The recent use of marijuana has been shown to impair driving ability.[136] According to the National Highway Traffic Safety Administration (NHTSA), "[l]ow doses of THC moderately impair cognitive and psychomotor tasks associated with driving, while severe driving impairment is observed with high doses, chronic use and in combination with low doses of alcohol."[137] Some may be concerned that recreational marijuana legalization could be associated with an increase in marijuana-related traffic incidents. In Colorado, despite limited traffic data, the Department of Public Safety reports the following:

> [T]he number of summons issued for Driving Under the Influence [DUI] in which marijuana or marijuana-in-combination[[138]] with other drugs [was recorded] decreased 1% between 2014 and 2015 (674 to 665).
>
> The prevalence of marijuana or marijuana-in-combination identified by CSP [Colorado State Patrol] as the impairing substance increased from 12% of all DUIs in 2014 to 15% in 2015.
>
> The Denver Police Department found summons where marijuana or marijuana-in-combination was recorded increased from 33 to 73 between 2013 and 2015. Citations for marijuana or marijuana-in-combination account for about 3% of all DUIs in Denver. Toxicology results from Chematox Laboratory showed an increase in positive cannabinoid screens for drivers, from 57% in 2012 to 65% in 2014. Of those that tested positive on the initial screen, the percent testing positive for delta-9 Tetrahydrocannabinol (THC) at 2 nanograms/millileter rose from 52% in 2012 to 67% in 2014.

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an observed difference in the population estimates would occur due to random variability if there was no difference in the estimates being compared. To review year-to-year, statistically significant changes, see the NSDUH state data reports.

[134] National Institute on Drug Abuse, *Preventing Drug Use among Children and Adolescents (In Brief)*, October 2003, https://www.drugabuse.gov/publications/preventing-drug-abuse-among-children-adolescents/chapter-1-risk-factors-protective-factors/what-are-risk-factors.

[135] See Colorado Revised Statutes, Title 25, §1.5-110. See the most recent report, CDPHE, Retail Marijuana Public Health Advisory Committee, *Monitoring Health Concerns Related to Marijuana in Colorado: 2016*, 2016.

[136] Blood THC concentrations drop quickly after individuals smoke marijuana. See Rebecca L. Hartman and Marilyn A. Huestis, "Cannabis effects on driving skills," *Clinical Chemistry*, vol. 59, no. 3 (March 2013), pp. 478-492; and Rebecca L. Hartman, Timothy L. Brown, and Gary Milavetz, et al., "Cannabis effects on driving lateral control with and without alcohol," *Drug and Alcohol Dependence*, vol. 154 (September 1, 2015), pp. 25-37.

[137] National Highway Traffic Safety Administration, *Drug and Human Performance Fact Sheets: Cannabis/Marijuana (Δ 9 -Tetrahydrocannabinol, THC)*, https://one.nhtsa.gov/people/injury/research/job185drugs/cannabis.htm.

[138] In this report, the concept of marijuana "in combination" references marijuana in combination with other drugs.

> Fatalities with THC-only or THC-in-combination positive drivers increased 44%, from 55 in 2013 to 79 in 2014. Note that the detection of any THC in [the] blood is not an indicator of impairment but only indicates presence in the system. Detection of delta-9 THC, one of the psychoactive properties of marijuana, may be an indicator of impairment.[139]

In monitoring the impacts of recreational marijuana legalization in Washington State, government researchers report that there was no trend identified in the percentage of drivers testing positive for marijuana (either marijuana only or marijuana in combination with other drugs/alcohol) for those involved in traffic fatalities and who were tested for drugs or alcohol.[140] They also report that "marijuana incidents"[141] on the highways and roads decreased from 2,462 in 2012 to 625 in 2014. Changes in these data may be influenced by many possible factors including changes in enforcement practices and priorities. It is possible that the sharp drop in marijuana incidents may be explained by the legalization of marijuana possession[142] after 2012. For example, many traffic stops involving the smell of marijuana would no longer require further law enforcement investigation unless the individual in question is under the age of 21, there is suspicion of drug trafficking, or other reasons.

Marijuana Arrests

After the legalization of the possession, sale, manufacturing, and distribution of certain quantities of marijuana for recreational purposes, one might expect the number of marijuana arrests to go down in jurisdictions that have done so. Indeed, Washington State reports that "all criminal activities involving marijuana decreased between 2012 and 2014."[143] Possession was cited as the most common criminal activity, and the number of marijuana possession arrests decreased from 5,133 in 2012 to 2,091 in 2013, and then to 1,918 in 2014.[144] Additionally, the number of marijuana incidents decreased from 6,336 in 2012 to 2,326 in 2014.[145]

In Colorado, the number of marijuana arrests decreased by nearly half from 12,894 in 2012 to 6,502 in 2013, and then increased to 7,004 in 2014. Of note, the number of marijuana arrests for youth (aged 10-17) increased by 6%, from 3,235 in 2012 to 3,400 in 2014, after a slight decline in 2013.[146]

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[139] Jack Reed, *Marijuana Legalization in Colorado: Early Findings: A Report Pursuant to Senate Bill 13-283*, Colorado Department of Public Safety, March 2016, p. 6, (hereinafter, *Marijuana Legalization in Colorado: Early Findings: A Report Pursuant to Senate Bill 13-283*).

[140] Washington State Office of Financial Management, Forecasting and Research Division, *Monitoring the Impacts of Recreational Marijuana Legalization*, 2015 Update Report, January 2016, p. 3, (hereinafter, *Monitoring the Impacts of Recreational Marijuana Legalization*).

[141] OFM relies on the FBI's definition of the term "incident" and states the following: "an 'incident' occurs when any law enforcement officer investigates a scene or situation, whether that investigation results in an arrest or not. Incidents involving multiple illicit drugs or other criminal activities are counted only once, and are included in whichever category is listed first by the local law enforcement agency." Ibid., p. 4.

[142] Washington State legalized the possession of marijuana in limited amounts by adults.

[143] *Monitoring the Impacts of Recreational Marijuana Legalization*, pp. 3 and 17.

[144] Ibid, p. 17.

[145] Of note, over this same period, the number of incidents increased each year for amphetamines/methamphetamines and heroin, and decreased each year for incident data in which no drug type was provided and drug type was unknown. See *Monitoring the Impacts of Recreational Marijuana Legalization*, p. 14.

[146] *Marijuana Legalization in Colorado: Early Findings: A Report Pursuant to Senate Bill 13-283*, p. 22.

Marijuana Trafficking

Transnational Trafficking

Mexican transnational criminal organizations have historically been the primary foreign suppliers of marijuana to the United States, with small amounts also coming from Canada and the Caribbean. While anecdotal reports about the impact of domestic legalization initiatives on the domestic marijuana black market exist, officials have noted that there is an "intelligence gap" with respect to data on exactly how domestic legalization has impacted the amount of Mexican-produced marijuana entering the United States.[147] For one, estimates on domestic marijuana consumption cannot speak to the source of this marijuana. In addition, drug seizure data from the various federal, state, and local law enforcement agencies do not give a sense of the origin of the marijuana. Further, there is no marijuana "signature program," like there is for cocaine and heroin, that can help determine the geographic origin of cannabis plants used to produce the seized marijuana.[148]

Marijuana cultivation in Mexico has decreased, though it is unclear precisely how this affects or is driven by U.S. demand for Mexican marijuana. One of the tradeoffs has been an increase in production of other drugs. Reportedly, the trafficking organizations have shifted production to more profitable drugs such as heroin and methamphetamine.[149] Consistent with a decline in Mexican marijuana cultivation, there has been a general decline in marijuana seizures along the Southwest border between 2010 and 2015. However, the DEA's outlook on marijuana trafficking is that "Mexico-produced marijuana will continue to be trafficked into the United States in bulk quantities and will likely increase in quality to compete with domestically-produced marijuana."[150]

One notable statistic is that since the first states began legalizing marijuana for recreational use in 2012, there has been a "sharp decline" in the number of individuals prosecuted and sentenced for federal marijuana trafficking offenses.[151] As experts have noted, however, this decline could be driven by a number, or combination, of factors such as federal efforts to prosecute marijuana-related drug offenders, efforts by drug traffickers to conceal their illegal contraband entering the United States, and the amount of illegal marijuana being shipped into the United States.[152]

Trafficking from States that Have Legalized into Other States

Some states have alleged that there has been increased marijuana trafficking from nearby states that have legalized marijuana possession or sale for medical or recreational purposes. For instance, according to DEA testimony, there has been increased marijuana trafficking in states surrounding Colorado since the state legalized recreational use.[153] The Rocky Mountain High

[147] U.S. Drug Enforcement Administration, *2015 National Drug Threat Assessment Summary*, DEA-DCT-DIR-008-16, October 2015, p. 71 (hereinafter, *2015 National Drug Threat Assessment Summary*).

[148] *National Drug Threat Assessment Summary 2016*, p. 116.

[149] Nick Miroff, "Losing Marijuana Business, Mexican Cartels Push Heroin and Meth," *The Washington Post*, January 11, 2015.

[150] *National Drug Threat Assessment Summary 2016*, p. 125.

[151] U.S. Sentencing Commission, *Quick Facts: Drug Trafficking Offenses*, May 2016.

[152] Christopher Ingraham, "Federal Marijuana Smuggling is Declining in the Era of Legal Weed," *The Washington Post*, May 26, 2016, referencing statements by Beau Kilmer, a drug policy researcher at RAND Corp.

[153] U.S. Congress, Senate Committee on the Judiciary, *Hearing on Oversight of the Drug Enforcement Administration*, Testimony of Administrator Michele M. Leonhart [transcript], 113th Cong., 2nd sess., April 30, 2014. Administrator (continued...)

Intensity Drug Trafficking Area (HIDTA) reported 394 instances of interdiction of Colorado marijuana destined for 36 other states in 2015.[154] Additionally, the HIDTA's report indicates that interdiction experts estimate these seizures represent about 10% or less of the total amount that is moved across the border undetected.[155]

In December 2014, Nebraska and Oklahoma filed a lawsuit in the U.S. Supreme Court[156] against Colorado claiming that their law enforcement and criminal justice systems had been adversely impacted by Colorado's laws legalizing marijuana.[157] The complaint included claims that Colorado's "statutes and regulations are devoid of safeguards to ensure marijuana cultivated and sold in Colorado is not trafficked to other states."[158] In March 2016, however, the Supreme Court declined to hear the case challenging Colorado's marijuana law.[159]

The Changing Domestic Black Market

There have been reports of changes in the domestic black market for marijuana as states have moved to legalize it for medical and recreational purposes. For instance, the market in Denver, CO, has been described as smaller and less violent than it previously was. In addition, buyers there are said to be purchasing more from "mom-and-pop operations" rather than from entities affiliated with larger cartels.[160] Most of the domestically produced marijuana (other than that which is produced in accordance with various state laws) is cultivated in California.[161] This cultivation is carried out not only by U.S. persons, but also by foreign criminal networks. For instance, Mexican traffickers run large outdoor grow sites in California, which are sometimes established on public lands.

The DEA has indicated that marijuana concentrates—such as hashish, hash oil, and keif—are a growing concern for federal law enforcement. These substances have "potency levels far exceeding those of leaf marijuana."[162] The DEA has also stated that one effect of state marijuana legalization initiatives has been an increase in seizures of marijuana concentrates and an increase in the number of THC extraction laboratories in the United States.[163]

Broadly, there has been a shifting demand for higher-quality marijuana. The marijuana produced in the United States and Canada is generally thought to be of superior quality to the marijuana

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Leonhart further stated, "Take for instance, Kansas, and we've talked to our partners in Kansas and they've already been seeing a 61 percent increase in marijuana seizures coming from Colorado."

[154] Rocky Mountain High Intensity Drug Trafficking Area, *The Legalization of Marijuana in Colorado: The Impact*, September 2016, p. 4.

[155] Ibid., p. 110.

[156] The Constitution provides the Supreme Court with original jurisdiction over "Controversies between two or more States," meaning such claims can be filed directly with the Supreme Court without first being litigated in the lower federal courts. U.S. CONST., art. III, §2. cl. 1.

[157] Jack Healy, "Nebraska and Oklahoma Sue Colorado Over Marijuana Law," *The New York Times*, December 18, 2014.

[158] States of Nebraska and Oklahoma v. State of Colorado, S. Ct., Complaint, p. 3.

[159] Nebraska, et al. v. Colorado, 577 U.S. ___, 136 S. Ct. 1034 (2016); *see also* David G. Savage, "Supreme Court Rejects Challenge to Colorado Marijuana Law From Other States," *The Los Angeles Times*, March 21, 2016.

[160] Tom James, "The Failed Promise of Legal Pot," *The Atlantic*, May 9, 2016.

[161] *National Drug Threat Assessment Summary 2015*, p. 72.

[162] *National Drug Threat Assessment Summary 2015*, p. v.

[163] *National Drug Threat Assessment Summary 2016*, p. 105.

produced in Mexico. To be responsive to the U.S. demand for high-quality marijuana, Mexican drug traffickers have tried to improve their product.[164] However, it is not just U.S. consumers who demand higher-quality marijuana. The demand exists in Mexico as well; there have even been anecdotal reports of traffickers moving high-quality marijuana produced in the United States across the Southwest border for sale and distribution in Mexico.[165] U.S. officials have not yet reported data on the quantity or frequency of this southbound smuggling.

The Marijuana Gray Market

In Colorado, state law allows the cultivation of up to 99 marijuana plants for patients and caregivers and up to 6 plants per individual for recreational purposes. In what has been dubbed "the gray market," marijuana is sometimes being grown legally *but then sold illegally.*[166] In addition to federal and local enforcement actions against gray market actors, Colorado Governor Hickenlooper reportedly is seeking to establish new limits on residential plants and give law enforcement additional resources to combat unlicensed marijuana growers.[167]

Legalization Impact on Criminal Networks

A number of criminal networks rely on profits generated from the sale of illegal drugs—including marijuana—in the United States. Mexican drug trafficking organizations control more of the wholesale distribution of marijuana than other major drug trafficking organizations in the United States.[168] One estimate has placed the proportion of U.S.-consumed marijuana that was imported from Mexico at somewhere between 40% and 67%.[169] While the Mexican criminal networks control the wholesale distribution of illicit drugs in the United States, they "are not generally directly involved in retail distribution of illicit drugs."[170] In order to facilitate the retail distribution and sale of drugs in the United States, Mexican drug traffickers have formed relationships with U.S. street, prison, and outlaw motorcycle gangs.[171] Although these gangs have historically been involved with retail-level drug distribution, their ties to the Mexican criminal networks have allowed them to become increasingly involved at the wholesale level as well. Trafficking and distribution of illicit drugs is a primary source of revenue for these gangs.[172]

A number of organizations have assessed the potential profits generated from illicit drug sales, both worldwide and in the United States, but "[e]stimates of marijuana ... revenues suffer particularly high rates of uncertainty."[173] The former National Drug Intelligence Center (NDIC),

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[164] Ibid., p. 116.

[165] John Burnett, "Legal Pot In the U.S. May Be Undercutting Mexican Marijuana," *NPR All Things Considered*, December 1, 2014.

[166] John Frank, "Colorado governor calls marijuana gray market 'a clear and present danger'," *The Denver Post*, November 15, 2016.

[167] Brian Eason "The top 10 issues facing Colorado lawmakers Eason and John Frank, in the 2017 session," *The Denver Post*, January 9, 2017.

[168] *National Drug Threat Assessment Summary 2016*.

[169] Beau Kilmer, Jonathan P. Caulkins, and Brittany M. Bond, et al., *Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?*, RAND International Programs and Drug Policy Research Center, 2010.

[170] Organization of American States, *The Drug Problem in the Americas: Studies: The Economics of Drug Trafficking*, p. 18.

[171] *National Drug Threat Assessment Summary 2016*.

[172] Ibid. See also *National Drug Threat Assessment Summary 2015*.

[173] Organization of American States, *The Drug Problem in the Americas: Studies: The Economics of Drug Trafficking*, (continued...)

for instance, estimated that the sale of illicit drugs in the United States generates between $18 billion and $39 billion in U.S. wholesale drug proceeds for the Colombian and Mexican drug trafficking organizations annually.[174] The proportion that is attributable to marijuana sales, however, is unknown.[175] Without a clear understanding of (1) actual proceeds generated by the sale of illicit drugs in the United States, (2) the proportion of total proceeds attributable to the sale of marijuana, and (3) the proportion of marijuana sales controlled by criminal organizations and affiliated gangs, any estimates of how marijuana legalization might impact the drug trafficking organizations are purely speculative.

Marijuana proceeds are generated at many points along the supply chain, including production, transportation, and distribution. Experts have debated which aspects of this chain—and the related proceeds—would be most heavily impacted by marijuana legalization. In addition, the potential impact of marijuana legalization in some subset of the states (complicated by varying legal frameworks and regulatory regimes) may be more difficult to model than the impact of federal marijuana legalization. For instance, in evaluating the potential fiscal impact from the 2012 Washington and Colorado legalization initiatives on the profits of Mexican drug trafficking organizations, the Organization of American States (OAS) hypothesized that "[a]t the extreme, Mexican drug trafficking organizations could lose some 20 to 25 percent of their drug export income, and a smaller, though difficult to estimate, percentage of their total revenues."[176]

Other scholars have based their estimates on a hypothetical federal legalization of marijuana when estimating the potential financial impact of marijuana legalization. Under this scenario, small-scale growers at the start of the marijuana production-to-consumption chain might be put out of business by professional farmers, a few dozen of which "could produce enough marijuana to meet U.S. consumption at prices small-scale producers couldn't possibly match."[177] Large drug trafficking organizations generate a majority of their marijuana-related income (which some estimates place at between $1.1 billion to $2.0 billion) from exporting the drug to the United States and selling it to wholesalers on the U.S. side of the border.[178] This revenue could be jeopardized if the United States were to legalize the production and consumption of recreational marijuana. Of note, the Tax Foundation has estimated that the annual U.S. marijuana

(...continued)

2013, p. 7.

[174] U.S. Department of Justice, National Drug Intelligence Center, *National Drug Threat Assessment 2009,* December 2008, p. 49.

[175] A 2006 Office of National Drug Control Policy figure estimated that over 60% of Mexican drug trafficking organizations' revenue could be attributed to marijuana sales. However, a number of researchers and experts have questioned the accuracy of this number and provided other estimates of marijuana proceeds. See, for example, Beau Kilmer, *Debunking the Mythical Numbers about Marijuana Production in Mexico and the United States*, RAND Drug Policy Research Center. See also U.S. Government Accountability Office, *Drug Control: U.S. Assistance has Helped Mexican Counternarcotics Efforts, but Tons of Illicit Drugs Continue to Flow into the United States*, GAO-07-1018, August 2007. Another estimate has placed the proportion of Mexican DTO export revenues attributable to marijuana at between 15% and 26% of total drug revenues. See Beau Kilmer, Jonathan P. Caulkins, and Brittany M. Bond, et al., *Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?*, RAND International Programs and Drug Policy Research Center, 2010.

[176] Organization of American States, *The Drug Problem in the Americas: Studies: The Economics of Drug Trafficking*, p. 41.

[177] Jonathan P. Caulkins, Angela Howken, and Beau Kilmer, "How Would Marijuana Legalization Affect Me Personally?" in *Marijuana Legalization: What Everyone Needs to Know* (Oxford University Press, 2012).

[178] Beau Kilmer, Jonathan P. Caulkins, and Brittany M. Bond, et al., *Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?*, RAND International Programs and Drug Policy Research Center, 2010.

market is $45 billion—0.28% of GDP.[179] Under a legalization regime, some portion of the revenue that might have previously been generated by traffickers could be lost to authorized sellers (in the form of profits) and governments (in the form of taxes).

International Response[180]

Developments in state marijuana laws and policies, particularly those that relate to recreational marijuana activities, have raised some concerns about the United States' compliance with three United Nations (U.N.) drug control treaties that impose certain international obligations relating to marijuana. These treaties generally seek to curb the use of controlled substances while carving out exceptions for medicinal and scientific uses. The United States is a party to the following drug treaties:

- The Single Convention on Narcotic Drugs (Single Convention)[181] requires parties to the convention to "take such legislative and administrative measures as may be necessary ... to limit exclusively to medical and scientific purposes" the manufacture, distribution, trade, use, and possession of "cannabis."[182]
- The 1971 Convention on Psychotropic Substances requires that specific controls be placed upon THC.[183]
- The 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires parties to establish criminal penalties for the possession, purchase, or cultivation of marijuana for nonmedicinal consumption, but only to the extent that such action is consistent with the "constitutional principles and basic concepts of [the country's] legal system."[184]

The International Narcotics Control Board (INCB or Board) and the Commission on Narcotic Drugs of the Economic and Social Council (Commission) are responsible for monitoring parties' compliance with these treaties,[185] though they appear to have limited ability to enforce such compliance. For example, the Single Convention provides that the Commission may "call the attention of the Board to any matters which may be relevant to the functions of the Board,"[186] while the Board may take measures that are "most consistent with the intent to further the co-operation of Governments with the Board and to provide the mechanism for a continuing

[179] Gavin Ekins and Joseph Henchman, *Marijuana Legalization and Taxes: Federal Revenue Impact*, Tax Foundation, May 12, 2016.

[180] This section was authored by Brian T. Yeh, Legislative Attorney, Congressional Research Service.

[181] Single Convention on Narcotic Drugs, March 30, 1961, 18 U.S.T. 1407, https://www.unodc.org/unodc/en/treaties/single-convention.html (last visited January 6, 2017). The Single Convention was amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs.

[182] Ibid. at art. 2, 4, 21, 28.

[183] Convention on Psychotropic Substances, February 21, 1971, 32 U.S.T. 543. The convention directs parties to "prohibit all use except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their Governments or specifically approved by them."

[184] December 20, 1988, S. Treaty Doc. No. 101-4 (1989).

[185] Single Convention on Narcotic Drugs, art. 5, March 30, 1961, 18 U.S.T. 1407; Convention on Psychotropic Substances, art. 17, 19, February 21, 1971, 32 U.S.T. 543; Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, art. 21, 22, December 20, 1988, S. Treaty Doc. No. 101-4 (1989).

[186] Single Convention on Narcotic Drugs, art. 8.

dialogue between Governments and the Board which will lend assistance to and facilitate effective national action to attain the aims of this Convention."[187]

It is unclear whether, or to what extent, the enactment of state laws authorizing the use of marijuana for recreational purposes affects the United States' compliance with the drug treaties. Some assert that state-level recreational marijuana legalization (and the federal government response to those state laws) does not conform with the international obligations regarding marijuana, while others disagree with this interpretation. For example, the then-President of the INCB stated in 2013 that recreational marijuana legalization in states is inconsistent with the Single Convention's requirement that parties limit lawful uses of cannabis to medical and scientific purposes.[188] On the other hand, in 2014, the then-Assistant Secretary of State for International Narcotics and Law Enforcement Affairs appeared to express a contrary view when he urged the international community to "accept flexible interpretation of" the U.N. Drug Control Conventions.[189] He appealed to countries "to tolerate different national drug policies, to accept the fact that some countries will have very strict drug approaches; other countries will legalize entire categories of drugs."[190] A Stanford University professor has also opined that the United States is not in violation of the drug control conventions on account of state-level laws,[191] although a Brookings Institution fellow has argued otherwise.[192]

Some observers have raised doubts about claims that the drug treaties contain the "flexibilities" that can accommodate state recreational marijuana laws; they have instead argued for reforms of the treaties to expressly permit them.[193] Yet in September 2014, President Obama disagreed that the international drug control regime needs revision in light of marijuana policy developments.[194] The Trump Administration's stance on this issue has not yet been articulated.

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[187] Ibid, at art. 9(5).

[188] Raymond Yans, INCB President, *Report of the International Narcotics Control Board*, March 11-15, 2013, at 7, https://www.incb.org/documents/Speeches/Speeches2013/CND_2013_Speech_FINAL_ENGLISH_120313_cl.pdf; "INCB has to underline, it is our mandate, the central role of the 1961 Convention which needs to be implemented worldwide, on the national level, but also on the sub-national level."

[189] U.S. Department of State, William R. Brownfield, *Trends in Global Drug Policy*, New York Foreign Press Center Briefing, October 9, 2014.

[190] Ibid.

[191] Keith Humphreys, "Can the United Nations Block U.S. Marijuana Legalization?*," Huffington Post*, September 25, 2013 (updated November 25, 2013); "Countries with federated systems of government like the U.S. and Germany can only make international commitments regarding their national-level policies. Constitutionally, U.S. states are simply not required to make marijuana illegal as it is in federal law. Hence, the U.S. made no such commitment on behalf of the 50 states in signing the UN drug control treaties."

[192] Jonathan Rauch, "Marijuana Legalization Poses a Dilemma for International Drug Treaties," *Brookings*, October 14, 2014; quoting Brookings fellow Wells Bennett as saying that "if 10, 15, 20 states enact and operate responsible regimes for the regulation of marijuana—we will be enforcing the Controlled Substances Act less and less in jurisdictions that have regulated, legal marijuana markets. And that will create more and more tension with our international commitments to suppress marijuana. At that point, it will be extraordinarily difficult for the U.S. to maintain that it complies with its obligations."

[193] See, for example, Wells Bennett and John Walsh, "Marijuana Legalization Is an Opportunity to Modernize International Drug Treaties," October 2014, *Brookings*.

[194] The White House, *Presidential Determination—Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2015*, September 15, 2014. "The U.N. drug conventions ... allow sovereign nations the flexibility to develop and adapt new policies and programs in keeping with their own national circumstances while retaining their focus on achieving the conventions' aim of ensuring the availability of controlled substances for medical and scientific purposes, preventing abuse and addiction, and suppressing drug trafficking and related criminal activities.... [R]evising the U.N. drug conventions is not a prerequisite to advancing the common and shared responsibility of international cooperation designed to enhance the positive goals we have set to counter illegal drugs and crime."

Tax Revenue

All eight of the states that have legalized marijuana for recreational purposes levy some combination of taxes and business licensing fees at the level of marijuana cultivation or retail sales (in addition to general state sales taxes).[195] Tax rates on the cultivation and retail sales are more commonly levied on an *ad valorem* basis, or as a percentage of price.[196] The tax treatment of medical marijuana varies by state. In some states, medical marijuana is indirectly taxed further back the distribution chain at the cultivator level. In addition, states tax the retail sales of medical marijuana differently. In Colorado, for example, medical marijuana sales are exempt from a 10% special excise tax that applies to recreational marijuana sales, but they are still subject to the 2.9% general state sales tax.[197] In Washington, medical marijuana sales are subject to the same 37% excise tax that applies to recreational sales, but they are exempt from the state's 6.5% general sales tax.[198]

While some states utilize marijuana-related revenue streams for general spending purposes, others have approved measures to dedicate a portion of this revenue for spending on education (Colorado and Oregon), criminal justice programs (Alaska), or public health and substance abuse programs (Washington).[199]

Overall, though, these tax and spending regimes have been subject to change, as government officials and voters respond to changes in revenue collections and budget priorities.

Selected Issues Before Congress—The Path Forward

Given the current federal marijuana policy gap with certain states, there are a number of issues that Congress may address. These include, but are not limited to, issues surrounding financial services for marijuana businesses, federal tax issues for these businesses, oversight of federal law enforcement, allowance of states to implement medical marijuana laws and involvement of federal health care workers, and consideration of marijuana's designation as a Schedule I drug.

Provision of Financial Services to the Marijuana Industry

In spite of the guidance issued by FinCEN and DOJ, many financial institutions remain reluctant to openly enter relationships with state-authorized marijuana businesses.[200] Some marijuana businesses and marijuana industry proponents have complained that even when marijuana

[195] As mentioned in the "Recreational Legalization" section of this report, Washington, DC, has not legalized the commercial sale of recreational marijuana.

[196] Alaska is the only state that imposes a flat dollar tax rate on marijuana: $50 per ounce is imposed when marijuana is sold or transferred from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility. See Alaska Department of Revenue, "Marijuana Tax," accessed January 11, 2017, http://www.tax.alaska.gov/programs/programs/index.aspx?60000.

[197] See Colorado Department of Revenue, "Marijuana Taxes," accessed January 11, 2017, https://www.colorado.gov/pacific/tax/marijuana-taxes-quick-answers.

[198] See Washington Department of Revenue, "Taxes Due on Marijuana," accessed January 11, 2017, http://dor.wa.gov/Content/FindTaxesAndRates/marijuana/Default.aspx.

[199] See Office of Governor Bill Walker, "Governor Walker Signs Historic Criminal Justice Reform Bill," press release, July 11, 2016, at; Laurel Andrews, "Here's Where Half of the Revenue from Alaska's Legal Pot Will Go," *Alaska Dispatch News*, July 14, 2016.

[200] Sophie Quinton, *Why Marijuana Businesses Still Can't Get Bank Accounts*, The PEW Charitable Trusts, March 22, 2016.

businesses are able to open bank accounts or secure other financial services, those customer relationships are frequently terminated in relatively short order, especially when the existence of the relationship between the financial institution and the marijuana business becomes public.[201]

Over the years, several legislative proposals have been designed to jump-start financial relationships with state-authorized marijuana businesses. Some of these proposals would attempt to alleviate BSA reporting burdens beyond the measures detailed in the 2014 FinCEN guidance.[202] These proposals also would amend banking laws to prevent banking regulators from "prohibit[ing], penaliz[ing], or otherwise discourag[ing] a depository institution from providing financial services to a marijuana-related legitimate business" (i.e., one that is in compliance with a state or local marijuana regulatory regime).[203]

While such measures, if enacted, might help around the edges, many financial institutions and their federal regulators may remain apprehensive about ties to the marijuana industry while marijuana is listed as a Schedule I controlled substance under the CSA. In the absence of legislative change to the CSA, financial institutions must proceed with the knowledge that the Administration could reverse or otherwise make significant changes to its enforcement priorities and policies.[204] In other words, while these financial institutions may not be the subject of law enforcement investigations currently, the option remains.

Other legislative proposals[205] would reclassify marijuana as a Schedule II substance—this would legalize marijuana for medical purposes. This would likely do more to ease bank concerns with providing financial services to *medical* marijuana businesses but would not *entirely* eliminate a financial institution's legal risks, particularly if it associates with medical marijuana businesses that operate in states or localities lacking strong regulatory oversight and enforcement standards. Additionally, the reclassification of marijuana to Schedule II probably would have little impact on the provision of financial services to *recreational* marijuana businesses because they would still be operating in violation of the CSA.

Federal Tax Treatment

Marijuana producers and retailers may not deduct the costs of selling their product (e.g., payroll, rent, or advertising) for the purposes of the federal income tax filings.[206] The Internal Revenue Code (IRC) Section 280E states that

> No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

[201] Ibid. See also David Migoya, "Oregon bank opens doors to Colorado marijuana businesses," *The Denver Post*, January 20, 2015,

[202] See, for example, S. 683, 114th Cong.; S. 1726, 114th Cong.; H.R. 1538, 114th Cong.; and H.R. 2076, 114th Cong.

[203] Ibid.

[204] See generally CRS Report R43708, *The Take Care Clause and Executive Discretion in the Enforcement of Law*, by Todd Garvey.

[205] See, for example, S. 683, 114th Cong.; H.R. 1538, 114th Cong.

[206] For more legal analysis, see CRS Report R44056, *Marijuana and Federal Tax Law: In Brief*, by Erika K. Lunder.

Media reports indicate that the Internal Revenue Service (IRS) has enforced Section 280E in audits of marijuana-related businesses by refusing to accept these businesses' deductions.[207] IRC Section 280E does not prohibit a marijuana business from deducting the costs of cultivating or acquiring marijuana as a "cost of goods sold," though.[208] Effectively this constitutes an implicit tax on marijuana-related businesses equal to the value of the tax benefit of such deductions if these firms had engaged in an industry that was legal under federal law. One such public case involves the Sacramento-based Canna Care marijuana dispensary. The IRS disallowed $2.6 million in deductions for employee salaries, rent, and other costs over a three-year period, which resulted in the business owing $875,000 in additional taxes. Canna Care challenged the IRS in U.S. Tax Court, but ultimately the court upheld the IRS ruling.[209]

The discrepancies between federal, state, and local tax treatments of marijuana-related businesses may create economic incentives to engage in the underground economy. In addition to the uncertainty of federal tax enforcement procedures (and costs of any related legal assistance), the inability of marijuana businesses to deduct their business expenses is effectively an implicit tax up to 39.6% (if organized as sole-proprietor or partnership) or 35% (if organized as a C corporation) of the cost of these expenses.[210] These implicit taxes are paid in addition to state and local sales and special excise taxes.[211] The status quo administration of federal tax laws creates an economic advantage for illicit marijuana sellers, who are not subject to direct taxation of their sales.

Past marijuana-related tax proposals have varied in scope.[212] Some would have exempted a business (that conducts marijuana sales in compliance with state law) from the Section 280E prohibition against allowing business-related tax credits or deductions for expenditures in connection with trafficking in controlled substances.[213] In contrast, one bill would have removed marijuana from all lists of controlled substances (and, indirectly, IRC §280E restrictions on marijuana),[214] and another would have imposed a federal excise tax on domestic recreational marijuana retail sales that would begin at 10% of the price and phase in a tax rate of 25% over four years.[215]

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[207] For example, see Jeff Daniels, "IRS Said to be Auditing Colorado Marijuana Businesses," *CNBC*, July 12, 2016, http://www.cnbc.com/2016/07/12/irs-said-to-be-auditing-colorado-marijuana-businesses.html; and Will Yankowicz, "Marijuana Companies' Biggest Battle Might Be Against the IRS," *Slate*, July 1, 2016, http://www.slate.com/blogs/moneybox/2016/07/01/legal_cannabis_businesses_pay_taxes_under_a_code_reserved_for_illegal_drug.html.

[208] See CRS Report R44056, *Marijuana and Federal Tax Law: In Brief*, by Erika K. Lunder.

[209] See Canna Care, Inc. v. Commissioner, T.C. Memo 2015-206, October 22, 2015, http://ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=10586.

[210] With 35% being the top, marginal tax bracket for corporations and 39.6% being the top, marginal tax bracket for individuals under the federal income tax code.

[211] Colorado imposes a sales tax of 10% and an excise tax of 15% on retail marijuana sales, in addition to a general 2.9% state sales tax and any local sales taxes. See State of Colorado Department of Revenue, "Retail Marijuana Return Filing Overview," January 29-31, 2014, http://www.colorado.gov/cms/forms/dor-tax/RetailMarijuanaReturnFilingOverviewJan2014.pdf. The state of Washington, which began allowing recreational marijuana sales in 2014, will impose an excise tax of 25% on the sales price of marijuana within an established, state-distribution system.

[212] For more general analysis of federal proposals to tax marijuana, see CRS Report R43785, *Federal Proposals to Tax Marijuana: An Economic Analysis*, by Jane G. Gravelle and Sean Lowry.

[213] See the Small Business Tax Equity Act of 2015 (H.R. 1855; S. 987) from the 114th Congress.

[214] See the Regulate Marijuana Like Alcohol Act (H.R. 1013) from the 114th Congress.

[215] See the Marijuana Tax Revenue Act of 2015 (H.R. 1014) from the 114th Congress.

Oversight of Federal Law Enforcement

Review of Agency Missions

In exercising its oversight authorities, Congress may choose to examine the extent to which (if at all) federal law enforcement missions—in particular the DEA's mission—are impacted by state legalization of marijuana. For instance, policymakers may elect to review the mission of each federal law enforcement agency involved in enforcing the CSA and examine how its drug-related investigations may be influenced by the varying state-level policies regarding marijuana. As noted, federal law enforcement has generally prioritized the investigation of drug traffickers and dealers over that of low-level drug users. Policymakers may question whether these policies and priorities are implemented consistently across states with different drug policies regarding marijuana.

Cooperation with State and Local Law Enforcement

One issue policymakers may debate is whether or how to incentivize task forces, fusion centers, and other coordinating bodies charged with combating drug-related crimes. Before determining whether to increase, decrease, or maintain funding for coordinated efforts such as task forces, policymakers may consider whether state and local counterparts are able to effectively achieve task force goals if the respective state marijuana policy is not in agreement with federal marijuana policy. Policymakers may choose to evaluate whether certain drug task forces are sustainable in states that have established policies that are either inconsistent—such as in states that have *decriminalized* small amounts of marijuana possession—or are in direct conflict—including states that have *legalized* either medical or recreational marijuana—with federal drug policy. For instance, might there be any internal conflicts that prevent task force partners from collaborating effectively to carry out their investigations?

Of note, the Arizona Court of Appeals ruled that patients who possess marijuana in compliance with the Arizona Medical Marijuana Act are entitled to the return of their marijuana that law enforcement may have seized during a traffic stop.[216] In states such as Colorado, media reports indicate that some local law enforcement officers avoid seizing marijuana in certain cases because they do not want to have to return the marijuana to its owner—an act that is tantamount to distribution of a Schedule I controlled substance, a violation of federal law.[217]

Oversight and Continuation of Federal Enforcement Priorities

As noted, in responding to states with recreational legalization initiatives, DOJ issued federal enforcement priorities for states with legal marijuana. According to DOJ, it monitors the effects of state legalization by

- collaborating with other DOJ components and other federal agencies in assessment of marijuana enforcement-related data;
- prosecuting cases that threaten federal enforcement priorities; and
- consulting with state officials about areas of federal concern.[218]

[216] State v. Okun, 231 Ariz. 462 (Ariz. Ct. App. 2013). The U.S. Supreme Court denied certiorari in 2014. Arizona v. Okun, 572 U.S. ___, 134 S. Ct. 1759 (2014).

[217] Jessica Maher, "Law enforcement conflicts still exist with legal pot," *Reporter-Herald*, January 2, 2014.

[218] U.S. Government Accountability Office, *DOJ Should Document Its Approach to Monitoring the Effects of* (continued...)

As of December 2015, however, DOJ has not documented its efforts to monitor the effects of state legalization and ensure that these priorities are being emphasized. It is unclear how the metrics to evaluate these priorities will be used to determine whether federal intervention is needed in states that have legalized.[219] For example, one of the eight enforcement priorities listed by Deputy Attorney General Cole was to prevent the diversion of marijuana to other states. While it seems the DEA is aware of increased marijuana trafficking from Colorado to Kansas, it is unclear what level of increased trafficking might trigger action by the federal government against state marijuana laws. Congress may choose to exercise oversight over DOJ's enforcement priorities and metrics for tracking illicit activity in the states. Congress may also request research on or an investigation of this issue outside of actions by the Administration.

The Administration may alter or reverse its enforcement priorities at any time. As mentioned, in a February 2017 White House press statement, the Trump Administration indicated there may be increased enforcement against recreational marijuana, and stated that there is a "big difference" between medical and recreational marijuana.[220]

Medical Marijuana

State Medical Marijuana Laws and Federal Law Enforcement

State medical marijuana laws have raised questions for federal policymakers about enforcing federal law related to marijuana in situations where individuals or organizations are acting in compliance with state law. In previous Congresses, Members of both the House and the Senate have introduced legislation that would amend the CSA such that provisions relating to marijuana would not apply to a person who is acting in compliance with relevant state law.[221]

As discussed, in recent years, Congress has included policy riders in appropriations acts to prohibit DOJ from using funds to prevent states from implementing their medical marijuana laws.[222] Congress may decide to alter, maintain, or reverse this provision. Notably, in a February 2017 White House press statement, the Trump Administration signaled some acceptance of the medicinal use of marijuana: "[t]he President understands the pain and suffering that many people go through who are facing especially terminal diseases and the comfort that some of these drugs, including medical marijuana, can bring to them."[223]

(...continued)

Legalization, GAO-16-1, December 30, 2015.

[219] Ibid, pp. 30-31.

[220] The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sean Spicer, 2/23/2017, #15*, February 22, 2017, https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15.

[221] See, for example, the Compassionate Access, Research Expansion, and Respect States (CARERS) Act of 2015 (H.R. 1538/S. 683 in the 114th Congress).

[222] See the Consolidated Appropriations Act, 2016 (P.L. 114-113), §542; and the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235), §538 from the 114th Congress. Of note, the medical marijuana provision remains in effect during the FY2017 continuing resolution (The Further Continuing Appropriations Act, 2017 (P.L. 114-254).) that continues appropriations for the bureaus and agencies funded through the annual Commerce, Justice, Science, and Related Agencies appropriations until April 28, 2017

[223] The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sean Spicer, 2/23/2017, #15*, February 22, 2017, https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15.

State Medical Marijuana Laws and Federal Health Care Providers

A topic of particular interest to federal policymakers has been how federal health care providers—especially those in the Department of Veterans Affairs (VA)—deal with state medical marijuana laws. VA policy does not deny health care services to veterans who participate in state marijuana programs; however, it does prohibit VA providers from completing the forms that effectively take the place of prescriptions in state medical marijuana programs.[224] Members in both chambers have introduced legislation that would allow VA providers to complete such forms.[225] Similar provisions passed the Senate as part of an FY2016 appropriations bill, and passed the Senate Committee on Appropriations as part of an FY2017 appropriations bill; however, neither were included in an enacted appropriations law.[226]

Consideration of Marijuana as a Schedule I Drug: Maintain or Minimize the Gap

As the gap between federal and state policies on marijuana widens each year, policymakers might decide to reevaluate federal marijuana policy. It has only been a few years since states began to legalize recreational marijuana, but over 20 years since they began to legalize medical marijuana. A large majority of states now have marijuana policies that contradict the CSA.

In addressing state-level legalization efforts, Congress could take one of several routes. It could elect to take no action, thereby upholding the federal government's current marijuana policy and enforcement priorities. It may also decide that the CSA must be enforced in states and direct federal law enforcement to strictly enforce the CSA, even when individuals may be in compliance with state laws. Alternatively, Congress could choose to reevaluate marijuana's placement as a Schedule I controlled substance. Given the history of its scheduling, Congress may consider establishing a committee of experts to evaluate the efficacy of marijuana laws in the United States and address other issues such as the medicinal value and harm of marijuana use.[227]

Upon reevaluation, should Congress determine that marijuana no longer meets the criteria to be a Schedule I substance, it could take legislative action to remove it from the list of substances on that schedule. In doing so, Congress may (1) place marijuana on one of the other schedules (II, III, IV, or V) of controlled substances or (2) remove marijuana as a controlled substance altogether. If Congress chooses to remove marijuana as a controlled substance, it could alternatively seek to regulate and tax commercial marijuana activities. If marijuana *remains* a controlled substance under the CSA under any schedule, this would not eliminate the existing conflict with states that have legalized recreational marijuana. If the conflict remains, Congress may choose to continue to allow states to carry on with implementation of recreational marijuana

[224] Department of Veterans Affairs, Veterans Health Administration (VHA), *Access to Clinical Programs for Veterans Participating In State- Approved Marijuana Programs*, VHA Directive 2011-004, Washington, DC, January 31, 2011, http://www.va.gov/vhapublications/viewpublication.asp?pub_id=2362. This directive expired on January 31, 2016; however, it is cited in VHA Directive 1134 (published on November 28, 2016) and thus appears to remain in effect.

[225] See the Veterans Equal Access Act (H.R. 667 in the 114th Congress); and the Compassionate Access, Research Expansion, and Respect States (CARERS) Act of 2015 (H.R. 1538/S. 683 in the 114th Congress).

[226] See §246 of H.R. 2029 (in the 114th Congress) as engrossed in the Senate on November 10, 2015, and §249 of S. 2806 (in the 114th Congress) as reported to the Senate on April 18, 2016.

[227] These would be similar to the efforts of the National Commission on Marihuana and Drug Abuse, also known as the Shafer Commission, which was established under the CSA to study marijuana in the United States. See **Appendix B** for further discussion of the Shafer Commission.

laws, or it may choose to press for increased enforcement action against or within the states to attempt to stop state-sanctioned, recreational marijuana.

Appendix A. Medical Research on Marijuana

Approved Drugs and Ongoing Research

The Food and Drug Administration (FDA) has approved two drugs containing synthetic THC: nabilone and dronabinol. Nabilone is FDA-approved as an antiemetic (to reduce nausea or prevent vomiting) for patients receiving chemotherapy for cancer.[228] Dronabinol is FDA-approved as both an antiemetic for patients on chemotherapy and an appetite stimulant for patients with AIDS-related weight loss.[229] In addition, drugs containing plant-derived THC and/or cannabidiol (CBD, a nonpsychoactive chemical component of marijuana) are in the drug development and approval process.[230]

The UK-based GW Pharmaceuticals has plant-derived cannabinoid drug products in trials with the goal of FDA approval.[231] Its drug Sativex®, which is composed primarily of plant-derived THC and CBD, has already gained approval in 30 other countries for the treatment of spasticity[232] due to multiple sclerosis.[233] In 2014, the company announced that the FDA had granted "Fast Track" designation to Sativex as a potential pain reliever for patients with advanced cancer;[234] however, in 2015, three trials of Sativex failed to show superiority over a placebo.[235] The company continues to seek approval of Sativex and other plant-derived cannabinoid products for treatment of various conditions (e.g., childhood epilepsy).[236]

Scientific Evaluations of Marijuana

Recent evaluations conducted separately by the FDA and the National Academies of Sciences, Engineering, and Medicine (the National Academies) illustrate the challenge of meeting the required standard of evidence. While taking different approaches to their evaluations, both the FDA and the National Academies have found that the current evidence base falls short.

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[228] FDA first approved nabilone in 1985 under the trade name Cesamet®, which is registered to Meda Pharmaceuticals Inc. See http://www.accessdata.fda.gov/scripts/cder/ob/results_product.cfm?Appl_Type=N&Appl_No=018677.

[229] FDA first approved dronabinol in 1985 under the trade name Marinol®, which is registered to AbbVie Inc. See http://www.accessdata.fda.gov/scripts/cder/ob/results_product.cfm?Appl_Type=N&Appl_No=018651.

[230] Department of Health and Human Services, Food and Drug Administration, *FDA and Marijuana: Questions and Answers*, http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm421168.htm#determinations. For an explanation of the FDA's drug development and approval process, see http://www.fda.gov/Drugs/DevelopmentApprovalProcess/default.htm.

[231] GW Pharmaceuticals, "GW Pharmaceuticals plc Reports Fourth Quarter and Year-End 2016 Financial Results and Operational Progress," press release, December 5, 2016, http://ir.gwpharm.com/releasedetail.cfm?ReleaseID=1002545.

[232] Spasticity refers to problems with muscle control. It is a disorder often found in people with multiple sclerosis, cerebral palsy, and other conditions.

[233] Ibid.

[234] GW Pharmaceuticals, "GW Pharmaceuticals Announces that Sativex Receives Fast Track Designation from FDA in Cancer Pain," press release, April 28, 2014, http://ir.gwpharm.com/releasedetail.cfm?ReleaseID=842890. For an explanation of FDA's "Fast Track" designation, see http://www.fda.gov/forpatients/approvals/fast/ucm20041766.htm.

[235] GW Pharmaceuticals, "GW Pharmaceuticals and Otsuka Announce Results From Two Remaining Sativex(R) Phase 3 Cancer Pain Trials," press release, October 27, 2015.

[236] GW Pharmaceuticals, "GW Pharmaceuticals plc Reports Fourth Quarter and Year-End 2016 Financial Results and Operational Progress," press release, December 5, 2016. Of note, the FDA does not release this kind of information, which is proprietary; this information is publicly available because the company released it.

FDA Evaluation. The FDA evaluated only marijuana, not drugs containing a plant-derived chemical constituent of marijuana or drugs containing synthetic THC. Its analysis of marijuana's potential therapeutic effects is limited to 11 published studies that met criteria for inclusion in the review (e.g., that the study must be a randomized controlled trial).[237] The studies examined marijuana's use to treat neuropathic pain (five studies), stimulate appetite in patients with HIV (two studies), treat glaucoma (two studies), treat spasticity in multiple sclerosis (one study), and treat asthma (one study).[238] The evaluation also assessed potential risks of marijuana use (see text box, "Risks Associated with Marijuana Use"). The evaluation, called an eight-factor analysis, was conducted by the FDA pursuant to a request by the DEA.[239] The DEA requests such scientific and medical evaluations from the Secretary of Health and Human Services (HHS) in response to petitions asking the DEA to reschedule marijuana administratively.[240]

National Academies Evaluation. The National Academies evaluated cannabis, its constituents, and drugs containing synthetic THC. For each of 11 health topics, the report assessed "fair- and good-quality" research, relying on systematic reviews published since 2011 (where available) and primary research published after the systematic review (or since 1999, if no systematic review exists).[241] The 11 health topics are (1) therapeutic effects; (2) cancer; (3) cardiometabolic risk; (4) respiratory disease; (5) immunity; (6) injury and death; (7) prenatal, perinatal, and postnatal exposure to cannabis; (8) psychosocial effects; (9) mental health; (10) problem cannabis use; and (11) cannabis use and abuse of other substances.[242] The report presents nearly 100 conclusions, including some related to the challenges in conducting research with cannabis and cannabinoids.

Federal Research Requirements for Marijuana

Many federal research requirements are standard across all schedules of controlled substances; however, some requirements vary according to the assigned schedule of the particular substance. Federal regulations are more stringent for Schedule I substances—including marijuana. Examples of this include the following:

- For Schedule I substances, such as marijuana, even if practitioners have a DEA registration for a substance in Schedules II-V, they must obtain a *separate* DEA registration for Schedule I substances.
- Individuals who seek to register to manufacture a controlled substance in Schedule I or II are subject to production quota limitations as determined by the DEA,[243] but registrants for substances in Schedules III-V are not subject to such quotas.

[237] Department of Justice, Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53687-53766 and 53767-53845, August 12, 2016.

[238] Ibid.

[239] The term "eight-factor analysis" refers to the eight factors to be included pursuant to 21 U.S.C. §811(c).

[240] The request for a scientific and medical evaluation is required by 21 U.S.C. §811(b). The results of the most recent eight-factor analysis prior to August 2016 are available at Department of Justice, Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 76 *Federal Register* 40551-40589, July 8, 2011.

[241] National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*, Washington, DC, 2017, p. S-3, doi: 10.17226/24625.

[242] Ibid.

[243] See 21 U.S.C. §826.

- Researchers are required to store Schedule I and II substances in electronically monitored safes, steel cabinets, or vaults that meet or exceed certain specifications.[244] They are required to store Schedule III-V substances by secure standards but the requirements are less stringent than those required for Schedule I and II substances.
- When researchers apply for a DEA registration to conduct research involving Schedule I controlled substances, they must comply with federal regulations specifying the form and content of the research protocols.[245] The DEA Administrator must forward a copy of the application and research protocol to HHS, which is responsible for determining "the qualifications and competency of the applicant, as well as the merits of the protocol."[246] The HHS Secretary delegates that responsibility to the FDA. *No equivalent process is required for Schedule II-V controlled substances.*

Marijuana Supply for Researchers

Under the CSA, the Attorney General is required to register an applicant to manufacture Schedule I or II controlled substances "if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971."[247] In the case of marijuana, the National Center for Natural Products Research at the University of Mississippi has been the only registered manufacturer, operating under a contract administered by the National Institute on Drug Abuse (NIDA) within HHS's National Institutes of Health. For nearly 50 years, it has been the only official source through which researchers may obtain marijuana for research purposes—and which some have referred to as a "federal research monopoly."[248] Some have contended that marijuana provided by NIDA to researchers is "both qualitatively and quantitatively inadequate."[249] Marijuana's status as a Schedule I drug has reportedly created difficulty for researchers who seek to study the substance but are potentially unable to meet the strict requirements of the CSA, or perhaps they seek to utilize a different quality of marijuana than what is available through NIDA.

In August 2016, the DEA announced a policy change "designed to foster research by expanding the number of DEA-registered marijuana manufacturers."[250] Under the new policy, the DEA is willing to license additional growers to "operate independently, provided the grower agrees (through a written memorandum of agreement with DEA) that it will only distribute marijuana

[244] 21 C.F.R. §§1301.72(a)(1)(i)-(iii) (specifications required for safes and steel cabinets storing Schedule I and II drugs or substances); see also 21 C.F.R. §§1301.72(a)(2) and 1301.72(a)(3)(i)-(vi) (specifications required for vaults storing Schedule I and II drugs or substances).

[245] 21 C.F.R. §1301.18(a).

[246] 21 U.S.C. §823(f); 21 C.F.R. §1301.32(a).

[247] 21 USC §823(a).

[248] See *NIDA's Role in Providing Marijuana for Research*, available at http://www.drugabuse.gov/drugs-abuse/marijuana/nidas-role-in-providing-marijuana-research; and Marc Kaufman, "Federal Marijuana Monopoly Challenged," *Washington Post*, December 12, 2005.

[249] Marc Kaufman, "Federal Marijuana Monopoly Challenged," *Washington Post*, December 12, 2005; and Department of Justice, Drug Enforcement Administration, "Lyle E. Craker; Denial of Application," 74 *Federal Register* 2101, January 14, 2009.

[250] Department of Justice, Drug Enforcement Administration, *DEA Announces Actions Related to Marijuana and Industrial Hemp*, August 11, 2016.

with prior, written approval from DEA."[251] In addition, under the new policy, these growers will only be permitted to supply marijuana to DEA-registered researchers whose "protocols have been determined by [HHS] to be scientifically meritorious." This new approach, DEA states, will allow individuals to obtain a DEA cultivation registration "not only to supply federally funded or other academic researchers, but also for strictly commercial endeavors funded by the private sector and aimed at drug product development." Given that both the FDA and the DEA identified the lack of research as a significant factor in denying the rescheduling petitions in 2016, and to the extent that this policy may increase the amount of marijuana research conducted, the change *could* contribute to future debate on rescheduling.

[251] Department of Justice, Drug Enforcement Administration, "Applications To Become Registered Under the Controlled Substances Act To Manufacture Marijuana To Supply Researchers in the United States," 81 *Federal Register* 53846-53848, August 12, 2016.

Appendix B. Background on Federal Marijuana Policy

Early 20th Century

Prior to 1937, the growth and use of marijuana was legal under federal law.[255] During the course of promoting federal legislation to control marijuana, Henry Anslinger, the first commissioner of the Federal Bureau of Narcotics (FBN),[256] and others submitted testimony to Congress regarding the evils of marijuana use, claiming that it incited violent and insane behavior.[257] Of note, Commissioner Anslinger had informed Congress that "the major criminal in the United States is the drug addict; that of all the offenses committed against the laws of this country, the narcotic addict is the most frequent offender."[258] The federal government *unofficially* banned marijuana under the Marihuana Tax Act of 1937 (MTA; P.L. 75-238).[259] The MTA imposed a strict regulation requiring a high-cost transfer tax stamp on marijuana sales, and these stamps were rarely issued by the federal government.[260] Shortly after passage of the MTA, all states made the possession of marijuana illegal.[261]

Anti-marijuana Propaganda

In the early 20th century, enforcement of drug laws was primarily the responsibility of local police, and the FBN occasionally assisted.[252] Due to limited and reduced appropriations during the Great Depression, the FBN budget and the number of narcotic agents declined and remained low for years. Publicity and warnings of the dangers of narcotics, in particular marijuana, became methods of drug control for the FBN.[253] In seeking federal control of marijuana and uniform narcotic laws, Commissioner Anslinger made personal appeals to civic groups and legislators and pushed for, and received, editorial support in newspapers; many newspapers maintained a steady stream of anti-marijuana propaganda in the 1930s.[254]

[252] David F. Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed. (New York: Oxford University Press, 1999), pp. 183-200, p. 228.

[253] Ibid., p. 214.

[254] Richard J. Bonnie and Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Conviction in the United States* (New York: The Lindesmith Center, 1999), pp. 94-95.

[255] States regulated marijuana but did not begin to ban it until after 1937.

[256] In 1930, the Federal Bureau of Narcotics (FBN) was established within the Treasury to handle narcotic enforcement.

[257] See statements by H. J. Anslinger, Commissioner of Narcotics, Bureau of Narcotics, Department of the Treasury and Dr. James C. Munch, before the U.S. Congress, House Committee on Ways and Means, *Taxation of Marihuana*, 75th Cong., 1st sess., April 27-30, May 4, 1937, HRG-1837-WAM-0002.

[258] U.S. Congress, House Committee on Ways and Means, *Taxation of Marihuana*, 75th Cong., 1st sess., April 27-30, May 4, 1937, HRG-1837-WAM-0002, p. 7.

[259] Congressional testimony indicated that marijuana, while it was a problem in the Southwest United States starting in the mid-1920s, became a "national menace" in the mid-1930s (1935-1937). See statement by H. J. Anslinger, Commissioner of Narcotics, Bureau of Narcotics, Department of the Treasury, before the U.S. Congress, House Committee on Ways and Means, *Taxation of Marihuana*, 75th Cong., 1st sess., April 27, 1937.

[260] Charles F. Levinthal, *Drugs, Society, and Criminal Justice*, 3rd ed. (New York: Prentice Hall, 2012), p. 58.

[261] In Leary v. United States (395 U.S. 6 (1968)), the MTA was overturned by the U.S. Supreme Court as a violation of the Fifth Amendment's privilege against compelled self-incrimination.

Mid-20th Century

In the decades after enactment of the MTA, Congress continued to pass drug control legislation and further criminalized drug abuse. For example, the Boggs Act (P.L. 82-255), passed in 1951, established mandatory prison sentences for some drug offenses, while the 1956 Narcotic Control Act (P.L. 84-728) further increased penalties for drug offenses. In conjunction with growing support for a medical approach to addressing drug abuse, there was a strong emphasis on law enforcement control of narcotics. Congress shifted the constitutional basis for drug control from its taxing authority to its power to regulate interstate commerce,[262] and in 1968 the FBN merged with the Bureau of Drug Abuse Control and was transferred from Treasury to the Department of Justice.[263] Several years later, President Nixon would declare a war on drugs.[264]

Congress and President Nixon enhanced federal control of drugs in the enactment of comprehensive federal drug laws—including the Controlled Substances Act (CSA), enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513). The CSA placed the control of marijuana and other plant, drug, and chemical substances under federal jurisdiction regardless of state regulations and laws. In designating marijuana as a Schedule I controlled substance, this legislation *officially* prohibited the manufacture, distribution, dispensation, and possession of marijuana.[265]

The Shafer Commission

As part of the CSA, the National Commission on Marihuana and Drug Abuse, also known as the Shafer Commission, was established to study marijuana in the United States.[266] Specifically, this commission was charged with examining issues such as

> (A) the extent of use of marihuana in the United States to include its various sources of users, number of arrests, number of convictions, amount of marihuana seized, type of user, nature of use;
>
> (B) an evaluation of the efficacy of existing marihuana laws;
>
> (C) a study of the pharmacology of marihuana and its immediate and long-term effects, both physiological and psychological;
>
> (D) the relationship of marihuana use to aggressive behavior and crime;
>
> (E) the relationship between marihuana and the use of other drugs; and
>
> (F) the international control of marihuana.[267]

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[262] As stated in Article I, §8, cl. 3 of the U.S. Constitution, "Congress shall have the Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." For more information about the commerce clause, see CRS Report R43023, *Congressional Authority to Enact Criminal Law: An Examination of Selected Recent Cases*, by Charles Doyle.

[263] David F. Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed. (New York: Oxford University Press, 1999), p. 239. The shift in constitutional authority was part of the Drug Abuse Control Amendments of 1965 (P.L. 89-74).

[264] For a broader discussion of the federal government's drug enforcement history, see CRS Report R43749, *Drug Enforcement in the United States: History, Policy, and Trends*, by Lisa N. Sacco.

[265] 21 U.S.C. §812 and §841. Of note, growing a marijuana plant is considered *manufacturing* marijuana.

[266] The commission was composed of two Members of the Senate, two Members of the House, and nine members appointed by the President of the United States. President Nixon appointed Raymond Shafer as the commissioner.

[267] P.L. 91-513, §601(d).

The Shafer Commission, in concluding its review, produced two reports: (1) *Marihuana: A Signal of Misunderstanding*, and (2) *Drug Use in America: Problem in Perspective*.[268]

In its first report, the Shafer Commission discussed the perception of marijuana as a major social problem and how it came to be viewed as such.[269] It made a number of recommendations, including the development of a "social control policy seeking to discourage marihuana use, while concentrating primarily on the prevention of heavy and very heavy use."[270] In this first report, the commission also called the application of criminal law in cases of personal use of marijuana "constitutionally suspect" and declared that "total prohibition is functionally inappropriate."[271] Of note, federal criminalization and prohibition of marijuana was never altered, either administratively or legislatively, to comply with the recommendations of the Shafer Commission.

In its second report, the Shafer Commission reviewed the use of all drugs in the United States, not solely marijuana. It examined the origins of the country's drug problem, including the social costs of drug use, and once again made specific recommendations regarding social policy. Among other conclusions regarding marijuana, the commission indicated that aggressive behavior generally cannot be attributed to its use.[272] The commission also reaffirmed its previous findings and recommendations regarding marijuana and added the following statement:

> The risk potential of marihuana is quite low compared to the potent psychoactive substances, and even its widespread consumption does not involve social cost now associated with most of the stimulants and depressants (Jones, 1973; Tinklenberg, 1971). Nonetheless, the Commission remains persuaded that availability of this drug should not be institutionalized at this time.[273]

At the conclusion of the second report, the Shafer Commission recommended that Congress launch a subsequent commission to reexamine the broad issues surrounding drug use and societal response.[274] While a number of congressionally directed commissions regarding drugs have since been established,[275] no such commission has been directed to review the comprehensive issues of drug use, abuse, and response in the United States.

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[268] National Commission on Marihuana and Drug Abuse, *Marihuana: A Signal of Misunderstanding*, First Report of the National Commission on Marihuana and Drug Abuse, Washington, DC, March 1972 (hereinafter, First Report of the Shafer Commission); and National Commission on Marihuana and Drug Abuse, *Drug Use in America: Problem in Perspective*, Second Report of the National Commission on Marihuana and Drug Abuse, Washington, DC, March 1973 (hereinafter, Second Report of the Shafer Commission).

[269] The commission stated that three factors contributed to the perception of marijuana as a major national problem, including "[1] the illegal behavior is highly visible to all segments of our society, [2] use of the drug is perceived to threaten the health and morality not only of the individual but of society itself, and [3] most important, the drug has evolved in the late sixties and early seventies as a symbol of wider social conflicts and public issues." First Report of the Shafer Commission, p. 6.

[270] First Report of the Shafer Commission, p. 134.

[271] Ibid., pp. 142-143.

[272] Second Report of the Shafer Commission, p. 158.

[273] Ibid, p. 224. In this statement, the Shafer Commission cites the following studies: R.T. Jones, *Mental Illness and Drugs: Pre-Existing Psychopathology and Response to Psychoactive Drugs*, Paper Prepared for the National Commission on Marihuana and Drug Abuse, 1973; and J.R. Tinklenberg, *Marihuana and Crime*, Paper Prepared for the National Commission on Marihuana and Drug Abuse, Unpublished, October 1971.

[274] Second Report of the Shafer Commission, pp. 410-411.

[275] See, for example, the President's Media Commission on Alcohol and Drug Abuse Prevention and the National Commission on Drug-Free Schools.

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ORANGE COUNTY SHERIFF'S DEPARTMENT

OFFICE OF THE SHERIFF

SHERIFF-CORONER
SANDRA HUTCHENS

RECEIVED
FEB 01 2017
City Clerk
City of Laguna Woods

January 30, 2017

Chris Macon, City Manager
City of Laguna Woods
24264 El Toro Road
Laguna Woods, CA 92637

Dear Mr. Macon,

I am writing to reaffirm my strong opposition to the City of Laguna Woods' issuance of any permits for marijuana dispensaries in the City as I expressed in my original letter dated August 24, 2015. I continue to believe that if the City were to issue a permit for a marijuana dispensary in the City, the City would see an increase in crime to the detriment of the safety and security of its residents. I understand in September of 2015 the City Council placed a moratorium on establishing, locating, or operating marijuana dispensaries in the City. I further understand the City has since taken the issue into consideration with the recent passing of California Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act. I urge the City Council not to enact or reenact any municipal code sections that would allow for the establishment of medical or recreational marijuana dispensaries in the City and instead join other cities and counties in refusing to allow marijuana dispensaries in their communities.

As stated in my original letter, the Orange County Sheriff's Department has taken an active role in investigating marijuana storefronts. These storefronts have used the title of "dispensaries", "collectives", "cooperatives", and "alternative health care" to name a few. In our experience, these businesses distribute/sell marijuana outside of California law and even if they were to operate within California law, sale or distribution of marijuana has been, and remains illegal under Federal Law.

My original letter outlined some adverse secondary effects of medical marijuana distribution storefronts and my opinion that they will result in increased violent crime such as robberies, aggravated assaults and murders, as well as increased traffic, noise, drug dealing, money laundering and firearms violations has not changed. We only need to look to Colorado to see what the effects will be. The city of Denver saw a large increase in their homeless population after the enactment of the marijuana legislation in Colorado. Overall, Colorado saw an increase in revenue from taxing marijuana but it was largely offset by an increased cost of law enforcement due to drugged-driving incidents, fatal crashes and a spike in gang related crime.

Colorado also had lawsuits filed against it from Nebraska and Oklahoma due to spikes in law enforcement issues related to cannabis products being transported into those states from Colorado. If dispensaries were permitted then the City of Laguna Woods would subject itself to similar, serious problems, especially since it would be the only city in the Sheriff's jurisdiction to allow it.

My original letter also addressed some concerns over requirements placed on the Police Chief by the City of Laguna Woods Municipal Code section 13.26.025. – "Medical Marijuana Dispensaries." I understand that the moratorium placed on this code is allowing the city to consider changes to the code to address these concerns.

I am still adamantly opposed to the issuance of any permit allowing the operation of a medical or recreational marijuana dispensary or any other medical marijuana storefront because: 1 – In my experience, these storefronts do not operate within California law; 2 – Marijuana is illegal under Federal Law. 3 – It has been demonstrated that medical marijuana storefronts may have the potential to increase crime. 4 – These storefronts compromise the health and welfare of the community and negatively impact the residents' quality of life.

My opinion has not changed with the passage of Proposition 64. While personal, nonmedical use of marijuana within defined limits has been decriminalized under California law, the law does not currently permit any storefront to legally sell marijuana for recreational purpose. Any storefront which purports to be "Proposition 64 Compliant" is in violation of the law.

The City of Laguna Woods is a valued contract partner and I appreciate your consideration of my input regarding these important issues. It is our goal to keep the City and its residents safe. Please do not hesitate to contact us if we may provide further information and assistance.

Sincerely,

Sandra Hutchens
Sheriff-Coroner

ORDINANCE NO. 17-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.08.010, 13.10.020, 13.12.020, 13.13.020, AND 13.26.025 AND ADDING A NEW SECTION 13.26.027 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARIES AND DELIVERY SERVICES

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5, and entitled "The Compassionate Use Act of 1996" or "CUA"); and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as Health and Safety Code Section 11362.7 et seq., and referred to as the "Medical Marijuana Program Act" or "MMPA") to clarify the scope of the CUA and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specific state criminal statutes; and

WHEREAS, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City's community commercial (CC) and professional and administrative office (PA) zoning districts; and

WHEREAS, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

WHEREAS, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City's regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City's Police Chief (provided under contract with the Orange County Sheriff's Department) to approve components of the applicant's "security plan", make a determination as to the "acceptability" of the applicant's background, and make a determination as to the "suitability" of the proposed location of the dispensary; and

WHEREAS, in a letter dated August 24, 2015, the Orange County Sheriff's Department advised the City that it does not believe that the tasks assigned to it under the City's medical marijuana dispensary permitting ordinance are included within

the City's law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

WHEREAS, the Orange County Sheriff Department's letter also advised that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

WHEREAS, in October of 2015, the Governor of California signed three bills into law (collectively titled the "Medical Marijuana Regulation and Safety Act" or the "MMRSA") that substantially reworked existing State laws relating to medical marijuana (i.e., the CUA and the MMPA); and

WHEREAS, although the MMRSA took effect January 1, 2016, the State anticipates that it will need until January of 2018 to set up the necessary agencies, information systems, and regulations to implement and administer many aspects of the MMRSA (such as issuing State licenses for dispensary and cultivation operations); and

WHEREAS, in November of 2016, California voters approved Proposition 64 (Control, Regulation, and Tax Adult Use of Marijuana Act) which, among other things, decriminalized certain forms of non-medical marijuana-related activities under state law, and exempted medical marijuana from sales and use tax provided that certain specified forms of identification are produced; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738, the California Supreme Court ruled that cities can prohibit medical marijuana dispensaries in their jurisdictions as part of their "broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders"; and

WHEREAS, the MMRSA and Proposition 64 also specifically authorize cities to prohibit medical and non-medical marijuana dispensaries; and

WHEREAS, the City Council included in the Fiscal Year 2015-16 Budget and Work Plan an assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City; and

WHEREAS, on September 10, 2015, the City Council adopted Ordinance No. 15-03 as an urgency ordinance imposing a 45-day moratorium to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study various issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods; and

WHEREAS, on October 13, 2015, the City Council adopted Ordinance No 15-05 extending the moratorium through September 8, 2016; and

WHEREAS, on August 17, 2016, the City Council adopted Ordinance No. 16-02 extending the moratorium through September 8, 2017; and

WHEREAS, in a letter dated January 30, 2017, after City staff conferred regarding any potential policy changes that may have occurred after the passage of Proposition 64, the Orange County Sheriff's Department advised the City that she remains "adamantly opposed" to the issuance of any permit for marijuana dispensaries, whether for medical or recreational uses; that asserts that "...it has been demonstrated medical marijuana storefronts may have the potential to increase crime[.]"; and

WHEREAS, on April 19, 2017, the City Council received and considered a report prepared by staff, and as required pursuant to Government Code Section 65858(d), describing the measures that have been taken and progress made to date to alleviate the conditions which led to the imposition of the moratorium; and

WHEREAS, as set forth in the report prepared by staff and its exhibits, which was considered by the City Council, during the period since the imposition of the moratorium, City staff has undertaken a number of investigations of the potential public safety and land use implications related to any prospective establishment, location, or operation of medical and non-medical marijuana dispensaries in Laguna Woods, including without limitation:

- Reviewing federal law and enforcement policies;
- Analyzing the impacts of the MMRSA;
- Analyzing the impacts of Proposition 64;

- Discussing medical marijuana dispensary experiences and policies with a number of other cities;

- Meeting with the Orange County Sheriff's Department;

- Meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs);

- Conducting research on the availability and types of testing of marijuana products for potential use in medical contexts;

- Commissioning a deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly (the "Law Enforcement Deployment Study");

- Analyzing business-generated sources of revenue to offset new costs associated with providing law enforcement and other City services for, or as a result of, prospective medical marijuana dispensaries; and

- Analyzing whether the City has adequate financial means to provide any level of reasonable assurance that enforcement costs associated with medical or non-medical marijuana dispensaries could be accommodated within the City's budget, absent some additional level of taxation or other financial arrangement; and

WHEREAS, on April 19, 2017, the City Council also considered proposed amendments to the Laguna Woods Municipal Code, as identified in Exhibit A attached hereto and incorporated herein by reference ("Code Amendment"), to:

1. Prohibit the establishment, location, or operation of medical and non-medical marijuana dispensaries; and

2. Allow medical marijuana deliveries otherwise consistent with state law, whether by collectives and cooperatives without dispensary presences in the City of Laguna Woods for such time as they may do so under applicable state law, or by persons or entities properly licensed by the

State of California once the state's MMRSA and Control, Regulation, and Tax Adult Use of Marijuana Act regulations take effect; and

WHEREAS, the Community Development Director or his or her designee prepared an exhibit, including proposed language and terminology for the proposed Code Amendments and any additional information and documents deemed necessary for the City Council to take action, and such exhibit was available for public inspection at City Hall and, upon request, was supplied to all persons desiring a copy, at least ten days prior to the scheduled City Council public hearing date; and

WHEREAS, on April 19, 2017, the City Council held a duly noticed public hearing on the proposed Code Amendments at which it considered all of the information, evidence, and testimony presented, both written and oral.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In adopting this Ordinance, the City Council finds and determines that each of the recitals to this Ordinance and Ordinances Nos. 15-03, 15-05 and 16-02 are true and correct, are adopted herein as findings.

SECTION 2. This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the CUA, the MMPA, the MMRSA, and Proposition 64.

SECTION 3. The City Council hereby finds and determines that (i) the Code Amendments comply with all applicable requirements of State law; (ii) the Code Amendments will not adversely affect the health, safety, or welfare of the residents within the community; (iii) the Code Amendments are in the public interest of the City of Laguna Woods; and, (iv) the Code Amendments are consistent with the Laguna Woods General Plan and its various elements.

SECTION 4. After reviewing the entire project record, the City Council finds and determines that the adoption of this Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to sections 15061(b)(3), 15321, and 15378 of the CEQA Guidelines. It can be seen with certainty that the adoption of the Zoning Code amendments presents no possibility that the activity in question will pose a significant effect on the environment, since there are no commercial dispensary or cultivation facilities present within the city,

and this ordinance will continue that baseline condition; the ordinance relates to enforcement actions in connection with permits and permitted activities, and relates to general policy and procedure making of the City.

SECTION 5. Sections 13.08.010, 13.10.020, 13.12.020, 13.13.020, and 13.26.025 of the Laguna Woods Municipal Code are hereby amended, and Section 13.26.027 is hereby added, to read as set forth in Exhibit A, attached to this Ordinance and incorporated herein by this reference.

SECTION 6. Staff is directed to agendize a City Council discussion of potential regulations permitting the establishment, location, and operation of medical and/or non-medical marijuana dispensaries should Federal laws change such that marijuana is no longer a Schedule 1 controlled substance under the Controlled Substances Act.

SECTION 7. This Ordinance shall take effect and be in full force and operation thirty (30) days after adoption.

SECTION 8. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 9. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

SECTION 10. All of the above-referenced documents and information have been and are on file with the City Clerk of the City.

PASSED, APPROVED AND ADOPTED this XX day of XX 2017.

_____

SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

_____
DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 17-XX** was duly introduced and placed upon its first reading at a regular meeting of the City Council on the XX day of XX 2017, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the XX day of XX 2017 by the following vote to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

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EXHIBIT A
CODE AMENDMENTS

Section 13.08.010 ("Table of permitted uses") of Chapter 13.08 ("Residential Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts			
Land Use Types	**RMF**	**RC**	**RT**	**Code References**
Marijuana Delivery	P	P	P	13.26.027
Marijuana Dispensary	X	X	X	13.26.025

Section 13.10.020 ("Table of permitted uses") of Chapter 13.10 ("Commercial Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts			
Land Use Types	**NC**	**CC**	**PA**	**Code References**
Marijuana Delivery	P	P	P	13.26.027
~~Medical~~ Marijuana Dispensary	X	~~RP~~ X	X	13.26.025

Section 13.12.020 ("Table of permitted uses") of Chapter 13.12 ("Open Space Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts		
Land Use Types	**OS-P**	**OS-R**	**Code References**
Marijuana Delivery	P	P	13.26.027
Marijuana Dispensary	X	X	13.26.025

Section 13.13.020 ("Table of permitted uses") of Chapter 13.13 ("Community Facilities Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Community Facilities		
Land Use Types	**Public/Institutional**	**Private**	**Code References**
Marijuana Delivery	P	P	13.26.027
~~Medical~~ Marijuana Dispensary	X	X	13.26.025

Section 13.26.025 ("Medical marijuana dispensaries") of Chapter 13.26 ("Special Regulations") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is repealed in its entirety and replaced with the following:

Sec. 13.26.025. - Marijuana dispensaries.

(a) *Legislative purpose.* It is the intent of the City of Laguna Woods to prohibit the establishment and operation of marijuana dispensaries within the boundaries of the City of Laguna Woods.

(b) *Definitions.* For the purpose of this Title 13, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(05) When used in reference to marijuana, *commercial cultivation* shall mean any cultivation activity that does not qualify for the exemption set forth in subdivision (g) of Section 11362.777 of the

California Health and Safety Code or subdivision (a) of Section 11362.1 of the California Health and Safety Code, as those statutes may be amended from time to time.

(10) When used in reference to marijuana, *cultivation* or *cultivate* shall have the same meaning as set forth in subdivision (l) of Section 19300.5 and subdivision (e) of Section 26001 of the California Business and Professions Code, as those statutes may be amended from time to time.

(15) When used in reference to marijuana, *customer* shall have the same meaning as set forth in subdivision (f) of Section 26001 of the California Business and Professions Code, as amended from time to time.

(20) *Marijuana* means and includes all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. *Marijuana* also means the separated resin, whether crude or purified, obtained from marijuana.

Marijuana also means and includes: “marijuana” as defined by Section 11018 of the California Health and Safety Code, as amended from time to time; “cannabis,” “cannabis concentrate,” “manufactured cannabis” and “medical cannabis” as defined by California Business & Professions Code Section 19300.5, as amended from time to time; “marijuana products” as defined by California Health and Safety Code Section 11018.1, as amended from time to time; and “marijuana accessories” as defined by California Health and Safety Code Section 11018.2, as amended from time to time.

Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this section, *marijuana* does not mean "industrial hemp" as defined by Section 81000 of the California

Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

(25) *Marijuana dispensary* means a premises where marijuana is offered for retail sale, regardless of whether the marijuana is used for medical or non-medical purposes.

Marijuana dispensary shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for persons with chronic life threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

(30) *Marijuana delivery* means the commercial transfer of marijuana to a customer, qualified patient, or primary caregiver by a person or entity with a valid state marijuana transport license.

(35) *Medical marijuana* shall have the same meaning as "medical cannabis" as defined by California Business & Professions Code Section 19300.5.

(40) *Primary caregiver* shall have the same meaning as set forth in subdivision (d) of Section 11362.7 of the California Health and Safety Code, as amended from time to time.

(45) *Qualified patient* shall have the same meaning as set forth in subdivision (f) of Section 11362.7 of the California Health and Safety Code, as amended from time to time.

(c) *Prohibition.* Marijuana dispensaries are expressly prohibited in all zoning districts throughout the City, regardless of whether the marijuana is used for medical or non-medical purposes. No person shall establish, operate, conduct, permit or allow any marijuana dispensary use anywhere within the City. A State license for the operation of a marijuana dispensary does not entitle the licensee to establish, operate, conduct, permit or allow a marijuana dispensary within City limits.

(d) *No nonconforming uses.* Nothing in this Chapter 13.26, nor in Section 13.02.180 relating to nonconforming uses, shall be deemed to permit any marijuana dispensary, marijuana delivery service, or commercial cultivation activity to operate or continue to operate in any manner inconsistent with state law, regardless of whether that dispensary, delivery service or commercial cultivation activity predates the adoption of this section. No legal nonconforming use otherwise applicable to any such marijuana dispensary, marijuana delivery service, or commercial cultivation activity under this Title 13 shall in any way excuse or permit any operation in any way inconsistent with state law requirements, as such state law requirements may exist at the time of the adoption of this section, or as state law requirements may subsequently be adopted and amended.

(e) *Public Nuisance.* Establishing, operating, conducting, permitting or allowing any marijuana dispensary within City limits shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure § 731 or any other remedy available at law.

(f) *Civil Penalties.* In addition to any other enforcement permitted by this section, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this section. In any civil action that is brought pursuant to this section, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

Section 13.26.027 ("Marijuana deliveries") of Chapter 13.26 ("Special Regulations") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is hereby added to read as follows:

Sec. 13.26.027. - Marijuana deliveries.

(a) *Legislative purpose.* It is the intent of the City of Laguna Woods to allow marijuana delivery services by persons lawfully permitted under state law to transport and deliver marijuana within the boundaries of the City of Laguna Woods, to facilitate the medical and non-medical uses of marijuana by persons who desire to avail themselves of state law policies permitting the same, but only under strict compliance with existing state law governing marijuana dispensaries, marijuana deliveries and cultivation, and state law and regulations as they may evolve under the Compassionate Use Act (CUA), the Medical Marijuana Program Act (MMPA), the Medical

Marijuana Regulation and Safety Act (MMRSA), and the Control, Regulation, and Tax Adult Use of Marijuana Act (Proposition 64), as each of those statutes and their corresponding regulations are adopted and amended from time to time. In so doing, the City of Laguna Woods attempts to reconcile the advancing state policy regarding liberalization of marijuana cultivation, transport, distribution, and use, while still avoiding the offsite and other public impacts of permanent commercial cultivation or marijuana dispensary facilities within the City's jurisdiction, to protect the public health, safety, and welfare of the residents.

(b) *Definitions.* All definitions set forth in Section 13.16.025 of this Title 13, as amended from time to time, shall apply under this section.

(c) *State-licensed marijuana deliveries permitted*. Marijuana delivery services lawfully operating from locations outside the City's jurisdiction are permitted to deliver marijuana to customers, qualified patients, and primary caregivers within the City, provided the marijuana delivery service has any and all necessary state licenses and is operating in a manner consistent with state law.

(d) *Public Nuisance.* Marijuana delivery services within City limits that do not comply with state law or this Chapter shall be, and are hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure § 731 or any other remedy available at law.

(e) *Civil Penalties.* In addition to any other enforcement permitted by this section, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this section. In any civil action that is brought pursuant to this section, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

8.1
WIRELESS FACILITIES REGULATIONS

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: April 19, 2017 Regular Meeting

SUBJECT: Wireless Facilities Regulations

Recommendation

Approve second reading and adopt an ordinance – read by title with further reading waived – entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.06.010, 13.08.010, 13.10.020, 13.12.020, 13.13.020, 13.24.020, AND 13.26.210 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO THE INSTALLATION AND MODIFICATION OF WIRELESS FACILITIES

Background

The Fiscal Year 2016-17 Budget & Work Plan includes a significant work plan item to "review and update the City's wireless communication facility regulations in order to ensure consistency with federal and state laws, regulations, and orders, as well as to promote clarity and administration."

Section 13.26.210 of the Laguna Woods Municipal Code (Attachment B) contains regulations related to the design and location of wireless communication facilities. Those regulations were adopted in 2003 and have remained unchanged since then.

Since 2003, there have been several changes in federal and state law with the intent of expediting the building of new telecommunications infrastructure, including:

- On February 22, 2012, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 was enacted into law, which changed how certain modifications to wireless facilities must be processed by local agencies.
- Effective May 15, 2015, the Federal Communications Commission ("FCC") adopted implementing regulations for Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, which, among other things, imposed mandatory timeframes for local agencies to process applications for certain modifications to wireless facilities.
- Effective January 1, 2016, California Assembly Bill 57 was approved, which, among other things, adopted mandatory timeframes for local agencies to process applications for new or collocated wireless facilities.

On February 15, 2017, a public hearing was held and the City Council introduced and approved the first reading of an ordinance (Attachment A) which, if adopted, would amend the City's regulations related to the installation and modification of wireless facilities (Attachment B).

Discussion

Today's meeting is an opportunity for City Council action, as well as public input, on the proposed wireless facilities regulations (Attachment A). The regulations are intended to ensure consistency with federal and state laws, regulations, and orders; protect local interests; and, promote clarity and administration.

As called for in the Local Hazard Mitigation Plan, the proposed regulations include requirements for new and certain modified ground-mounted wireless facilities to install and maintain an on-site backup generator, or similar on-site energy source, in order to provide backup power for the wireless facility for a period of not less than 24 continuous hours. Those requirements would help to minimize impacts to individuals in hazard areas during energy shortages.

Environmental Review

This project has no possibility of directly impacting the environment, nor is it reasonably foreseeable that the adoption of this ordinance will have indirect impacts on the environment. Therefore, the adoption of this ordinance is not a project subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. Furthermore, even if CEQA did apply, this project would be categorically exempt

under sections 15303 (New Construction or Conversion of Small Structures), 153011 (Accessory Structures), and 15322 (In-Fill Development Projects) of Title 14 of the California Code of Regulations.

Fiscal Impact

Funds to support this project are included in the City's budget.

Attachments: A – Proposed Ordinance
Exhibit A – Code Amendment Text
B – Existing Laguna Woods Municipal Code Section 13.26.210 (Wireless Communication Facilities)

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ORDINANCE NO. 17-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.06.010, 13.08.010, 13.10.020, 13.12.020, 13.13.020, 13.24.020, AND 13.26.210 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO THE INSTALLATION AND MODIFICATION OF WIRELESS FACILITIES

WHEREAS, the City's Fiscal Year 2016-17 Budget & Work Plan includes a significant work plan item to "review and update the City's wireless communication facility regulations in order to ensure consistency with federal and state laws, regulations, and orders, as well as to promote clarity and administration"; and

WHEREAS, the City seeks to ensure that its zoning laws are consistent with the goals, policies, and standards set forth in the City General Plan, federal law, and state law as it relates to the installation and modification of certain wireless facilities within the City; and

WHEREAS, on February 22, 2012, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) ("Section 6409(a)") was enacted into law, which changed how certain modifications to wireless facilities must be processed by local agencies; and

WHEREAS, effective May 15, 2015, the Federal Communications Commission ("FCC") adopted implementing regulations for Section 6409(a), set forth at 47 C.F.R. § 1.40001, which, among other things, imposed mandatory timeframes for local agencies to process applications for certain modifications to wireless facilities; and

WHEREAS, effective January 1, 2016, California Assembly Bill No. 57 ("AB 57"), codified at Gov. Code § 65964.1, was approved, which, among other things, adopted mandatory timeframes for local agencies to process applications for new or collocated wireless facilities; and

WHEREAS, both the federal and state government have passed the aforementioned laws with the intent to expedite the pace of building new telecommunications infrastructure; and

WHEREAS, proposed language and terminology for amendments to the Laguna Woods Municipal Code intended to ensure the City's procedural and

substantive requirements for wireless facilities are consistent with the above-described recent changes to state and federal law is set forth in the attached Exhibit A to this Ordinance (the "Code Amendments"); and

WHEREAS, the proposed Code Amendments also protect local interests, including siting and locational considerations, as well as requirements related to the provision of on-site backup generators intended to minimize impacts to individuals in hazard areas during energy shortages consistent with Project C of the City's Local Hazard Mitigation Plan for calendar years 2013-2017; and

WHEREAS, the Community Development Director or his or her designee prepared an exhibit, including proposed language and terminology for the proposed Code Amendments and any additional information and documents deemed necessary for the City Council to take action, and such exhibit was available for public inspection at City Hall and, upon request, was supplied to all persons desiring a copy, at least ten days prior to the scheduled City Council public hearing date; and

WHEREAS, on February 15, 2017, the City Council held a duly noticed public hearing on the proposed Code Amendments at which it considered all of the information, evidence, and testimony presented, both written and oral.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby finds and determines that (i) each of the recitals to this Ordinance are true and correct, and are adopted herein as findings; (ii) the Code Amendments comply with all applicable requirements of State law; (iii) the Code Amendments will not adversely affect the health, safety, or welfare of the residents within the community; (iv) the Code Amendments are in the public interest of the City of Laguna Woods; and, (v) the Code Amendments are consistent with the Laguna Woods General Plan and its various elements.

SECTION 2. After reviewing the entire project record, it has been determined with certainty that there is no possibility that the Code Amendments could have a significant effect on the environment. Accordingly, pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations, the City Council certifies that the Code Amendments are not subject to CEQA. The City Council further determines and certifies that, even if the Code Amendments were subject to CEQA, they are categorically exempt from the requirements of CEQA pursuant to sections 15303 (New Construction or Conversion of Small Structures), 15311 (Accessory Structures), and

15332 (In-Fill Development Projects) of Title 14 of the California Code of Regulations.

SECTION 3. Sections 13.06.010, 13.08.010, 13.10.020, 13.12.020, 13.13.020, 13.24.020, and 13.26.210 of the Laguna Woods Municipal Code are hereby amended to read as set forth in Exhibit A, attached to this Ordinance and incorporated herein by this reference.

SECTION 4. This Ordinance shall take effect and be in full force and operation thirty (30) days after adoption.

SECTION 5. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

SECTION 6. The Deputy City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

SECTION 7. All of the above-referenced documents and information have been and are on file with the City Clerk of the City.

PASSED, APPROVED AND ADOPTED this XX day of XX 2017.

_____

SHARI L. HORNE, Mayor

ATTEST:

_____

YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

_____
DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 17-XX** was duly introduced and placed upon its first reading at a regular meeting of the City Council on the XX day of XX 2017, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the XX day of XX 2017 by the following vote to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

EXHIBIT A
CODE AMENDMENTS

Paragraphs (530) ("Major facility") and (555) ("Minor facility") of Subsection (d) ("Specific terms") of Section 13.06.010 ("Definitions") of Chapter 13.06 ("Definitions") of Title 13 ("Zoning") of the Laguna Woods Municipal Code are repealed in their entirety (deletions shown with ~~strike through~~):

~~(530) *Major facility*: A wireless communication facility that is ground mounted and does not exceed the maximum height of the applicable zoning district in which the major facility is located.~~

~~(555) *Minor facility*: A wireless communication facility that is either wall mounted, utility mounted, or roof mounted in such a manner that the entire facility is screened by solid material on four sides, is architecturally compatible with surrounding land uses and does not exceed the maximum height of the applicable zoning district in which the minor facility is located.~~

Section 13.08.010 ("Intent and permitted uses") of Chapter 13.08 ("Residential Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts			
Land Use Types	**RMF**	**RC**	**RT**	**Code References**
~~Wireless Communication Facilities~~	~~U~~	~~U~~	~~U~~	~~13.26.120~~
Wireless Facilities	Varies – See Code References			13.26.210

Section 13.10.020 ("Table of permitted uses") of Chapter 13.10 ("Commercial Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts			
Land Use Types	**NC**	**CC**	**PA**	**Code References**
~~Wireless Communication Facilities~~	~~U~~	~~U~~	~~U~~	~~13.26.120~~
Wireless Facilities	Varies – See Code References			13.26.210

Section 13.12.020 ("Table of permitted uses") of Chapter 13.12 ("Open Space Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts		
Land Use Types	**OS-P**	**OS-R**	**Code References**
~~Wireless Communication Facilities~~	~~U~~	~~U~~	~~13.26.120~~
Wireless Facilities	Varies – See Code References		13.26.210

Section 13.13.020 ("Table of permitted uses") of Chapter 13.13 ("Community Facilities Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts		
Land Use Types	**Public/Institutional**	**Private**	**Code References**
~~Wireless Communication Facilities~~	~~U~~	~~U~~	~~13.26.210~~
Wireless Facilities	Varies – See Code References		13.26.210

Subsection (a) ("Use permits") of Section 13.24.020 ("Types of permits") of Chapter 13.24 ("Discretionary Permits and Procedures") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

Sec. 13.24.020. - Types of permits.

(a) Use permits.

(1) The purpose of a use permit is to provide for the public review of detailed final plans for a proposed use. Uses which require a use permit are regarded as having a relatively moderate to high potential for adverse impacts on the subject site or surrounding community Due to the nature or magnitude of the use vis-a-vis the sensitivity of the subject site or surrounding community.

(2) Establishment, maintenance and operation of the use or uses proposed by the application shall be in compliance with the information and specifications shown on the approved use permit.

(3) The following are special use types subject to supplemental regulations as specified in this Code and may require additional findings above those required ~~per Subsection 13.24.110(e)~~ by this Section in consideration of an approval of such uses:

a. Affordable housing Incentive.

b. Off-street parking alternative.

c. Condominium conversion.

d. Fence/wall height modification.

e. Wireless facilities.

The existing Section 13.26.210 ("Wireless communication facilities") of Chapter 13.26 ("Special Regulations") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is repealed in its entirety and replaced with a new Section 13.26.210 ("Wireless Facilities") to read as follows:

Sec. 13.26.210. - Wireless Facilities.

(a) *Purpose and intent.* The purpose of these requirements and guidelines is:

(1) To regulate the location and design of Wireless Facilities as defined herein to facilitate the orderly deployment and development of wireless communications services in the City;

(2) To ensure the design and location of Wireless Facilities are consistent with policies of the City previously adopted to guide the orderly development of the City;

(3) To promote the public health, safety, comfort, convenience, quality of life and general welfare of the City's residents;

(4) To protect property values and enhance aesthetic appearance of the City by maintaining architectural and structural integrity;

(5) To protect views from obtrusive and unsightly accessory uses and facilities; and

(6) To ensure the City's requirements and guidelines for Wireless Facilities are consistent with state and federal law, including without limitation, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455(a)) and its implementing regulations (set forth in 47 C.F.R. § 1.40001), Section 332(c) of the Communications Act of 1934 (codified at 47 U.S.C. § 332), and California Assembly Bill No. 57 ("AB 57"), effective January 1, 2016 (codified at Gov. Code § 65964.1).

(b) *Scope.* This Section does not intend to, and shall not be interpreted to apply to:

(1) Prohibit or effectively prohibit Personal Wireless Services; or

(2) Unreasonably discriminate among providers of functionally equivalent Personal Wireless Services; or

(3) Regulate the installation, operation, Collocation, modification or removal of Wireless Facilities on the basis of the environmental effects of RF emissions to the extent that such emissions comply with all applicable FCC regulations; or

(4) Prohibit or effectively prohibit any Collocation or modification that the City may not deny under California or federal law; or

(5) Preempt any applicable state or federal law.

(c) *Implementing Policies and Procedures.* The Director may adopt such policies and procedures as he or she deems necessary to implement the requirements of this Section, or to otherwise preserve and maintain the public health, safety, welfare, and convenience, provided such policies and procedures are consistent with this Section and not in conflict with all applicable state and federal laws.

(d) *Definitions.* For purposes of this Section only, the following words, phrases, and terms as used in this Section shall have the meaning as indicated below. The "definitions" and "general rules for construction of language" set forth in Section 13.06.010 of this Code shall also apply to this Section.

(1) *Applicant*: any Person submitting an Application for a Permit.

(2) *Application*: an application for a Permit.

(3) *Base Station*: has the same meaning as the term is defined in 47 C.F.R. § 1.40001(b)(1), as amended from time to time or replaced by a successor regulation.

(4) *Collocation*: has the same meaning as the term is defined in 47 C.F.R. § 1.40001(b)(2), as amended from time to time or replaced by a successor regulation.

(5) *CPUC*: the California Public Utilities Commission.

(6) *Department*: the City's Community Development Department.

(7) *Director*: the City Manager or his or her designee.

(8) *Eligible Facilities Request*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(3), as amended from time to time or replaced by a successor regulation.

(9) *Eligible Facility Request Permit* or *EFR Permit*: a permit issued pursuant to this Section authorizing a Eligible Facilities Request.

(10) *Eligible Support Structure*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(4), as amended from time to time or replaced by a successor regulation.

(11) *Existing*: only when capitalized, has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(5), as amended from time to time or replaced by a successor regulation.

(12) *FCC*: the Federal Communications Commission.

(13) *Historic Resource:* Any building, site, structure, object, or district, which may have historical, prehistoric, architectural, archaeological, cultural, or scientific importance and is listed or eligible for listing in the National Register of Historic Places, the California Register of Historical Resources, or a local register of historical resources, including without limitation, any historically or architecturally significant, decorative, or specially designed utility, transit, or street light pole located in the public right-of-way.

(14) *Historic Protected Location:*

a. Any site that has a Historic Resource or is in the Immediate Vicinity of a Historic Resource; or

b. Any eligible national register historic district, listed or eligible California register historic district, or local historic or conservation district.

(15) *Immediate Vicinity*: only when capitalized, “Immediate Vicinity” shall mean within two hundred (200) feet of the property lines surrounding a Historic Resource, Park, Residence or public right-of-way.

(16) *Over-the-Air Reception Devices* or *OTARD*s: any antennae or mast listed in 47 C.F.R. § 1.4000(a)(i)-(iv), as amended from time to time or replaced with a successor regulation.

(17) *Park*: any public park located in the City.

(18) *Park Protected Location*: any site that is a Park or is in the Immediate Vicinity of a Park.

(19) *Permit*: a Wireless Use Permit or an Eligible Facility Request Permit.

(20) *Permittee*: a Person issued a Permit.

(21) *Person*: any individual, group, company, partnership, association, joint stock company, trust, corporation, society, syndicate, club, business, or governmental entity. "Person" shall not include the City.

(22) *Personal Wireless Service*: shall have the same meaning as the term is defined in 42 U.S.C. § 332(c)(7)(C)(i), as amended from time to time or replaced by a successor statute.

(23) *Protected Location*: a Historic Protected Location, Park Protected Location, or Residential Protected Location.

(24) *Replace*: only when capitalized, “Replace” means to remove previously permitted equipment and install new equipment at a permitted Wireless Facility that is identical in size or smaller than the previously permitted equipment.

(25) *Residence*: any structure intended for lawful use as a dwelling, including single-family attached and detached homes and multiple-family structures.

(26) *Residential Protected Location*: any site that has a Residence or is in the Immediate Vicinity of a Residence.

(27) *Reviewing Authority:*

a. For requests for an Eligible Facility Request Permit, the “Reviewing Authority” is the Director.

b. For requests that require a Wireless Use Permit and appeals of any decision of the Director, the "Reviewing Authority" is the City Council.

(28) *Section 6409(a)*: Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455(a)) and its implementing regulations (codified at 47 C.F.R. § 1.40001), as that statute and those regulations are amended from time to time or replaced with a successor statute or regulation.

(29) *Site*: only when capitalized, "Site" has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(6), as amended from time to time or replaced by a successor regulation.

(30) *Substantial Change* or *Substantially Change*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(7), as amended from time to time or replaced by a successor regulation.

(31) *Tower*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(9), as amended from time to time or replaced by a successor regulation.

(32) *Transmission Equipment*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(8), as amended from time to time or replaced by a successor regulation.

(33) *Unprotected Location*: means a site that is not a Historic Protected Location, Park Protected Location, nor a Residential Protected Location.

(34) *Wireless Facility*: has the same meaning as the term "personal wireless service facilities" is defined by 47 U.S.C. § 332(c)(7)(C)(ii), as amended from time to time or replaced by a successor statute. The term "Wireless Facility" also includes any Base Station, Tower or Transmission Equipment.

(35) *Wireless Use Permit:* a permit issued pursuant to this Section authorizing a Permittee to construct, install, and maintain a Wireless Facility.

(e) *Applicability; Exemptions.*

(1) *Applicability.* This Section applies to all new Wireless Facilities and all modifications to Existing Wireless Facilities unless the Wireless Facility qualifies for an exemption under state or federal law or subsection (e)(2) below.

(2) *Exemptions.* In addition to any exemptions provided by state or federal law, this Section does not apply to:

a. Amateur radio facilities;

b. Antennas for OTARDs; or

c. Wireless Facilities owned and operated by the City for its use.

(f) *Development Requirements.* Wireless Facilities shall comply with each of the following requirements.

(1) *Signage.* A Wireless Facility shall not bear any signs or advertising devices other than certification, public safety, warning, or other required seals or required signage that are required by governmental agencies acting in their regulatory capacity.

(2) *Screening and Camouflage*.

a. Any and all Transmission Equipment shall be located within a building, an enclosure, or an underground vault in a manner that complies with the development standards of the zoning district in which such Transmission Equipment is located. In addition, if Transmission Equipment is located above ground, it shall be visually compatible with the surrounding buildings and either shrouded by sufficient landscaping to screen the Transmission Equipment from view, or designed to match the architecture of adjacent buildings. If Transmission Equipment will be visible from a Protected Location or a public street, the Applicant shall provide a solid masonry block wall, or another material that is acceptable to the Reviewing Authority, that will screen the Transmission Equipment from the Protected Location or public street. If no recent and/or reasonable architectural theme is present, the Reviewing Authority may require a particular design that is deemed suitable to the subject location.

b. All screening used in connection with a wall mounted and/or roof mounted Wireless Facility shall be compatible with the architecture, color, texture, and materials of the building or structure to which it is attached.

c. A Wireless Facility's exterior finish shall be comprised of nonreflective material(s) and painted, screened, or camouflaged to blend with the materials and colors of surrounding buildings, structures, or environments.

d. A roof mounted Wireless Facility that extends above the existing parapet of the building on which it is mounted shall be screened by a material and in a manner that is compatible with the existing design and architecture of the building to the satisfaction of the Reviewing Authority.

e. A roof mounted Wireless Facility requiring the placement of any guy wires, supporting structures, or accessory equipment shall be located and designed so as to minimize the visual impact as viewed from surrounding properties and public rights-of-way, including any public views from higher elevations.

(3) *Illumination.* Wireless Facilities may not be illuminated unless specifically required by the Federal Aviation Administration ("FAA") or other governmental agencies acting in their regulatory capacity.

(4) *Consent to Collocation.* The Permittee and the property owner, if different from the Permittee, shall consent to future Collocation of other Wireless Facilities on or with the Permittee's Wireless Facility, unless such Collocation is technically infeasible; provided however, this requirement shall not be construed to encourage the installation of a larger Wireless Facility (such as a Tower) where a smaller and more discrete Wireless Facility (such as a distributed antennae system or "DAS") would be sufficient to meet the Personal Wireless Service needs of the community.

(5) *Setbacks.* A Wireless Facility shall be considered an accessory structure for the purpose of determining applicable setback requirements. If the Wireless Facility is located in a residential zoning district or a Protected Residential Location, then the Wireless Facility shall comply with the setback requirements for the nearest residential zoning district. In all other

instances, the Wireless Facility shall comply with the applicable setback requirements for the zoning district in which it is located.

(6) *Height.* A Wireless Facility shall not exceed the maximum building height for the zoning district in which it is located; provided however:

a. A roof mounted Wireless Facility may exceed the height of the structure on which it is mounted by up to fifteen (15) feet if the Applicant demonstrates to the Reviewing Authority's satisfaction that: (i) the extended height is technically necessary for operation of the Facility, (ii) the Facility is Collocated, or contains adequate space suitable for future Collocation, and the extended height is necessary for such Collocation, and (iii) the extended height is otherwise consistent with the requirements set forth in this Section;

b. A utility mounted Wireless Facility may exceed the height of the structure on which it is mounted by up to four (4) feet if the Applicant demonstrates to the Reviewing Authority's satisfaction that the extended height: (i) is technically necessary for operation of the Wireless Facility, and (ii) is otherwise consistent with the requirements set forth in this Section; and

c. A ground mounted Wireless Facility may exceed the maximum building height for the zoning district in which it is located if: (i) the Applicant demonstrates to the Reviewing Authority's satisfaction that exceeding the height limitation is technically necessary for operation of the Wireless Facility; (ii) the Wireless Facility is Collocated, or contains adequate space suitable for future Collocation, and the extended height is necessary for such Collocation, and (iii) the extended height is otherwise consistent with the requirements set forth in this Section.

(7) *Horizontal Protrusion.*

a. No portion of a Wireless Facility may protrude beyond property lines or into any portion of property where such Wireless Facility is not itself permitted (such as in a required setback); provided, however, the Reviewing Authority may approve the location of guy wires in a required setback if the Applicant

demonstrates to the Reviewing Authority's satisfaction that such approval is technically necessary for the operation of the Wireless Facility and otherwise consistent with the requirements set forth in this Section.

b. A utility mounted Wireless Facility shall not protrude horizontally from the side(s) of the structure on which it is mounted by more than eighteen (18) inches; provided however, the Wireless Facility may exceed the protrusion requirement if the Applicant demonstrates to the Reviewing Authority's satisfaction that the extended protrusion is technically necessary for operation of the Facility.

(8) *Location and Siting.*

a. Unless specifically exempt by federal law, state law or this Section, the following types of Wireless Facilities are prohibited in Historic Protected Locations:

1. Ground mounted Wireless Facilities; and

2. Wall mounted, utility mounted, or roof mounted Wireless Facilities that: (i) are not screened by solid material on four sides; (ii) are not architecturally compatible with surrounding land uses; and (iii) exceed the maximum height of the applicable zoning district in which the Wireless Facility is located. For the purposes of determining such maximum height, no additional height that may be otherwise permissible under subsection (f)(6) above shall be considered.

b. A new Wireless Facility shall not be located within 1,500 feet of any existing Wireless Facility unless:

1. The new Wireless Facility is wall mounted, utility mounted, or roof mounted and: (i) is screened by solid material on four sides; (ii) is architecturally compatible with surrounding land uses; and (iii) does not exceed the maximum height of the applicable zoning district in which the Facility is located. For the purposes of determining such maximum height, no additional height that may be otherwise permissible under subsection (f)(6) above shall be considered; or

2. The Reviewing Authority determines that: (i) the Applicant has demonstrated to the Reviewing Authority's satisfaction that a shorter distance between the new and existing Wireless Facilities is technically necessary, (ii) the area served by the new Wireless Facility could not be served by one or more Wireless Facilities that meet the criteria set forth in subsection "1" above, (iii) the selected Site would result in less visual obtrusiveness in the surrounding area, and (iv) the new and existing Wireless Facilities are not located within 500 feet of each other.

c. A ground mounted Wireless Facility:

1. Shall not be located in any required setback;

2. Shall not be located in a required parking area, vehicle maneuvering area, vehicle/pedestrian circulation area, or area of landscaping such that it interferes with, or in any way impairs, the utility or intended function of such area; and

3. To the extent possible, shall be located in close proximity to existing above ground utilities, such as electrical towers or utility poles (not scheduled for removal or undergrounding within eighteen (18) months of the date the Application is deemed complete), light poles, trees of comparable height, water tanks and other areas where the Wireless Facility will not detract from the image or appearance of the City.

d. *City-Owned Property and Public Right-of-Way.*

1. The City Council may approve by resolution, following a duly noticed public hearing, a list of sites located on City-owned property or within the public right-of-way that are pre-approved for Wireless Facilities. Each site shall include a description of permissible development and design characteristics of the permissible types of Wireless Facility, including but not limited to maximum height requirements. The City shall make such resolution available to all persons upon request. The City Council may subsequently amend the list of preapproved sites or Wireless Facilities by resolution from time

to time. Wireless Facilities on preapproved sites require an Eligible Facilities Request Permit or a Wireless Use Permit, as applicable, and must otherwise comply with the Laguna Woods Municipal Code.

2. Unless otherwise exempt by federal or state law, Wireless Facilities on City-owned property or in the public right-of-way require a written lease agreement, license, or other agreement acceptable to the City Attorney's Office between the City and the operator of the Wireless Facility. The existence of a lease agreement, license, or similar agreement shall not relieve the operator of any obligations to obtain appropriate Permits for the Wireless Facility or otherwise comply with the Laguna Woods Municipal Code.

3. All lease agreements, licenses, or similar agreements for Wireless Facilities on City-owned property or in the public right-of-way shall be nonexclusive. To the extent technically feasible, the operator of a Wireless Facility located on City-owned property or in the public right-of-way shall make the supporting structure of the Facility available to any other Applicant wishing to Collocate.

(9) *Safety and Security.*

a. A ground mounted Wireless Facility shall be secured from access by the general public with a fence or other form or screening of a type and dimensions approved by the Reviewing Authority.

b. A ground mounted Wireless Facility shall be covered with a clear anti-graffiti material of a type approved by the Reviewing Authority. The Reviewing Authority may waive this requirement if the Applicant demonstrates to the satisfaction of the Reviewing Authority that there is adequate other security around the Wireless Facility to prevent graffiti.

(10) *Backup Power Requirement.*

a. This provision shall only apply to applications for the construction of new ground-mounted Wireless Facilities, or

modification to a preexisting ground-mounted Wireless Facility, that require the issuance of a Wireless Use Permit.

b. All construction of new ground-mounted Wireless Facilities, or modification to an existing ground-mounted Wireless Facility, that require the issuance of a Wireless User Permit, shall be required to install and maintain an on-site backup generator, or similar on-site energy source, that is of sufficient capacity and maintained in such condition as to be readily capable of powering all of the equipment located on said Wireless Facility so as to allow the Wireless Facility to continue to function for a period of not less than 24 hours of continuous use when regular energy systems as provided by the local utility company to the subject Wireless Facility are inoperable, interrupted, or otherwise experiencing shortages.

c. Other Standards.

1. *Number*. More than one on-site backup generator or similar on-site energy source may be installed to serve a single ground-mounted Wireless Facility in order to meet the requirements of this section.

2. *Aesthetics*. On-site backup generators and similar on-site energy sources shall be architecturally integrated into one or more concealing structures or otherwise screened from view from public right-of-way and residential properties by topography, plantings, walls, or fencing.

3. *Noise*. On-site backup generators and similar on-site energy sources shall be installed and operated in a manner that results in compliance with the noise standards set forth in this Code.

4. *Water Quality*. On-site backup generators and similar on-site energy sources shall be installed in a manner that results in compliance with applicable National Pollutant Discharge Elimination System (NPDES) requirements and water quality-related best management practices, as may be required at the City’s discretion.

5. *Limitations on Operation*. In order to control noise and minimize operational impacts, on-site backup generators

and similar on-site energy sources shall only be operated when regular energy systems as provided by the local utility company to the subject automobile service station are inoperable, interrupted, or otherwise experiencing shortages.

d. Permitting. To the greatest extent authorized by state and federal law, the installation of on-site backup generators, or similar on-site energy sources, shall be included as a condition of approval for the conditional use permit sought from the City, or as a site development permit when no conditional use permit is required. The applicant shall be responsible for determining whether additional permits or approvals are required from the City, Orange County Fire Authority, South Coast Air Quality Management District, and other regulatory agencies.

e. Submittals. The City may require such submittals and fees as are reasonably necessary to implement and enforce this section including, but not limited to, site plans, visual renderings, and reports from qualified professionals to substantiate the demand and power-generating adequacy of the on-site backup generator or similar on-site energy source.

(g) *Types of Permits Required.*

(1) *Wireless Use Permit.* Unless specifically exempt by federal law, state law or this Section, all new Wireless Facilities and modifications or Collocations to existing Wireless Facilities that do not qualify as an Eligible Facilities Request require a Wireless Use Permit.

(2) *Eligible Facility Request Permit.* Unless specifically exempt by federal law, state law or this Section, all Eligible Facilities Requests require an Eligible Facilities Request Permit.

(h) *Applications; Fees; Deposits.*

(1) *Contents of Application.* Except as set forth in subsections "m" and "n" below, Applications for a Permit must include all of the following:

a. *Use Permit Application Materials.* Any and all materials required for a "Use Permit" under Chapter 13.24 of this Code, including a fully completed and executed form application required by Section 13.24.030(a) of this Code, as may be amended

from time-to-time or replaced by a successor ordinance. Unless otherwise exempt under either federal or state law, if the proposed Wireless Facility is to be located on a City-held easement or right-of-way, on City-owned property, or on a City-owned building or structure, the form application must be signed by an authorized representative of the City. The form application must state what approval is being sought (*i.e.*, a Wireless Use Permit or an Eligible Facility Request Permit).

b. *Required Licenses or Approvals.* Evidence that the Applicant has all current licenses and registrations from the FCC, the CPUC, and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide Personal Wireless Services utilizing the proposed Wireless Facility. Furthermore, the Applicant is required to provide any other evidence that it possesses the required licenses and approvals to provide Personal Wireless Services within the City.

c. *Prior Approvals.* For proposed modifications to Existing Wireless Facilities, the Applicant must provide copies of the approved plans, photo simulations, staff report/resolution, and/or approval letters from the original discretionary approval(s) along with the most recent discretionary approval(s) for the Existing Wireless Facility. Notwithstanding the foregoing, this requirement can be independently waived by the City to the extent the required approvals are in the City's possession.

d. *Carriers.* For modifications to Existing Wireless Facilities, the Application must identify all carriers currently using the Wireless Facility. For all proposed Wireless Facilities, the Application must identify all carriers that will use the Facility if the Permit is approved (if known).

e. *Plans.* Three (3) full-size construction-ready plans of the proposed Wireless Facility with an exact PDF copy on compact disk, wet stamped by a professional engineer, showing the entire proposed Wireless Facility and any appurtenant structures, including, where applicable, any required on-site backup generator, or similar on-site energy source, in plan and elevation views, all proposed changes in plan and elevation views, and all utility runs

and points of contact. These plans must be drawn at 1" = 20' or a comparable scale and contain all of the following information:

1. Location, type, dimensions, height, number, color and technical specifications of any proposed antennas.

2. Location, type, dimensions, gross floor area, height, materials and color of proposed equipment structure. Location of exhaust ports or outlets.

3. Location of existing and proposed power, telephone and other utilities serving the site.

4. Specific landscape, screening and fencing materials. Landscape plans shall include size, species, location, distance apart, plus irrigation and maintenance plans. For applications that will require compliance with Section 4.28 of the Laguna Woods Municipal Code, this particular requirement must be satisfied by providing the landscape documentation package required under that Section.

5. Proposed setbacks from property lines, nearest Residence and residentially zoned properties.

6. Location of adjacent roadways and proposed means of access.

7. Location and extent of any streams, wetlands, or landslide hazard areas on or within 100 feet of the underlying property.

8. Lot size and lot coverage calculations for the underlying property.

f. *Drawings/Simulations.* Where applicable, the Applicant must provide all of the following:

1. Two (2) color copies of photographs of the existing site conditions.

2. Two (2) color copies of photo simulations showing the proposed changes to the site.

3. Two (2) color copies of photo simulations of the proposed Wireless Facility from any Historic Resource(s), Park(s), Residence(s), and public right(s)-of-way in the Immediate Vicinity of the Wireless Facility.

4. For modifications to Existing Wireless Facilities, dimensioned elevation drawings of the Existing Wireless Facility showing the existing and proposed antennas and equipment structures (at 1/8" = 1' or comparable scale).

g. *RF Exposure Compliance Report.* A radio frequency ("RF") report acceptable to the City prepared and certified by an RF engineer that certifies that the proposed Wireless Facility, as well as any collocated Wireless Facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the site of the proposed Wireless Facility.

h. *Environmental Review.* Additional information, such as engineer diagrams, site diagrams, plans, technical information, and any other information with respect to the potential visual, noise, public health, and safety impacts of the proposed Wireless Facility to permit the City to conduct a preliminary environmental review.

i. *Letter of Justification.* A letter of justification accompanied by written documentation that explains and validates the Applicant's efforts to develop the proposed Wireless Facility is in accordance with federal and state law, as well as this Section. The letter of justification shall also include: (i) a description of the technical objectives to be achieved; (ii) an annotated topographical map that identifies the targeted service area to be benefitted; (iii) the estimated number of potentially affected users in the targeted service area; and (iv) full-color signal propagation maps with objective units

of signal strength measurement that show the Applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. The letter of Justification shall include a written statement demonstrating how the proposed Wireless Facility complies with all federal guidelines regarding interference and American National Standards Institute ("ANSI") standards applicable to the Facility, including but not limited to nonionizing electromagnetic radiation ("NIER") standards, and stating that the proposed Wireless Facility will comply with all applicable federal and state laws, including specifically FCC and Federal Aviation Administration ("FAA") regulations, and the City's General Plan, this Code, and all City ordinances, resolutions and policies.

j. *Alternative Sites Analysis.* The Applicant must provide a list of all sites considered as alternatives to the location of the proposed Wireless Facility, together with a general description of the site design considered at each alternate site. The Applicant must also provide a written explanation for why the alternative sites considered were unacceptable or infeasible, unavailable or not as consistent with the development standards in this Section as the location of the proposed Wireless Facility. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons written explanation. If an Existing Wireless Facility is listed among the alternatives, the Applicant must specifically address why the modification of the Existing Wireless Facility is not a viable option. When an Applicant proposes a site in the public right-of-way, the initial alternative sites analysis required for a complete Application may evaluate other potential locations within the right-of-way.

k. *Exemptions.* Applications for an Eligible Facility Request Permit are exempt from the requirements set forth above for "Environmental Analysis", "Letter of Justification" and "Alternative Site Analysis" , and subsections (c)(6) and (c)(7) of Section 13.24.030 of this Code (relating to properties within 300 feet of the

site), as amended from time to time or replaced by a successor ordinance.

l. *Waivers.* The Director may waive one or more of the above-listed Application requirements only when: (i) the Applicant attends a pre-submittal consultation meeting with City staff for the proposed Wireless Facility, (ii) the Director finds that compliance with the Application requirement would create an unnecessary or unreasonable burden on the Applicant, and (iii) the Director memorializes the waiver and grounds therefor in a writing.

(2) *Filing Fee.*

a. A filing fee to defray the cost of processing and notification for each Application brought under this section shall be paid by the Applicant at the time the Application is accepted. Such fees shall be in accordance with the fee schedule currently in effect as adopted by resolution by the City Council.

b. Should the Applicant fail to provide the required filing fee, the City shall either (1) not accept the Application, or (2) deem and the Application incomplete.

c. The City may refund a filing fee in whole upon a determination that the application was erroneously required or filed. The City may refund a fee pro rata, based on the cost of processing the application, if the application is withdrawn prior to a decision thereon.

(3) *Future Application Developments and Modifications.* The City Council authorizes the Director to develop and make publicly available forms for Permit Applications and other materials specific for Wireless Facilities, and from time-to-time to update and amend such publicly available forms and materials as the Director deems appropriate.

(i) *Application Submittal and Resubmittal Meetings.*

(1) *Pre-Submittal Consultation Meeting.* Before submitting an Application for a Wireless Use Permit for a proposed Wireless Facility in a Protected Location or a public right-of-way, an Applicant shall schedule and attend a pre-submittal consultation meeting with the Director or other designated City staff. For all other Applications, pre-submittal consultation

meetings are strongly encouraged but not required. City staff will endeavor to provide Applicants with a pre-submittal consultation meeting within fifteen (15) working days after receipt of a written request for a meeting.

(2) *Application Submittal Meeting.* All Applications must be submitted to the City at a pre-scheduled submittal meeting. City staff will endeavor to provide Applicants with a submittal meeting within five (5) working days after receipt of a written request for a meeting.

(3) *Application Resubmittal Meeting.* All resubmittals of Applications must be submitted to the City at a pre-scheduled resubmittal meeting. City staff will endeavor to provide Applicants with a resubmittal meeting within five (5) working days after receipt of a written request for a meeting.

(4) *Waiver of Meeting Requirements.* The Director, in his or her sole discretion, may waive in writing the requirement for any of the above-listed meetings.

(j) *Initial Review of Permit Applications.*

(1) *Completeness Determination.* Following receipt of a new or resubmitted Application for a Permit, the Director shall make an initial determination as to whether the Application is complete. If the Director determines the Application is not complete, the Director shall provide written notice to the Applicant that clearly and specifically delineates all missing documents, information, or payments within the timeframes set forth below.

a. *Eligible Facility Request Permits.* For Applications for EFR Permits, the Director shall provide the Applicant with written notice of his or her completeness determination within the timeframes set forth in 47 C.F.R. § 1.40001(c)(3), as that regulation is amended from time to time or replaced with a successor regulation.

b. *Wireless Use Permits.* For Applications for Wireless Use Permits, the Director shall provide the Applicant with written notice of his or her completeness determination within the timeframes set forth in Government Code § 65964.1, as that statute is amended from time to time or replaced with a successor statute.

c. *Tolling Agreement.* The timeframe to review any Application for completeness may be extended by mutual agreement of the Applicant and the Director.

(2) *Initial Categorization Determination.* At the time the Director determines an Application is complete, the Director shall also make an initial determination as to whether the proposal will be categorized as an Application for one of the following:

a. An Eligible Facilities Request for a modification to an Eligible Support Structure that is one of the following: (i) a Tower in the public right-of-way; (ii) a Tower that is not in a public right-of-way; or (iii) a Base Station in any location; or

b. A Wireless Use Permit for a new or modified Wireless Facility in one or more of the following locations: (i) a public right-of-way; (ii) a Historic Protected Location; (iii) a Park Protected Location; and (iv) a Residential Protected Location.

The Director shall provide written notice to the Applicant of his or her initial categorization determination.

An Application for a proposal that the Director determines is an Eligible Facilities Request shall be processed in accordance with subsections (k)(1), (l)(1), and (m)(1) of this Section.

Applications for all other proposals shall be processed in accordance with subsections (k)(2), (l)(2), and (m)(2) of this Section.

(k) *Timeframes and Reviewing Authority.*

(1) *Eligible Facility Request Permits.* The Director shall approve or deny an Application for an EFR Permit within the timeframes set forth in 47 C.F.R. § 1.40001(c)(2), as that regulation is amended from time to time or replaced with a successor regulation.

(2) *Wireless Use Permits.* The City Council shall approve, conditionally approve, or deny an Application for a Wireless Use Permit within the timeframes set forth in Government Code § 65964.1, as that statute is amended from time to time or replaced with a successor statute.

(3) *Tolling Agreement.* The timeframes to approve, conditionally approve, or deny any Application may be extended by mutual agreement of the Applicant and the Director.

(l) *Notice and Hearing Requirements.*

(1) *Eligible Facility Request Permits.* Unless otherwise required by state or federal law, Applications for EFR Permits may be acted upon administratively without notice or a public hearing.

(2) *Wireless Use Permits.* Before the City Council approves an Application for a Wireless Use Permit, the City shall comply with the notice and public hearing requirements for approval of a "Use Permit" set forth in Chapter 13.24 of this Code, including without limitation, the requirements set forth in Section 13.24.040(2), as that Section is amended from time to time or replaced with a successor ordinance. Any public hearing for a Wireless Use Permit may be continued to a time certain without further notice.

(m) *Required Findings.*

(1) *Eligible Facility Request Permits.* If the Director determines a proposal meets the criteria for an Eligible Facilities Request set forth in Section 6409(a), the Director shall issue an EFR Permit unless the Director makes one or more of the following findings:

a. The proposal involves a structure that was constructed or modified without all regulatory approvals required at the time it was constructed or modified;

b. The proposal Substantially Changes the physical dimensions of the Eligible Support Structure;

c. The proposal entails excavation or deployment outside the Site;

d. The proposal would defeat one or more of the concealment elements of the Eligible Support Structure;

e. The proposal does not comply with one or more conditions of the underlying approval(s) for the Eligible Support Structure and any appurtenant equipment, provided however, this

limitation does not apply if the proposal merely changes the physical dimensions of the Eligible Support Structure in a manner that does not qualify as a "Substantial Change";

f. The proposal involves the replacement of the entire Eligible Support Structure;

g. The Applicant has not paid all outstanding balances owed to the City for the reasonable and necessary costs of processing the Application, including any fees imposed pursuant to this Section; or

h. The proposal does not qualify for mandatory approval under Section 6409(a) for any other lawful reason.

(2) *Wireless Use Permits.* The City Council shall approve an Application for a Wireless Use Permit if it determines it can make all of the following findings:

a. The Applicant has paid all outstanding balances owed to the City for the reasonable and necessary costs of processing the Application, including any fees imposed pursuant to this Section.

b. The proposed Wireless Facility satisfies all of the findings required for approval of a "Use Permit" set forth in Chapter 13.24 of this Code, including without limitation, the findings required by Section 13.24.040(4)(a), as that Section is amended from time to time or replaced with a successor ordinance.

c. The proposed Wireless Facility blends into the surrounding environment or is architecturally integrated into a concealing structure and is screened or camouflaged by existing or proposed new topography, vegetation, buildings, or other structures. Any such improvements are appropriate for and compatible with the site and surrounding area.

d. The size, design, and operation of the proposed Wireless Facility is compatible with any supporting structures, surrounding structures, and existing uses on surrounding properties.

e. Unless infeasible, the location of the proposed Wireless Facility conforms to one or more of the following in order of preference:

1. The proposed Wireless Facility is Collocated with an Existing Wireless Facility;

2. The proposed Wireless Facility is attached to an existing structure such as an existing building, communication tower, church steeple or utility; or

3. The proposed Wireless Facility is located in an Unprotected Location.

f. *For ground mounted Wireless Facilities only*, no existing building or support structure can reasonably accommodate the proposed Wireless Facility. Evidence supporting this finding may consist of any of the following:

1. No existing buildings or support structures are located within the geographic area proposed to be served by the proposed Wireless Facility;

2. Existing buildings or support structures are not of sufficient height or structural strength to satisfy the proposed Wireless Facility's operational or engineering requirements.

3. The proposed Wireless Facility would create electromagnetic interference with another Wireless Facility on an Existing structure, or the Existing Transmission Equipment on an Existing building or support structure would create interference with the Applicant's proposed Transmission Equipment.

4. The costs, fees, or contractual provisions required by a property owner or by an incumbent wireless service provider in order to Collocate the proposed Wireless Facility on an existing building or structure, or to adapt an existing building or structure for the location of the proposed Wireless Facility, are unreasonable.

5. There are other limiting factors that render Existing buildings and structures unsuitable for use by the Applicant for the proposed Wireless Facility.

g. Alternative sites for the location of the proposed Wireless Facility are unacceptable, infeasible, unavailable, or less consistent with the development requirements in this Section.

h. The Site will provide adequate ingress and egress to the proposed Wireless Facility.

i. There is a documented public need for the proposed Wireless Facility.

j. The proposed Wireless Facility is the least intrusive means to achieve the Facility's technical objectives.

k. The proposed Wireless Facility will comply with all applicable state and federal regulations for such facilities, including safety regulations and FCC regulations regarding interference with the reception or transmission of other *wireless* service signals within the City and surrounding community.

l. *For Wireless Facilities in a Public Right-of-Way only*, the proposed Wireless Facility will not create any significant blockage to public views.

m. *For Wireless Facilities in a Historic Protected Location only*, the proposed Wireless Facility will not significantly impair the views of any Historic Resource or significantly degrade the aesthetic attributes of any Historic Resource.

n. *For Wireless Facilities in a Park Protected Location only*, the proposed Wireless Facility will not significantly impair the views of any Park or significantly degrade the aesthetic or natural attributes that define the Park.

o. *For Wireless Facilities in a Residential Protected Location only*, the proposed Wireless Facility will not significantly impair the views from any Residence or significantly detract from any of the defining characteristics of the zoning district in which it is located.

(3) *Denial of Permit.* If an Application for a Permit is denied, the Director (in the case of an EFR Permit) or City Council (in the case of a Wireless Use Permit) shall make a written determination setting forth the grounds for denial supported by substantial evidence contained in a written record, as may be required by law.

(n) *Transfers Involving a Wireless Facility or Wireless Use Permit.* Within 30 days after a Permitee transfers any interest in the Wireless Facility or any Permit(s) issued for the Facility, the Permitee shall deliver written notice to the City. The written notice must include: (1) the transferee's legal name; and (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set out in subsection (t) below. By accepting the transfer, the transferee shall be deemed to have accepted all Permit terms and conditions.

(o) *Preemption Exemption.* An Applicant or Permittee may seek an exemption from any requirement of this Section on the basis that it is preempted by state or federal law. An Applicant seeking an exemption on the basis that denial of a Permit would effectively prohibit Personal Wireless Service must demonstrate with clear and convincing evidence all the following:

(1) The Applicant has the legal right to access the rights-of-way or private property necessary for the proposed Wireless Facility;

(2) A significant gap in the Applicant's service coverage exists; and

(3) All alternative sites identified in the Application review process are either technically infeasible or not available.

(p) *Notice of Decision; Appeals.*

(1) *Notice of the Decision.* Within five (5) working days after final decision by the Reviewing Authority on an Application submitted for approval pursuant to this Section, notice of the decision shall be mailed to the Applicant at the address provided on the Application and to all other persons who have filed a written request for notice of the decision with the Department. If the Application is denied, the Reviewing Authority shall provide the reasons for any denial either in the written decision or in some

other written record available at the same time as the notice of decision is provided.

(2) *Appeals.* Any interested person may appeal a final decision by the Director in accordance with the appeal procedures set forth in Chapter 13.24 of this Code. The appeal must state in plain terms the grounds for the appeal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The City Council shall hear the appeal.

(q) *Non-Waiver of Enforcement.* An Applicant or Permittee shall not be relieved of its obligation to comply with every provision of the Code, any Permit issued hereunder, or any applicable law or regulation by reason of any failure of the part of the City to notice, enforce or prompt compliance by the Applicant or Permittee.

(r) *Amendment of Permits.* Any Permit issued under this Section may be amended in accordance with the amendment procedures applicable to "Use Permits," set forth in Chapter 13.24 of this Code, including Section 13.24.090 as that Section is amended from time to time or replaced by a successor ordinance. Notwithstanding the foregoing, amendments to a Permit that qualify as an Eligible Facilities Request shall be processed in accordance with the procedures applicable to EFR Permits set forth in this Section.

(s) *Reservation of Right to Review Permits for Changed Circumstances.* Any Wireless Use Permit issued under this Section shall be subject to the reservation of the City's right and jurisdiction to review and require the Permittee obtain an amendment to the Wireless Use Permit (including any conditions of approval) based on changed circumstances. Changed circumstances include, but are not limited to, the following:

(1) Increased height or size of the Wireless Facility without proper authorization from the City;

(2) Additional impairment of the views from surrounding properties;

(3) Change in the type of antenna or supporting structure;

(4) Changed color or materials;

(5) A substantial change in location on the site; and

(6) An effective increase in signal output above or near the maximum permissible exposure ("MPE") limits imposed by the revised radio frequency emissions guidelines by the FCC.

(t) *Revocation of Permits.* Any Permit issued under this Section may be revoked in accordance with the revocation procedures applicable to "Use Permits," set forth in Chapter 13.24 of this Code, including Section 13.24.080 as that Section is amended from time to time or replaced by a successor ordinance.

(u) *Abandonment/Discontinuation of Wireless Facility; Removal; Relocation.*

(1) *Discontinued use.* The operator of a lawfully erected Wireless Facility, and the owner of the Site upon which it is located, shall promptly notify the Director in writing in the event that use of the Wireless Facility is discontinued for any reason. In the event that discontinued use is permanent, then the owner(s) and/or operator(s) shall promptly remove the Wireless Facility, repair any damage to the site caused by such removal, and restore the Site as appropriate such as to be in conformance with applicable Zoning Codes. All such removal, repair and restoration shall be completed within ninety (90) days after the use is discontinued, and shall be performed in accordance with all applicable health and safety requirements and requirements relating to abandonment of utility facilities. . For purposes of this subsection, a discontinued use shall be permanent unless the Wireless Facility is likely to be operative and used within the immediately following three (3) month period.

(2) *Abandonment.* A Wireless Facility that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the Wireless Facility and the owner(s) of the Site upon which it is located. Such notice may be delivered in person, or mailed to the address(es) stated on the Wireless Facility's Permit Application, and shall be deemed given at the time it is hand delivered or placed in first class mail. Such notice shall also provide that in the event the Wireless Facility is not removed as otherwise provided in this Section, the Wireless Facility shall be deemed to be abandoned, and may be removed, retained, or otherwise disposed of by the City.

(3) *Removal of abandoned facility or hearing.* The operator of the Wireless Facility and the owner(s) of the Site on which it is located, shall within thirty (30) days after notice of abandonment is given either (a)

remove the Wireless Facility and restore the Site, or (2) provide the Department with written objection to the City's determination of abandonment and request for hearing before the City Council. If a written objection is timely received and a hearing is properly requested, the City shall conduct a hearing, and the procedures for hearings, notices and related fees set forth in Chapter 13.24 of this Code shall apply. At such hearing, the operator and/or owner shall be given the opportunity to provide evidence that the Wireless Facility was in use during the relevant six (6) month period, and that it is presently operational. The operator and/or owner shall also be given the opportunity to rebut or cross examine any evidence provided by the City to the contrary. The City Council shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator written notice of its determination. As part of its determination the City Council may, but is not required to, provide the appealing owner or operator additional time to remove or salvage the abandoned Wireless Facility.

(4) *Removal by City*. The City may remove any abandoned Wireless Facility, repair any and all damage to the Site caused by such removal, and otherwise restore the Site at any time after the latter of: (1) thirty (30) days following delivery of the notice of abandonment, or (2) immediately following delivery of a notice of decision by the City Council, or expiration of any additional time granted for approval, if applicable. The City may, but shall not be required to, store the removed Facility (or any part thereof). The owner of the Site upon which the abandoned Wireless Facility was located, and all prior operators of the Wireless Facility, shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. The City may, in lieu of storing the removed Wireless Facility, convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

(5) *Penalties.* The operator of the abandoned Wireless Facility, and the owners of the Site upon which the Facility is located shall be in violation of this Section for failure to timely comply with any requirements hereunder. Each such person shall be subject to penalties for each such violation, pursuant to this Code.

(6) *City lien on property.* Until the cost of removal, repair, restoration and storage is paid in full, a lien may be placed on the personal property and any real property on which the abandoned Wireless Facility

was located, for the full amount of the cost of removal, repair, restoration and storage. The Director shall cause the lien to be recorded in the Orange County Recorder's Office.

(v) *Severability*. If any subsection, subdivision, paragraph, sentence, clause, or phrase of this Section or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Section or any part thereof. The City Council hereby declares that it would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsections, subdivision paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid or ineffective.

ITEM 8.1 - Attachment B

Sec. 13.26.210. - Wireless communication facilities.

(a) *Purpose and intent.* The purpose of these requirements and guidelines is to regulate the location and design of wireless communication facilities as defined herein to facilitate the orderly deployment and development of wireless communications services in the City of Laguna Woods, to ensure the design and location of wireless communications facilities are consistent with policies of the City previously adopted to guide the orderly development of the City of Laguna Woods, to promote the public health, safety, comfort, convenience, quality of life and general welfare of the City's residents, to protect property values and enhance aesthetic appearance of the City by maintaining architectural and structural integrity, and by protecting views from obtrusive and unsightly accessory uses and facilities.

(1) In adopting and implementing the regulatory provisions of this section, it is the intent of the Laguna Woods City Council to further the objectives specified above, and to create reasonable regulations in conformance with the provisions of the Telecommunication Act of 1996 without unnecessarily burdening the Federal interests in ensuring access to telecommunication services, in promoting fair and effective competition among competing communication service providers, and in eliminating local restrictions and regulations that, with regard to antennas, may preclude reception of an acceptable signal quality or may unreasonably delay, prevent, or increase the cost of installation, maintenance, or use of such antennas.

(2) The Laguna Woods City Council has found and determined that these requirements and guidelines for wireless communication facilities are necessary to attain such purposes.

(3) These regulations are intended to supersede any applicable provisions of the Laguna Woods Zoning Code pertaining to such antenna structures and appurtenant communication equipment and to establish minimum requirements and flexible guidelines for the governance of wireless communications facilities, taking into consideration the rapid technological advances and the proliferation in use of radio communication services.

(b) *Applicability.*

(1) All wireless communication facilities which are erected, located, or modified within the City of Laguna Woods on or following the effective date of this Code shall comply with this section, subject to the categorical exemptions under Paragraph (4) of this section, provided that:

a. All facilities for which applications were determined complete by the Planning Department prior to the effective date of this Code shall be exempt from the regulations and guidelines of this section.

b. All facilities for which building permits were issued by the City of Laguna Woods prior to the effective date of this Code shall be exempt from the regulations and guidelines of this chapter, unless and until such time as Subsection (b)(1)c of this section applies.

c. All facilities for which building permits and any extension thereof have expired shall comply with the provisions of this Code.

d.

All facilities constructed or erected prior to the effective date of this Code that are in violation of applicable laws, ordinances, or other regulations shall be considered an illegal nonconforming facility and shall be subject to abatement as a public nuisance.

(2) The following uses shall be exempt from the provisions of this section until such time as Federal regulations are repealed or amended to eliminate the necessity of the exemption:

a. Any antenna structure that is one meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, as defined by Section 207 of the Telecommunications Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission;

b. Any antenna structure that is two meters (78.74 inches) or less in diameter located in a commercial or industrial zone and is designed to transmit or receive radio communication by satellite antenna;

c. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive multipoint distribution service, provided that no part of the antenna structure extends more than 12 feet above the principal building on the same lot.

(3) The following uses shall be exempt from the provisions of this section, so long as the antenna structure complies with all other zoning requirements:

a. Any antenna structure that is designed and used solely to receive UHF, VHF, AM, and FM broadcast signals from licensed radio and television stations.

b. Any antenna structure that is designed and used solely in connection with authorized operations of an amateur radio station licensed by the FCC (i.e., a "HAM" radio transmission).

(c) *Distances.* For the purpose of this section, all distances shall be measured in a straight line without regard to intervening structures, from the nearest point of the proposed major facility to the relevant property line at point five feet above ground level.

(d) Regulations for both major and minor wireless communication facilities.

(1) Both major and minor facilities shall be erected, located, operated and maintained at all times in compliance with this section and all applicable laws and regulations of the City, the State of California, and the United States of America.

(2) Both major and minor facilities are conditionally permitted in the applicable land use designations subject to the following table:

Land Use Designations	Major	Minor
Nonresidential	CUP	CUP

Residential	Not permitted	CUP
Open Space	Not permitted	CUP

(3) Application requirements and procedures.

a. Both major and minor facilities proposed to be erected, located, operated and maintained at all times shall require a conditional use permit (CUP). Each applicant applying for a CUP shall submit a completed CUP application in accordance with the requirements set forth in this Code, and such additional or different requirements as are made applicable by this section. In addition to the City submittal requirements, a scaled site plan shall be provided to the City which shows illustrating the following information:

1. The proposed location of the wireless telecommunications antenna facility.
2. Elevations of the wireless telecommunication antenna facility with dimensions.
3. The height of any existing or proposed structure(s).
4. Location of any accessory equipment facility.
5. Locations of all guy wires.
6. Location of all aboveground and belowground wiring and connection cables.
7. Location of existing or proposed easements on the property.
8. The height of any panels, microwave dishes, or whip antennas, above ground level.
9. The distance between the antenna facility and any existing or proposed accessory equipment facility.
10. Any other necessary information as may be required by the Community Development Department.

Any application that is improperly submitted or fails to contain all of the information as required by this section shall be deemed incomplete.

b. Each application shall contain a letter of justification accompanied by written documentation that explains and validates the applicant's efforts to locate the facility in accordance with the screening and site selection guidelines set forth in this section.

c. Each application shall contain a narrative and map that discloses the exact location and nature of any and all existing facilities that are owned, operated or used by the applicant within the City of Laguna Woods, or within five miles of its geographic borders, as well as any proposed or planned sites that may reasonably be known to the applicant at the time the application is made.

d.

Each application shall contain a narrative and appropriate maps that disclose the geographic area(s) within the City of Laguna Woods that will be serviced by the proposed facility, the geographic area(s) bordering the City of Laguna Woods, if any, that will be serviced by the proposed facility, the nature of the Service to be provided or purpose of the facility, the reasons, if any, why the applicant cannot locate the facility outside the City of Laguna Woods, and the efforts, if any, that applicant has made to locate the facility outside the City of Laguna Woods.

e. A radio frequency (RF) report prepared by a qualified RF engineer acceptable to the City to demonstrate that the proposed facility, as well as any collocated facilities, complies with current Federal RF emission standards. This RF report shall also include signal strength exhibits.

f. Computerized visual assessments or other exhibits equivalent in a form and manner acceptable to the Community Development Director showing the before and after visual appearances of the proposed facility.

g. A preliminary environmental review in accordance with the City submittal requirements, with special emphasis placed upon the nature and extent of visual, public, health, and safety impacts.

h. Evidence of any required licenses and approvals to provide wireless services in the City.

i. Notwithstanding any permit that may be granted in accordance with this section, the facility shall be erected, located, operated and maintained at all times in compliance with this section and all applicable laws, regulations and requirements of the Building Code, and every other Code and regulation imposed or enforced by the City of Laguna Woods, the State of California, and the United States federal government. Applicants are separately required to obtain all applicable building and construction permits that may be required prior to erecting or installing the facility.

(4) General development requirements. The facility shall comply with each of the following requirements:

a. A facility shall not bear any signs or advertising devices other than certification, public safety, warning, or other required seals or required signage.

b. Any and all accessory equipment, or other equipment associated with the operation of the facility, including but not limited to transmission cables, shall be located within a building, an enclosure, or underground vault in a manner that complies with the development standards of the zoning district in which such equipment is located. In addition, if equipment is located above ground, it shall be visually compatible with the surrounding buildings and either shrouded by sufficient landscaping to screen the equipment from view, or designed to match the architecture of adjacent buildings. If accessory equipment will be visible from a residential area or an arterial street, the applicant shall provide a solid masonry block wall that will screen the equipment from the residential area or another material that is acceptable to the

Community Development Director. If no recent and/or reasonable architectural theme is present, the Community Development Director may require a particular design that is deemed suitable to the subject location.

c. The facility's exterior finish shall be comprised of nonreflective material(s) and painted, screened, or camouflaged to blend with surrounding building's or structure's materials and colors.

d. All screening used in connection with a wall mounted and/or roof mounted facility shall be compatible with the architecture, color, texture, and materials of the building or structure to which it is attached.

e. Facilities may not be illuminated unless specifically required by the Federal Aviation Administration or other governmental agencies.

f. The applicant and the property owner if different from the applicant shall consent to future collocation of other facilities on or with the applicant's facility, unless technological requirements preclude that collocation.

(5) Setback requirements and guidelines. A facility shall be considered an accessory structure. If the facility is located in a residential zone or within 200 feet of a residential use, then the facility shall comply with the setback requirements for such zone. In all other instances, the extent of compliance with the setback requirements for the zone in which the facility is located shall be considered, by the City in connection with the processing of the CUP.

(6) Screening and site selection guidelines. In addition to the above requirements, the City shall consider the following guidelines in conjunction with the processing of a CUP:

a. The proposed facility should blend into the surrounding environment or be architecturally integrated into a concealing structure, taking into consideration alternate sites that are available, including collocation.

b. The proposed facility should be screened or camouflaged by existing or proposed new topography, vegetation, buildings, or other structures. Any such improvements shall be appropriate for and compatible with the site and surrounding area.

c. The total size of the proposed facility should be compatible with surrounding and supporting structures.

d. If feasible, the location of the proposed facility should conform to the following in order of preference:

1. Collocated with an existing facility or located at a preapproved location;
2. Attached to an existing structure such as an existing building, communication tower, church steeple or utility;
3. Located in an industrial zoning district;
4. Located in a commercial zoning district;

e.

Proximity of the proposed facility to residential structures and to boundaries of residentially zoned districts.

f. The availability of suitable alternative locations for the facility.

g. The nature of existing uses on adjacent and nearby properties.

h. Proposed ingress and egress to the facility.

(e) *Required findings for both major and minor wireless communication facilities.*

(1) Wireless communications facilities findings. In addition to the required findings for conditional use permits contained in this Code, the following findings are required for every major and minor conditional use permit (CUP) for wireless facilities:

a. That the proposed facility will not create any significant blockage to public views and;

b. That the proposed facility will be an enhancement to the City due to its ability to provide additional communication capabilities and;

c. That the proposed facility will be aesthetically integrated into its surrounding land uses and;

d. That the proposed facility will comply with FCC regulations regarding interference with the reception or transmission of other wireless service signals within the City and surrounding community and;

e. That the proposed facility will operate in compliance with all other applicable Federal regulations for such facilities, including safety regulations and;

f. That the public need for the use of the antenna facility has been documented.

(2) If the Planning Commission does not approve an application for such conditional use permit, the Planning Commission shall make a written determination supported by findings as required by law.

(f) *Additional regulations for minor facilities.* In addition to the requirements above, the following requirements shall apply to the following types of facilities:

(1) *Minor facility height requirements.* Notwithstanding any other provision in the Laguna Woods Municipal Code, no minor facility shall exceed the maximum building height for the applicable zoning district. A roof mounted facility may exceed the height of the structure on which it is mounted up to 15 feet for the necessary operation and safety of the facility. Such permit to exceed the height for a minor facility shall not be considered for approval unless:

a. The applicant demonstrates to the Community Development Director's satisfaction that exceeding the height limitation is necessary for operation of the facility; or

b. The facility is collocated, or contains adequate space suitable for future collocation, and the height in excess of zoning requirements is necessary to the proposed shared use.

(2) *Utility mounted facilities, vertical extensions.* A utility mounted facility may, if approved by the Planning Commission, exceed the maximum building height limit for the applicable zoning district. The extent that the utility mounted facility exceeds the height of the existing utility pole or structure and the need for such height increase shall be taken into consideration by the City in conjunction

with the processing of the CUP for the utility mounted facility. A utility mounted facility shall not exceed the height of a utility pole or structure by more than four feet of its existing height. Any extension above four feet shall receive Planning Commission approval of a conditional use permit.

(3) *Utility mounted facilities, horizontal extension.* The extent that the utility mounted facility protrudes or extends horizontally from the existing utility pole or structure, and there is a need for such extension, additional considerations shall be taken into account by the City in conjunction with its processing of a CUP for a utility mounted facility. A utility mounted facility may not protrude or extend horizontally more than 18 inches from the existing utility pole or structure unless such utility mounted facility receives Planning Commission approval of a conditional use permit.

(g) *Additional regulations for major facilities.* In addition to the requirements of above, the following requirements shall apply to the following types of facilities:

(1) *Location requirements.*

a. No portion or extension of a major facility shall protrude beyond property lines or extend into any portion of property where such facility is not itself permitted; provided, however, that the City may approve the location of guy wires in a required setback if such approval is consistent with the guidelines and requirements set forth in this section.

b. A ground mounted facility shall not be located in a required parking area, vehicle maneuvering area, vehicle/pedestrian circulation area or area of landscaping such that it interferes with, or in any way impairs, the utility or intended function of such area.

c. A ground mounted facility shall not be permitted unless the reviewing authority makes the additional finding that, based upon evidence submitted by the applicant, no existing building or support structure can reasonably accommodate the proposed facility. Evidence supporting this finding will be reviewed by the reviewing authority and may consist of any of the following:

1. No existing buildings or support structures are located within the geographic area proposed to be served by the applicant's facility.
2. Existing buildings or support structures are not of sufficient height or structural strength to satisfy the applicant's operational or engineering requirements.
3. The applicant's proposed facility would create electromagnetic interference with another facility on an existing structure, or the existing antenna array on an existing building or support structure would create interference with the applicant's proposed antenna array.
4. The costs, fees, or contractual provisions required by a property owner, or by an incumbent wireless service provider, in order to collocate a new antenna array on an existing building or structure, or to adapt an existing building or structure for the location of the new antenna array, are unreasonable.
5. There are other limiting factors that render existing buildings and structures unsuitable for use by the applicant.

d.

If the proposed major facility cannot be collocated, it must be sited at least 1,500 feet from any existing major facility unless the reviewing authority determines that a shorter distance is required for technological reasons, the area served could not be served by one or more minor facilities, and that it would result in less visual obtrusiveness in the surrounding area.

(2) *Additional design requirements.*

a. A ground mounted facility shall be secured from access by the general public with a fence of a type or other form or screening approved by either the Community Development Director or the Planning Commission.

b. A ground mounted facility shall be covered with a clear anti-graffiti material of a type approved by the Community Development Director. The Community Development Director may grant an exception to this requirement if the applicant demonstrates to the satisfaction of the Community Development Director that there is adequate security around the facility to prevent graffiti.

(3) *Height requirements.* Notwithstanding any other provision in the Laguna Woods Municipal Code, no major facility shall exceed the maximum building height for the applicable zoning district unless such facility receives Planning Commission approval and considers the following:

a. The applicant demonstrates to the Community Development Director's satisfaction that exceeding the height limitation is reasonably necessary for operation of the facility; or

b. The facility is collocated, or contains adequate space suitable for future collocation, and the excess in height is reasonably necessary to the proposed shared use.

(4) *Additional screening and site selection guidelines.* The following screening and site selection guidelines shall be considered by the City in conjunction with the processing of a major facility CUP:

a. A major facility should not be located within 200 feet of any property containing a residential use.

b. If technical data require the placement of a major facility to be located within 1,500 feet of an existing major facility, under Section 13.26.210, the new major facility should be located at least 500 feet from the existing major facility.

c. A ground mounted facility should be located in close proximity to existing above ground utilities, such as electrical tower or utility poles (not scheduled for removal or undergrounding in the next 18 months), light poles, trees of comparable height, water tanks and other areas where the facility will not detract from the image or appearance of the City.

d. A roof mounted facility that extends above the existing parapet of the building on which it is mounted shall be screened by a material and in a manner that is compatible with the existing design and architecture of the building to the satisfaction of the Community Development Director.

e.

A roof mounted facility, requiring the placement of any guy wires, supporting structures, or accessory equipment shall be located and designed so as to minimize the visual impact as viewed from surrounding properties and public streets, including any pertinent public views from higher elevations.

f. No part of a ground mounted facility should be located in any required setback.

(h) *Public property facilities*.

(1) *Preapproved locations.*

a. The City may approve by resolution, following a duly noticed public hearing, a list of sites which may be located on public property or within the public right-of-way and which are approved for major facilities. Each site shall include a description of permissible development and design characteristics, including but not limited to maximum height requirements. The City shall make said resolution available to all persons upon request. The approved list of locations may be subsequently amended by resolution from time to time.

b. All facilities located on a public property site which is preapproved in accordance with this section following the effective date of this Code must obtain approval of a CUP in accordance with the Laguna Woods Municipal Code, and any additional or different requirements made applicable by this section.

c. All leases of public property that is preapproved in accordance with this section shall be nonexclusive. The operator of a facility located on such public property shall make the supporting structure of the facility available to any other applicant wishing to collocate to the extent technically feasible.

(2) *Requirement for separate lease agreement.* Any lease of City-owned property for the purpose of erecting a wireless communications facility shall require a negotiated lease agreement or other written license granted by the City of Laguna Woods. The existence of a lease agreement or license shall not relieve an applicant of any obligations to obtain appropriate permits or otherwise comply with the Laguna Woods Municipal Code.

(i) *Coordinated antenna plans.*

(1) *Requirements.* Any wireless service provider may apply for Planning Commission approval of a coordinated antenna plan (CAP) by filling a CUP to obtain preapproval for the use of proposed and potential future locations for facilities, subject to the following requirements:

a. The CAP shall specify permissible development and design characteristics for identified future locations, including but not limited to maximum height and size, type of supporting structure, and type of antenna.

b. The CAP shall identify potential future locations by lot and parcel number.

c. Applications for a CAP may be considered by the Planning Commission after holding a noticed public hearing thereon in accordance with this Code.

d.

Following Planning Commission approval of a CAP, each facility that complies with the specifications of the CAP may be approved subject to Community Development Director review and approval in accordance with the requirements set forth and referenced herein. Except for the type of permit, nothing in this section shall relieve the applicant of the obligation to comply with the regulations, requirements, and guidelines as required by this chapter, and the Community Development Director may recommend denial of a CUP, or place conditions upon its approval, notwithstanding prior approval of a CAP.

e. Any conditions placed on the approval of a CUP for a facility that complies with the CAP shall be consistent with the specifications of the CAP.

f. The CAP shall not vest any permanent rights to use the preapproved locations for facilities beyond the date of expiration. Unless extended, the CAP shall expire 24 months following its approval by the Planning Commission regardless of whether any CUP has been granted pursuant to the CAP. The Planning Commission may at its discretion, after written request therefore, extend the term of the CAP for up to twenty four (24) additional months; no CAP shall continue longer than 48 months.

(2) *Findings.* The Planning Commission shall approve a CAP based upon the following findings:

a. The intent and purpose of this section, and all its regulations and requirements will be preserved.

b. Any future facility complying with the specifications imposed by the CAP will not have a significant adverse impact on the subject site or surrounding community beyond those impacts considered in the approval of the CAP.

c. Any future facilities within the specifications of the CAP will be consistent with the General Plan and the uses permitted in the Laguna Woods Zoning Code, subject to subsequent approval of a CUP.

(3) *Application procedures.* Each applicant for a CAP shall submit the following information:

a. Written application on a form prescribed by the Community Development Department;

b. A map clearly indicating the following information:

1. Lot and parcel dimensions for proposed locations;

2. Location, size, height and use of all existing buildings and structures on the proposed location and abutting properties;

3. Location, height, and description of all existing aboveground utility facilities on the proposed location and abutting properties;

4. Location, size, and dimensions of all existing yards, setbacks, landscape areas, parking, walls, fences, and spaces between structures on the proposed location and abutting properties.

5. Any other information as may be required by the Community Development Department.

c.

Letter of justification indicating for each location the proposed maximum height of the facility; the anticipated type of antenna structure; any anticipated accessory equipment to be located on the site; proposed screening materials, if any; and willingness to collocate on the proposed location.

d. All applicable permit processing fees as established by resolution. An additional permit fee for each proposed facility shall be submitted with each subsequent application for a CUP, and with each request for modification of a permit.

(4) *Modification procedures.* Subsequent approval of a CUP for a major or minor facility subject to a CAP requires strict compliance with the specifications of the CAP (in addition to any additional conditions of the CUP); provided, however, that the Community Development Director may approve a minor modification of the CAP concurrent with an application for a CUP. For the purposes of this section, a minor modification shall include any adjustment to the approved specifications of the CAP which (a) does not increase the height of the facility by more five percent from the approved maximum height, (b) does not move the location of the facility closer to any approved location, (c) does not move the location of the facility within 200 feet of a residential property or school facility, and (d) does not otherwise significantly increase the adverse impacts upon the subject site or surrounding community.

(j) *Appeal or review and notices.* Any applicant or the operator and/or owner of a facility may appeal a final decision of the Community Development Director or Planning Commission. All appeals shall be processed in accordance with this Code, including required fees.

(k) *Reservation of right to review permits.*

(1) *Changed circumstance.* Any conditional use permit granted or approved pursuant to this section shall be granted or approved by the City and its Planning Commission with the reservation of the right and jurisdiction to review and modify the permit (including the conditions of approval) based on changed circumstances. Changed circumstances include, but are not limited to, the following in relation to the approved facility as described and diagramed in the related site plan: increased height or size of the facility; additional impairment of the views from surrounding properties; change in the type of antenna or supporting structure; changed color or materials; substantial change in location on the site; and an effective increase in signal output above or near the maximum permissible exposure (MPE) limits imposed by the revised radio frequency emissions guidelines by the Federal Communications Commission.

(2) *Additional right to revoke for violation.* The reservation of right to review any permit granted or approved hereunder by the City, its Planning Commission and/or City Council is in addition to, and not in lieu of, the right of the City, its Planning Commission and/or City Council to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

(3)

Modification of permit/collocation. Upon review, any changed circumstance as determined by the Community Development Director shall require the application and approval of a modification to the original conditional use permit, provided that any modification to accommodate collocated facilities may be approved administratively without the approval of the Planning Commission.

(l) *Facility removal.*

(1) *Discontinued use.* The operator of a lawfully erected facility, and the owner of the premises upon which it is located, shall promptly notify the Community Development Director in writing in the event that use of the facility is discontinued for any reason. In the event that discontinued use is permanent, then the owner(s) and/or operator(s) shall promptly remove the facility, repair any damage to the premises caused by such removal, and restore the premises as appropriate such as to be in conformance with applicable Zoning Codes. All such removal, repair and restoration shall be completed within 90 days after the use is discontinued, and shall be performed in accordance with all applicable health and safety requirements. For purposes of this subsection, a discontinued use shall be permanent unless the facility is likely to be operative and used within the immediately following three-month period.

(2) *Abandonment.* A facility that is inoperative or unused for a period of six continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the facility and the owner(s) of the premises upon which the facility is located. Such notice may be delivered in person, or mailed to the address(es) stated on the facility permit application, and shall be deemed given at the time delivered or placed in the mail. A written notice of the City's determination of abandonment shall be mailed or delivered to the operator of the facility at the address stated in the relevant permit application.

(3) *Removal of abandoned facility or hearing.* The operator of the facility and the owner(s) of the property on which it is located, shall within 30 days after notice of abandonment is given either (1) remove the facility and restore the premises, or (2) provide the Community Development Department with written objection to the City's determination of abandonment and request for hearing before the Community Development Director. If a written objection is timely received and a hearing is properly requested, the procedures for hearings, notices and related fees set forth in this code shall apply. The operator and/or owner shall be given the opportunity to provide evidence that the facility was in use during the relevant six-month period and that it is presently operational. The operator and/or owner shall be given the opportunity to cross examine any evidence provided by the City to the contrary. The Community Development Director shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator notice of its determination.

(4) *Removal by City.* The City may remove the abandoned facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable code at any time: (1) after 30 days following the notice of abandonment, or (2) following a notice of decision by the Community Development Director, if applicable, subject

to the owner/operator's right of appeal under this Code. The City may, but shall not be required to, store the removed facility (or any part thereof). The owner of the premises upon which the abandoned facility was located, and all prior operators of the facility, shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

(5) *Penalties.* The operator of the facility, and the owners of the premises upon which it is located shall be in violation of this chapter for failure to timely comply with any requirements hereunder. Each such person shall be subject to penalties for each such violation, pursuant to this Code.

(6) *City lien on property.* Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the personal property and any real property on which the abandoned facility was located, for the full amount of the cost of removal, repair, restoration and storage. The Community Development Director shall cause the lien to be recorded in the Orange County Recorder's Office.

(Ord. No. 03-03, § 5(18.60.200), 4-16-2003)

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