

AGENDA

Thursday, April 13, 2023

CITY OF CITRUS HEIGHTS CITY COUNCIL

5:00 PM SPECIAL MEETING

6:00 PM REGULAR MEETING

City Hall Council Chambers

6360 Fountain Square Drive, Citrus Heights, CA

HOW TO PARTICIPATE:

Remote participation for the public is no longer being offered. Everyone is invited to and encouraged to attend and participate in City meetings in person.

The City of Citrus Heights welcomes your interest and involvement in the City's legislative process. The Council may take up any agenda item at any time, regardless of the order listed. The City Council has established a procedure for addressing the Council. If you wish to address the Council during the meeting, please fill out a Speaker Identification Sheet and give it to the City Clerk. When you are called upon to speak, step forward to the podium and state your name for the record. Normally speakers are limited to five minutes each with 30 minutes being allowed for all comments. Any public comments beyond the initial 30 minutes may be heard at the conclusion of the agenda. The Mayor has the discretion to lengthen or shorten the allotted times. Alternatively, you may submit your comment by 4:00 p.m. on the meeting day to by completion of an online Speaker Card at <https://www.citrusheights.net/FormCenter/City-Council-Meetings-Speaker-Card-30>. Written public comments shall be limited to 250 words or less. Each comment will be read aloud by the City Clerk.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection during normal business hours at City Hall, located at 6360 Fountain Square Drive. Audio / Visual presentation material must be provided to the City Clerk's Office at least 48 hours prior to the meeting. Email subscriptions of the agenda are available online by signing up with the City's [Notify Me](#) service.

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April 13, 2023 City Council Agenda Packet

Documents:

[4-13-23 SPECIAL REGULAR COUNCIL AGENDA PACKET.PDF](#)

CALL SPECIAL MEETING TO ORDER

1. Roll Call: Council Members: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer

PUBLIC COMMENT

CLOSED SESSION

2. THREAT TO PUBLIC SERVICES OR FACILITIES

Pursuant to Government Code Section 54957

Consultation with: Citrus Heights Police Department

REPORT OUT OF CLOSED SESSION

ADJOURNMENT

CALL REGULAR MEETING TO ORDER

1. Flag Salute
2. Roll Call: Council Members: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer
3. Video Statement

APPROVAL OF AGENDA

COMMENTS BY COUNCIL MEMBERS AND REGIONAL BOARD UPDATES

PUBLIC COMMENT

PRESENTATIONS

4. Proclamation Of The City Of Citrus Heights Proclaiming April 9-15, 2023 As "National Animal Care & Control Appreciation Week"
5. Proclamation Of The City Of Citrus Heights Proclaiming April 9-15, 2023 As "National Public Safety Telecommunicators Week"
6. Proclamation Of The City Of Citrus Heights Proclaiming April 16-22, 2023 As "National Volunteer Week"

CONSENT CALENDAR

It is recommended that all consent items be acted on simultaneously unless separate discussion and/or action are requested by a Council Member.

7. SUBJECT: Approval Of Minutes
RECOMMENDATION: Approve the Minutes of the Meeting of March 23, 2023
8. SUBJECT: Second Reading - Chapter 42, "FLOODS" City Ordinance Update
STAFF REPORT: R. Cave / L. Blomquist / D. Kehrer
RECOMMENDATION: Adopt Ordinance No. 2023-002, an Ordinance of the City Council of the City of Citrus Heights Amending Chapter 42 "FLOODS" of the Citrus Heights Municipal Code
9. SUBJECT: On-Call Environmental And Traffic Engineering Consultant Services
STAFF REPORT: C. Kempenaar / R. Cave / E. Signer / L. Blomquist

RECOMMENDATION: Adopt Resolution 2023-___, a Resolution of the City Council of the City of Citrus Heights, California, Authorizing the City Manager to Execute Agreements with Bollard, De Novo, Dudek, ECORP, Helix, and Raney for On-Call Environmental Services and Fehr & Peers, Kimley-Horn & Associates, Inc., and Wood Rodgers, Inc. for On-Call Traffic Engineering Services

10. SUBJECT: Appointment To Sacramento Groundwater Authority
STAFF REPORT: A. Van

RECOMMENDATION: Confirm the appointment of members of the Citrus Heights Water District Board to serve on the Sacramento Groundwater Authority Board

11. SUBJECT: Proposed One-Time Payment To City Manager
STAFF REPORT: R. Jones / S. Talwar

RECOMMENDATION: Consider approval of a one-time payment to City Manager

12. SUBJECT: Proposed Amendment To The New Sylvan Purchase And Sale Agreement With Woodside Homes

STAFF REPORT: A. Feeney / R. Jones

RECOMMENDATION: Adopt Resolution 2023-___, a Resolution of the City Council of the City of Citrus Heights, California, Approving an Amendment to the Purchase Agreement of Sylvan Property with Woodside Homes

PUBLIC HEARINGS

13. SUBJECT: Proposed Amendments To Article VIII Of Chapter 22 Of The Citrus Heights Municipal Code (Massage Establishments)

STAFF REPORT: C. Kempenaar / A. Bermudez

RECOMMENDATION: Staff recommends the following

- a. Move to determine the proposed amendments are exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the Guidelines; and
- b. Move to introduce for first reading, read by title only and waive the full reading of Ordinance 2023- _____, an Ordinance of the City of Citrus Heights Amending Article VIII of Chapter 22 of the Citrus Heights Code Relating to Massage Establishments

REGULAR CALENDAR

14. SUBJECT: Greenback Open Space Naming Options

STAFF REPORT: C. Kempenaar / R. Cave

RECOMMENDATION: Review the options outlined in this staff report and provide direction on how to proceed.

15. SUBJECT: Assembly Bill 742: Preventing The Use Of Police Canines For The Purpose Of Arrest, Apprehension, Or Any Form Of Crowd Control - Letter Of Opposition

STAFF REPORT: A. Turcotte

RECOMMENDATION: Consider the signing and delivery of a letter of opposition of AB 742.

16. SUBJECT: Assembly Bill 734: Youth Tackle Football

STAFF REPORT: A. Van

RECOMMENDATION: Staff recommends the City Council discuss and provide direction as to whether the Council would like to:

- a. Take a position on the proposed legislation;
- b. Continue the matter to allow for additional time before consideration of taking a position on the proposed legislation; or
- c. Take no action.

DEPARTMENT REPORTS

17. SUBJECT: Police Department Annual Report
DEPARTMENT: Police Department

CITY MANAGER ITEMS

ITEMS REQUESTED BY COUNCIL MEMBERS / FUTURE AGENDA ITEMS

ADJOURNMENT

CITY OF CITRUS HEIGHTS
CITY COUNCIL
Special / Regular Meeting of Thursday, April 13, 2023
City Hall Council Chambers, 6360 Fountain Square Dr., Citrus Heights, CA
Special Meeting 5:00 p.m.
Regular Meeting 6:00 p.m.

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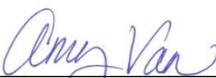
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April 7, 2023



 Amy Van, City Clerk

**SPECIAL CITY COUNCIL MEETING
5:00 PM**

CALL SPECIAL MEETING TO ORDER

1. Roll Call: Council Members: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer

PUBLIC COMMENT

CLOSED SESSION

2. THREAT TO PUBLIC SERVICES OR FACILITIES
Pursuant to Government Code Section 54957
Consultation with: Citrus Heights Police Department

REPORT OUT OF CLOSED SESSION

ADJOURNMENT

**REGULAR CITY COUNCIL MEETING
6:00 PM**

CALL REGULAR MEETING TO ORDER

1. Flag Salute
2. Roll Call: Council Members: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer
3. Video Statement

APPROVAL OF AGENDA

COMMENTS BY COUNCIL MEMBERS AND REGIONAL BOARD UPDATES

PUBLIC COMMENT

PRESENTATIONS:

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RECOMMENDATION: Adopt Ordinance No. 2023-002, an Ordinance of the City Council of the City of Citrus Heights Amending Chapter 42 "FLOODS" of the Citrus Heights Municipal Code
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STAFF REPORT: C. Kempenaar / R. Cave / E. Signer / L. Blomquist
RECOMMENDATION: Adopt Resolution 2023-___, a Resolution of the City Council of the City of Citrus Heights, California, Authorizing the City Manager to Execute Agreements with Bollard, De Novo, Dudek, ECORP, Helix, and Raney for On-Call Environmental Services and Fehr & Peers, Kimley-Horn & Associates, Inc., and Wood Rodgers, Inc. for On-Call Traffic Engineering Services
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STAFF REPORT: A. Van
RECOMMENDATION: Confirm the appointment of members of the Citrus Heights Water District Board to serve on the Sacramento Groundwater Authority Board
11. **SUBJECT:** Proposed One-Time Payment to City Manager
STAFF REPORT: R. Jones / S. Talwar
RECOMMENDATION: Consider approval of a one-time payment to City Manager
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STAFF REPORT: A. Feeney / R. Jones
RECOMMENDATION: Adopt Resolution 2023-___, a Resolution of the City Council of the City of Citrus Heights, California, Approving an Amendment to the Purchase Agreement of Sylvan Property with Woodside Homes

PUBLIC HEARING

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RECOMMENDATION: Staff recommends the following
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REGULAR CALENDAR

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STAFF REPORT: C. Kempenaar / R. Cave
RECOMMENDATION: Review the options outlined in this staff report and provide direction on how to proceed.

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STAFF REPORT: A. Turcotte
RECOMMENDATION: Consider the signing and delivery of a letter of opposition of AB 742.

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RECOMMENDATION: Staff recommends the City Council discuss and provide direction as to whether the Council would like to:
 - a. Take a position on the proposed legislation;
 - b. Continue the matter to allow for additional time before consideration of taking a position on the proposed legislation; or
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DEPARTMENT REPORTS

17. **SUBJECT:** Police Department Annual Report
DEPARTMENT: Police Department

CITY MANAGER ITEMS

ITEMS REQUESTED BY COUNCIL MEMBERS/ FUTURE AGENDA ITEMS

ADJOURNMENT

**CITY OF CITRUS HEIGHTS
CITY COUNCIL
MINUTES
Special / Regular Meeting of Thursday, March 23, 2023
City Hall Council Chambers
6360 Fountain Square Drive, Citrus Heights, CA**

CALL SPECIAL MEETING TO ORDER

The special meeting was called to order at 4:30 p.m. by Mayor Schaefer.

1. Roll Call: Council Members present: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer
Council Members absent: None
Staff present at the roll call: Feeney, Jones and Van

PUBLIC COMMENT

None

CLOSED SESSION

2. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to California Government Code Section 54957
Title: City Manager

The City Council, City Manager and City Attorney participated in the closed session.

REPORT OUT OF CLOSED SESSION

There was no reportable action from closed session.

ADJOURNMENT

Mayor Schaefer adjourned the special meeting at 5:45 p.m.

CALL REGULAR MEETING TO ORDER

The regular meeting was called to order at 6:00 p.m. by Mayor Schaefer.

1. The Flag Salute was led by Council Member Lopez-Taff.
2. Roll Call: Council Members present: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer
Council Members absent: None
Staff present: Bermudez, Blomquist, Feeney, Huber, Jones, Piva, Turcotte, Van and department directors.
3. The video statement was read by City Clerk Van.

APPROVAL OF AGENDA

ACTION: On a motion by Vice Mayor Daniels, seconded by Council Member Lopez-Taff, the City Council approved the agenda.

AYES: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer
NOES: None
ABSENT: None

PUBLIC COMMENT

Ruth Fox representing REACH and Neighborhood Association Area 6 thanked the City Council for their participation in the REACH Potluck event. The event was very successful and benefitted the residents of Citrus Heights.

Mike Lafortune with Woodside Homes stated they are the project applicant for the Sylvan Corners property. He reconfirmed Woodside's commitment to bringing a high quality project to the City. Woodside very much appreciates its relationship with the City and are very thankful for the collaboration and support staff has been providing through the entitlement process.

City Clerk Van read the following written statement submitted by Peter Ho, "I spoke to City Council on Jan 26, 2023 about unjust home receivership of my home I would like to speak to Council and Mayors and City Leaders again."

COMMENTS BY COUNCIL MEMBERS AND REGIONAL BOARD UPDATES

Council Member Middleton attended the Citrus Heights Marching Band Spaghetti Feed event. She announced the Citrus Heights Police Activities League is holding an annual "Egg" Your House event to support the League.

Council Member Karpinski-Costa attended the Citrus Heights Marching Band Spaghetti Feed event. She also visited the Masonic Lodge in Citrus Heights. She also attended the REACH Potluck dinner. She also toured the Sacramento Regional Sanitation District Echo Water Project site. She provided a report from the Sacramento-Yolo Mosquito and Vector Control District Board. She was principal for a day at Arlington Heights Elementary School.

Council Member Lopez-Taff provided an updated from the Homeless Policy Council meeting. She also attended the San Juan Unified School District Innovation School meeting. She attended the Masonic Lodge open house and the REACH Potluck dinner.

Vice Mayor Daniels attended the REACH Potluck dinner. He provided a report from the Sacramento Metropolitan Air Quality District Board meeting. He also provided an update from the Sacramento Regional Transit Ad Hoc Board Composition and Voting meeting. He announced the opening ceremonies for the Wall that Heals will be held on March 29.

Mayor Schaefer commended staff on their work in submitting projects to the Sacramento Area Council of Governments and successfully receiving funding for the Arcade Cripple Creek Extension Project. He also attended the REACH Potluck dinner.

CONSENT CALENDAR

4. Pulled for discussion.
5. **SUBJECT:** Neighborhood Improvement Partnership Grant Program – Guidelines modification
STAFF REPORT: M. Huber / C. Riddle
RECOMMENDATION: Adopt Resolution No. 2023-023 A Resolution of the City Council of the City of Citrus Heights, California, Approving Neighborhood Improvement Partnership Grant Program Guidelines

ACTION: On a motion by Council Member Karpinski-Costa, seconded by Council Member Middleton, the City Council adopted Consent Calendar Item 5.

AYES: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer
NOES: None
ABSENT: None

CONSENT CALENDAR ITEMS PULLED FOR DISCUSSION

4. **SUBJECT:** Approval of Minutes
RECOMMENDATION: Approve the Minutes of the Meeting of March 3, 2023 and March 9, 2023

Mayor Schaefer pulled Item 4 for a separate vote.

ACTION: On a motion by Council Member Lopez-Taff, seconded by Vice Mayor Daniels, the City Council adopted Consent Calendar Item 4.

AYES: Karpinski-Costa, Lopez-Taff, Daniels
NOES: None
ABSENT: None
ABSTAIN: Middleton, Schaefer

PUBLIC HEARING

6. **SUBJECT:** Consolidated Annual Performance Evaluation Report to the U.S. Department of Housing and Urban Development for Program Year 2022 Community Development Block Grant Funds
STAFF REPORT: C. Kempenaar / N. Piva
RECOMMENDATION: Adopt Resolution No. 2023-024 A Resolution of the City Council of the City of Citrus Heights, California, Approving the Consolidated Annual Performance Evaluation Report for Program Year 2022 and Direct Staff to Submit, with Minor Modifications as Necessary, the Caper Report to the U.S. Department of Housing and Urban Development (HUD)

Housing & Human Services Program Coordinator Piva stated the item is an annual evaluation of the City's Community Development Block Grant (CDBG) Program. She stated in 2022 the City received \$624,851 in

CDBG funding that allowed the City to carry out a number of housing activities that target primarily low-income households. She provided an overview of the activities the City was able to complete with the funding.

Mayor Schaefer opened the public hearing at 6:42 p.m.

Public Comment

Via Zoom Rick Hodgkins stated his residential complex has an on-site community center that works with kids and they are also seeking ways to improve their community and anything the City can do for them is appreciated.

Mayor Schaefer closed the public hearing at 6:45 p.m.

City Council questions and comments followed.

ACTION: On a motion by Vice Mayor Daniels, seconded by Council Member Middleton, the City Council adopted Resolution No. 2023-024 A Resolution of the City Council of the City of Citrus Heights, California, Approving the Consolidated Annual Performance Evaluation Report for Program Year 2022 and Direct Staff to Submit, with Minor Modifications as Necessary, the Capex Report to the U.S. Department of Housing and Urban Development (HUD).

| | |
|---------|---|
| AYES: | Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer |
| NOES: | None |
| ABSENT: | None |

REGULAR CALENDAR

- SUBJECT:** Consideration of Forming a Citrus Heights Education Committee
STAFF REPORT: A. Feeney / A. Van
RECOMMENDATION: Staff recommends the City Council discuss and provide direction on the formation of a Citrus Heights Education Advisory Committee

City Clerk Van stated at the January 12, 2023 City Council meeting, Council discussed a future agenda item to consider forming a Citrus Heights Education Committee to examine the feasibility of a Citrus Heights school district. She provided an overview of previous advisory committees the City has formed in the past. Items for Council consideration are to determine whether to form a committee, the composition and selection process, the proposed work plan and timeframe, or provide alternate direction to staff.

Public Comment

Via Zoom John expressed his support in researching what's involved in forming our own school district. He expressed concerns regarding student safety. He expressed his willingness to volunteer to be on the committee.

Al Fox stated the exploratory effort in exploring our own district is ill. He urged the City Council to postpone this effort for at-least two years to give the San Juan Unified School District Board and Superintendent a chance to develop their plan for Citrus Heights.

Tom Scheeler stated he thinks it would be great to at least explore the opportunity for forming our own school district.

Daniel Thigpen with the San Juan Unified School District stated the District is proud of the long standing partnership they have in Citrus Heights to support student and community success. He stated earlier this year the District is setting aside millions of dollars to improve and enhance safety measures throughout all of its schools including in Citrus Heights.

Via Zoom Rick Hodgkins stated he is neutral on whether the City should have its own school district.

City Council questions and comments followed.

ACTION: On a motion by Vice Mayor Daniels, seconded by Council Member Lopez-Taff, the City Council approved the formation of a Citrus Heights Education Advisory Committee.

| | |
|---------|-------------------------------|
| AYES: | Lopez-Taff, Daniels, Schaefer |
| NOES: | Karpinski-Costa, Middleton |
| ABSENT: | None |

The City Council further directed the City Council Education & Community Programs 2x2 Ad Hoc Committee to develop a work plan and timeframe for the Citrus Heights Education Advisory Committee and bring it back for City Council discussion and consideration for adoption at a future City Council meeting.

- SUBJECT:** Resolution to Approve a Memorandum of Understanding for Sayonara Drive Replacement Housing Project
STAFF REPORT: C. Kempenaar / A. Bermudez / N. Piva
RECOMMENDATION: Adopt Resolution No. 2023-025 A Resolution of the City Council of the City of Citrus Heights, California, Authorizing the City Manager to Enter Into a Memorandum of Understanding with Habitat for Humanity of Greater Sacramento for the Sayonara Drive Replacement Housing Project

Housing & Human Services Program Coordinator Piva provided an overview of the timeline of the Sayonara Drive Replacement Housing Project. In 2021, the City began discussions with Habitat for Humanity and on March 10, 2022, the City Council held a study session and supported developing each vacant lot with two single-family units per parcel. Some key objects in the Memorandum of Understanding (MOU) are the project will be built over a three-year period, will provide home ownership opportunities to 26 income qualified families, and fulfills the City's replacement housing obligation. The MOU also includes the City's cash contribution of \$1,911,585 and permit fee waivers of \$369,434.

Public Comment

Via Zoom Rick Hodgkins spoke in support of the item.

Anne Gambino and Michael Gordon with Habitat for Humanity addressed the Council regarding the project and responded to questions from Council Members.

City Council questions and comments followed.

ACTION: On a motion by Vice Mayor Daniels, seconded by Council Member Middleton, the City Council adopted Resolution No. 2023-025 A Resolution of the City Council of the City of Citrus Heights, California, Authorizing the City Manager to Enter Into a Memorandum of Understanding with Habitat for Humanity of Greater Sacramento for the Sayonara Drive Replacement Housing Project.

AYES: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer
NOES: None
ABSENT: None

9. **SUBJECT:** Citrus Heights Business Attraction Incentive Program approval
STAFF REPORT: M. Huber
RECOMMENDATION: Adopt Resolution No. 2023-026 A Resolution of the City Council of the City of Citrus Heights, California, Approving the Citrus Heights Business Attraction Incentive Program Guidelines and Allocating \$1,000,000 in American Rescue Plan Act Funds to Administer the Program Through June 30, 2024

Economic Development & Community Engagement Director Huber provided an overview of the Business Attraction Incentive Program that intends to enhance the City’s competitiveness in the attraction of businesses that contribute to economic diversification and impact, community vibrancy, and/or quality of life. Staff recommends allocating \$1,000,000 in American Rescue Plan Act funds to activate the program available through June 2024.

City Council questions followed.

Public Comment

Via Zoom Rick Hodgkins spoke in support of the item.

ACTION: On a motion by Council Member Karpinski-Costa, seconded by Council Member Lopez-Taff, the City Council adopted Resolution No. 2023-026 A Resolution of the City Council of the City of Citrus Heights, California, Approving the Citrus Heights Business Attraction Incentive Program Guidelines and Allocating \$1,000,000 in American Rescue Plan Act Funds to Administer the Program Through June 30, 2024.

AYES: Karpinski-Costa, Lopez-Taff, Middleton, Daniels, Schaefer
NOES: None
ABSENT: None

10. **SUBJECT:** Municipal Code Chapter 42 – FLOODS City Ordinance Update
STAFF REPORT: R. Cave / L. Blomquist / D. Kehrer
RECOMMENDATION: Introduce for a First Reading, read by title only and waive the full reading of Ordinance No. 2023-___ An Ordinance of the City Council of the City of Citrus Heights Amending Chapter 42 “Floods” of the Citrus Heights Municipal Code

City Engineer Blomquist reported that in 1997 the City joined the National Flood Insurance Program (NFIP) which makes federally backed flood insurance available to residents. Recent code changes did occur to the NFIP and they were adopted. In order to continue participation in this program the City must adopt the recommended ordinance changes.

City Council questions and comments followed.

ACTION: On a motion by Council Member Karpinski-Costa, seconded by Council Member Middleton, the City Council introduced for a first reading, read by title only and waive the full reading of Ordinance No. 2023-____ An Ordinance of the City Council of the City of Citrus Heights Amending Chapter 42 “Floods” of the Citrus Heights Municipal Code.

AYES: Karpinski-Costa, Lopez-Taff, Middleton, Schaefer
NOES: Daniels
ABSENT: None

11. **SUBJECT:** Senate Bill 316: Prevent Serial Theft – Request for Letter of Support
STAFF REPORT: A. Feeney / A. Van
RECOMMENDATION: Staff recommends the City Council consider the request for a letter of support of SB 316.

City Clerk Van stated the City received a request form Senator Roger Niello’s office seeking City Council support of SB 316.

City Council comments followed.

Public Comment

Via Zoom Rick Hodgkins addressed the Council and said people do bad things for many different reasons because they don’t have access to the services.

ACTION: On a motion by Vice Mayor Daniels, seconded by Council Member Karpinski-Costa, the City Council directed staff to send a letter of support of SB 316.

AYES: Karpinski-Costa, Lopez-Taff, Daniels, Schaefer
NOES: Middleton
ABSENT: None

DEPARTMENT REPORTS

12. **SUBJECT:** Proposed CA Bill AB 742, Law Enforcement: Police Canines
DEPARTMENT: Police Department

Police Chief Turcotte provided an overview of AB 742, as well as current legal standards that exist today. He also provided an overview of the Citrus Heights Police Department’s current policy on K9 utilization.

City Council questions and comments followed.

Public Comment

Via Zoom Rick Hodgkins stated he was bitten by a pet dog when he was young and wanted to make sure care is exercised when utilizing K9’s.

Vice Mayor Daniels requested staff bring back an agenda item to consider opposing AB 742. Mayor Schaefer supported Vice Mayor Daniels' request to come back with an action item.

CITY MANAGER ITEMS

City Manager Feeney announced a Community Projects Grant Information Session will be held on March 29, 4 p.m. at City Hall. He also announced that the City was successful in receiving a Highway Safety Improvement Program Grant of approximately \$1.7 million and includes systemic intersection improvements at 36 signalized intersections throughout the City. He noted that the "Wall that Heals" will be at Rusch Park beginning March 29 through April 2.

ITEMS REQUESTED BY COUNCIL MEMBERS/ FUTURE AGENDA ITEMS

Vice Mayor Daniels requested a future agenda item to examine funding a police officer at each of the two high schools in Citrus Heights. Mayor Schaefer supported Vice Mayor Daniels' request.

CLOSED SESSION

13. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Pursuant to Government Code Section 54956.8
Property: 7137 Auburn Blvd., Citrus Heights, CA (APN 211-0020-025-0000)
Agency Negotiator: City Manager Ashley J. Feeney and City Attorney Ryan Jones
Negotiating Parties: Woodside Homes
Under Negotiation: Both price and terms of payment

The City Council, City Manager and City Attorney participated in the closed session.

REPORT OUT OF CLOSED SESSION

There was no reportable action from closed session.

ADJOURNMENT

Mayor Schaefer adjourned the regular meeting at 9:54 p.m.

Respectfully submitted,

Amy Van, City Clerk



CITY OF CITRUS HEIGHTS

CITY COUNCIL STAFF REPORT MEMORANDUM

DATE: April 13, 2023

TO: Mayor and City Council Members
Ashley J. Feeney, City Manager

FROM: Regina Cave, General Services Director
Leslie Blomquist, City Engineer
Daniel Kehrer, Senior Civil Engineer

SUBJECT: **Second Reading - Chapter 42, “FLOODS” City Ordinance Update**

Summary and Recommendation

On March 23, 2023, the City Council introduced, read by title only, and waived the first full reading of an Ordinance amending Chapter 42 FLOODS of the Citrus Heights Municipal Code.

The background materials associated with this item are contained in the [March 23, 2023 City Council Meeting Staff Report](#), available on the City’s website.

Staff recommends the City Council adopt Ordinance No. 2023-002, an Ordinance of the City Council of the City of Citrus Heights amending Chapter 42 “FLOODS” of the Citrus Heights Municipal Code.

Fiscal Impact

There is no direct fiscal impact resulting from revisions to the Ordinance. Revisions are consistent with City’s current approach to floodplain management and development within and near floodways.

Attachments

1. Ordinance No. 2023-002 An Ordinance of the City Council of the City of Citrus Heights, California, Amending Chapter 42 “FLOODS” of the Citrus Heights Municipal Code.

ORDINANCE NO. 2023-002

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CITRUS HEIGHTS
AMENDING CHAPTER 42 “FLOODS” OF THE CITRUS HEIGHTS
MUNICIPAL CODE**

The City Council of the City of Citrus Heights does ordain as follows:

The provisions of Chapter 42 of the City of Citrus Heights Code are amended, as follows:

SECTION 1. Amendment. Section 42-4 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 42-4. Definitions.

Unless specifically defined in this section, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory use means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

Adversely affects means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point.

Alluvial fan means a geomorphologic feature characterized by a cone- or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

Apex means the point of highest elevation on an alluvial fan, which on undisturbed fans is generally the point where the major stream that formed the fan emerges from the mountain front.

Appeal means a request for a review of the floodplain administrator's interpretation of any section of this chapter or a request for a variance.

Area of shallow flooding means a designated AO or AH zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard. See *Special flood hazard area*.

Area of special flood-related erosion hazard means the land within a community that is not likely to be subject to severe flood-related erosion losses. The area may be designated as zone E on the flood insurance rate map (FIRM).

Area of special mudslide (i.e., mudflows) hazard means the area subject to severe mudslides (i.e., mudflows). The area is designated as zone M on the flood insurance rate map (FIRM).

Backfill means the placement of fill material within a specified depression, hole or excavation pit below the surrounding adjacent ground level as a means of improving floodwater conveyance or to restore the land to the natural contours existing prior to excavation.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year; also called the 100-year flood.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Building. See *Structure*.

Building Code means [California Code of Regulations Title 24, the California Building Standards Code, the family of building codes specifically adopted by the State of California and composed of: \(1\) Part 2, applicable to buildings and structures other than dwellings within the scope of this part; \(2\) Part 2.5, applicable to one and two family dwellings and townhouses not more than three stories, and accessory structures; \(3\) Part 10, applicable to existing buildings \(as defined in that code\); and \(4\) Other specified codes.](#)

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Curvilinear line means the border on either a flood hazard boundary map or flood insurance rate map that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain that may impede or alter the flow capacity of a floodplain.

Erosion means the process of the gradual wearing away of land masses. This peril is not per se covered under the National Flood Insurance Program.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads, is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on

which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Fill means the placement of fill material at a specified location to bring the ground surface up to a desired elevation.

Fill material can be natural sand, dirt, soil or rock. For the purposes of floodplain management, fill material may include concrete, cement, soil cement, brick or similar material as approved on a case-by-case basis.

Flood, flooding and floodwater mean:

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters;
 - b. The unusual and rapid accumulation or runoff of surface waters from any source; and/or
 - c. Mudslides (i.e., mudflows) which are proximately caused by flooding, as defined in subsection (2) of this definition, and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as which earth is carried by a current of water and deposited along the path of the current; and
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1) of this definition.

Flood control project means a dam or barrier design and constructed to keep water away from or out of a specified area, including but not limited to levees, floodwalls, and channelization.

Flood elevation determination means a determination by the administrator of the water surface elevations of the base flood, that is, the flood level that has a one-percent or greater chance of occurrence in any given year.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

~~*Flood hazard boundary map (FHBM)* means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated the areas of flood hazards.~~

Flood insurance rate map (FIRM) means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood insurance rate map, the flood boundary and floodway map, and the water surface elevation of the base flood.

Floodplain and *floodprone area* mean any land area susceptible to being inundated by water from any source. See the definition of *Flood*.

Floodplain administrator means the individual appointed to administer and enforce the floodplain management regulations.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations and special purpose ordinances such as floodplain management regulations.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized flood-modifying works are those constructed to conform to sound engineering standards.

Flood-related erosion means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Flood-related erosion area and *flood-related erosion-prone area* mean a land area adjoining the shore of a lake or other body of water which, due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

Flood-related erosion area management means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and floodplain management regulations.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot; also referred to as "regulatory floodway."

Floodway encroachment lines means the lines marking the limits of floodways on federal, state, and local floodplain maps.

Floodway fringe means the area of a floodplain on either side of the designated floodway where encroachment may be permitted.

Fraud and victimization, related to sections 42-23—42-25, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the variance board will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for 50 to 100 years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally dependent use means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include longterm storage or related manufacturing facilities.

Hardship, related to sections 42-23—42-25, means the hardship that would result from a failure to grant the requested variance. The variance board requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as exceptional hardships. All of these problems can be resolved through other means, without granting a variance. This is so even if the alternative means are more expensive or complicated than building with a variance, or if they require the property owner to put the parcel to a different use than originally intended, or to build elsewhere.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district registered historic district;

- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. By the Secretary of the Interior directly in states with approved programs.

Landfill means a permitted location for the disposal, placement or dumping of garbage, trash, debris, junk, or waste material.

Letter of Map Change (LOMC) means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include: (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (2) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features; (3) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations; and (4) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system that consists of a levee and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of any lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

Map means the flood hazard boundary map (FHBM) or the flood insurance rate map (FIRM) for a community, issued by the Flood Insurance Administration of the Federal Emergency Management Agency.

Market Value means the price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by one of the following methods: (1) Actual Cash Value (replacement cost depreciated for age and quality of construction); (2) tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser; or (3) a qualified independent appraiser.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

Minimum necessary, related to sections 42-23—42-25, means the minimum necessary to afford relief to the applicant of a variance with a minimum deviation from the requirements of this chapter. For variances to an elevation requirement, this means the variance board need not grant permission for the applicant to build at grade, for example, or even to whatever elevation the applicant proposes, but only that level the board believes will both provide relief and preserve the integrity of the local ordinance.

Mudslide (i.e., mudflow) describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain.

Mudslide-prone area (i.e., mudflow-prone) means an area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

New construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads, is completed on or after the effective date of floodplain management regulations adopted by a community.

Obstruction includes but is not limited to any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or, due to its location, its propensity to

snare or collect debris carried by the flow of water or its likelihood of being carried downstream.

One-hundred year flood means a flood which has a one-percent annual probability of being equaled or exceeded. It is identical to the "base flood," which will be the term used throughout this chapter.

Principal structure means a structure used for the principal use of the property as distinguished from an accessory use.

Public safety and nuisances, related to sections 42-23 through 42-25, mean the granting of a variance must not result in additional threats to public safety or create nuisances. This chapter is intended to help protect the health, safety, well-being, and property of the local citizens. This is a long-range community effort made up of a combination of approaches such as adequate drainage systems, warning and evacuation plans, and keeping new property above the flood levels. These longterm goals can only be met if exceptions to the requirements of this chapter are kept to a bare minimum.

Recreational vehicle means a vehicle that is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or fewer when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Riverine means relating to, formed by, or resembling a river, including tributaries; stream; brook; etc.

Sheet flow area. See *Area of shallow flooding*.

Special flood hazard area (SFHA) means an area having special flood or flood-related erosion hazards, and shown on [an FHBM or the FIRM](#) as zone A, [AE](#), AO, A1—A30, AE, A99, or AH.

Start of construction includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as

garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance means a grant of relief from the requirements of this chapter that permits construction in a manner that would otherwise be prohibited by this chapter.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, where specified, of floods of various magnitudes and frequencies in the floodplain of coastal or riverine areas.

Watercourse means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on, or over which, waters flow at least periodically. The term "watercourse" includes specifically designated areas in which substantial flood damage may occur.

SECTION 2. Amendment. Section 42-7 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 42-7. Establishment of areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA) in the flood insurance study [for Sacramento County, California and Incorporated Areas](#) dated ~~August 19, 1991~~ [August 16, 2012](#), and the [accompanying Flood Insurance Rate Maps](#) (FIRM), ~~dated August 19, 1991~~, and all subsequent amendments and/or revisions [thereto](#), are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study and attendant mapping is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are

recommended to the city council by the floodplain administrator. The study and flood insurance rate maps (FIRMs) are on file in the office of the city engineer, City Hall, ~~6237~~ 6360 Fountain Square Drive, Citrus Heights, CA 95621.

SECTION 3. Amendment. Section 42-12 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 42-12. Development permit.

- (a) A development permit shall be obtained before any construction or other development begins within any area of special flood hazard, area of flood-related erosion hazard or area of mudslide (i.e., mudflow) established in section 42-7.
- (b) Application for a development permit shall be made on forms furnished by the floodplain administrator and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of such.
- (c) Specifically, the following information is required in the application:
 - (1) Proposed elevation, in relation to mean sea level, of the lowest floor, including basement, of all structures; in zone AO~~;~~ ~~the elevation of the highest adjacent grade and proposed elevation of the lowest floor of all structures;~~
 - (2) Proposed elevation, in relation to mean sea level, of the lowest floor, including basement, of all structures; in zones A1-30, AE and AH;
 - ~~(23)~~ Proposed elevation in relation to mean sea level to which any structure will be floodproof;
 - ~~(34)~~ All appropriate certifications listed in section 42-14(4); and
 - ~~(45)~~ Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

SECTION 4. Amendment. Section 42-14 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 42-14. Floodplain administrator's duties and responsibilities.

The duties and responsibilities of the floodplain administrator shall include but not be limited to the following:

- (1) Review all development permits to determine that:
 - a. The permit requirements of this chapter have been satisfied;
 - b. All other required state and federal permits have been obtained;
 - c. The site is reasonably safe from flooding; and

- d. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated.
- (2) Obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer sections 42-15—42-22 when base flood elevation data has not been provided in accordance with section 42-7. Any such information shall be submitted to the city council for adoption.
 - (3) Whenever a watercourse is to be altered or relocated:
 - a. Notify adjacent communities and the state department of water resources prior to such alternation or relocation of a watercourse and submit evidence of such notification to the Federal Insurance Administration of the Federal Emergency Management Agency.
 - b. Require that the flood-carrying capacity of the altered or relocated portion of the watercourse is maintained.
 - c. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.
 - d. Require applicants who propose alteration of a watercourse to notify adjacent communities and the NFIP State Coordinating Agency, and to submit copies of such notifications to the Federal Emergency Management Agency (FEMA).
 - (4) Obtain and maintain for public inspection and make available as needed the following:
 - a. The certification required by section 42-15(3)a, which pertains to floor elevations.
 - b. The certification required by section 42-15(3)b, which pertains to elevations in areas of shallow flooding.
 - c. The certification required by section 42-15(3)c, which pertains to elevation or floodproofing of nonresidential structures.
 - d. The certification required by section 42-15(3)c.1 or (3)c.2, which pertains to wet floodproofing standard.
 - e. The certification of elevation required by section 42-17(b), which pertains to subdivision standards.
 - f. The certification required by section 42-20(1), which pertains to floodway encroachments.
 - g. The reports required by section 42-21(d), which pertains to mudflow standards.
 - (5) Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards, areas of flood-related erosion hazards or areas of mudslide (i.e., mudflow). For example, where there appears to be a conflict between a

mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in section 42-24.

- (6) Take action to remedy violations of this chapter as specified in section 42-8.

SECTION 5. Amendment. Section 42-15 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 42-15. Standards for construction.

In all areas of special flood hazards, the following standards are required:

- (1) *Anchoring.* Standards for anchoring shall be as follows:
- a. All new construction, substantial improvements, and other proposed new development shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - b. All manufactured homes shall meet the anchoring standards of section 42-18.
- (2) *Construction materials and methods.* Standards for construction materials and methods shall be as follows:
- a. All new construction, substantial improvement and other proposed new development shall be constructed with materials and utility equipment resistant to flood damage.
 - b. All new construction, substantial improvement and other proposed new development shall be constructed using methods and practices that minimize flood damage.
 - c. All new construction, substantial improvement and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.
 - d. Require within zone AH or AO that adequate drainage paths around structures on slopes guide floodwaters around and away from proposed structures.
- (3) *Elevation and floodproofing.* Standards for elevation and floodproofing shall be as follows:
- a. All N~~n~~ew construction, substantial improvement and other proposed new development within zones AE, and AH shall comply with the applicable requirements of the building code and have the lowest floor, including basement, elevated ~~to or~~ two-feet above the base flood elevation. Nonresidential structures may meet the standards in subsection (3)c of this section. Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor or verified to be

properly elevated by the community building inspector. Such certification or verification shall be provided to the floodplain administrator.

- b. New construction, substantial improvement, and other proposed new development in zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM or at least two feet [above base flood elevation](#) if no depth number is specified. Nonresidential structures may meet the standards in subsection (3)c of this section. Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor or verified to be properly elevated by the community building inspector. Such certification or verification shall be provided to the floodplain administrator.
- c. Nonresidential construction shall either be elevated to conform with subsection (3)a or (3)b of this section or, together with attendant utility and sanitary facilities, shall:
 1. Be floodproofed so that, below the base flood level, the structure is watertight with walls substantially impermeable to the passage of water;
 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 3. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the floodplain administrator.
- d. Require, for all new construction, substantial improvement and other proposed new development, that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 1. Either a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided, the bottom of all openings shall be no higher than one foot above grade (openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwater); or
 2. Certification to comply with a local floodproofing standard approved by the Federal Insurance Administration of the Federal Emergency Management Agency.
- e. Manufactured homes shall also meet the standards in section 42-18.

SECTION 6. Amendment. Section 42-21 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 42-21. Mudslide-prone areas.

- (a) The floodplain administrator shall review permits for proposed construction of other development to determine if it is proposed within a mudslide area.
- (b) Permits shall be reviewed to determine that the proposed development is reasonably safe from mudslide hazards. Factors to be considered in making this determination include but are not limited to the following:
 - (1) The type and quality of soils;
 - (2) Evidence of groundwater or surface water problems;
 - (3) The depth and quality of any fill;
 - (4) The overall slope of the site; and
 - (5) The weight that any proposed development will impose on the slope.
- (c) Within areas which have mudslide hazards, the following requirements apply:
 - (1) A site investigation and further review shall be made by persons qualified in geology and soils engineering;
 - (2) The proposed grading, excavation, new construction, substantial improvement and other proposed new development shall be adequately designed and protected against mudslide damages;
 - (3) The proposed grading, excavation, new construction, substantial improvement and other proposed new development do not aggravate the existing hazard by creating either on-site or off-site disturbances; and
 - (4) Drainage, planting, watering, and maintenance shall not endanger slope stability.
- ~~(d) Within zone M on the flood insurance rate map, the city shall adopt a drainage ordinance which at least complies with the standards of sections 7001 through 7006 and sections 7008 through 7015 of the most recent amendment of the 1973 Uniform Building Code:
 - ~~(1) The location of foundation and utility systems of new construction, substantial improvement and other proposed new development;~~
 - ~~(2) The location, drainage and maintenance of all excavations, cuts and fills and planted slopes;~~
 - ~~(3) Protective measures, including but not limited to retaining walls, buttress fills, subdrains, diverter terraces, benchings, etc.; and~~
 - ~~(4) Engineering drawings and specifications to be submitted for all corrective measures, accompanied by supporting soils engineering and geology reports.~~~~

SECTION 7. Amendment. Section 42-22 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 42-22. Erosion-prone areas.

- (a) The floodplain administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the city.
- (b) Such permits shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.
- (c) If a proposed improvement is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvement shall be relocated, or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.
- (d) ~~Within zone E on the flood insurance rate map, a~~ A setback is required for all new development from the ocean, lake, bay, riverfront or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designated according to the flood-related erosion hazard and erosion rate, in relation to the anticipated useful life of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

SECTION 8. Severability. If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 9. Effective Date and Notice. This ordinance shall take effect thirty (30) days after its adoption, provided it is published in full or in summary within fifteen (15) days of its adoption, in a newspaper of general circulation published and circulated in the City of Citrus Heights.

PASSED AND ADOPTED by the City Council of the City of Citrus Heights this 13th day of April 2023 by the following vote:

AYES: **Council Members:**
NOES: **Council Members:**
ABSENT: **Council Members:**
ABSTAIN: **Council Members:**

Tim Schaefer, Mayor

ATTEST:

Amy Van, City Clerk



CITY OF CITRUS HEIGHTS

CITY COUNCIL STAFF REPORT MEMORANDUM

DATE: April 13, 2023

TO: Mayor and City Council Members
Ashley J. Feeney, City Manager

FROM: Casey Kempenaar, Community Development Director
Regina Cave, General Services Director
Leslie Blomquist, City Engineer
Eric Singer, Associate Planner

SUBJECT: **On-Call Environmental and Traffic Engineering Consultant Services**

Summary and Recommendation

Since 2018, the City has utilized on-call environmental and traffic engineering services to provide California Environmental Quality Act (CEQA) and environmental review related services for new development projects as well as provide support for City projects and tasks. The current on-call contracts are set to expire in May 2023. In preparation of the contract expirations, in January 2023, staff issued a request for qualifications (RFQ) to procure qualified consultants for new on-call contracts.

Staff recommends the City Council adopt Resolution 2023-__, a Resolution of the City Council of the City of Citrus Heights, California, authorizing the City Manager to execute Agreements with Bollard, De Novo, Dudek, ECORP, Helix, and Raney for On-Call Environmental Services and Fehr & Peers, Kimley-Horn & Associates, Inc., and Wood Rodgers, Inc. for On-Call Traffic Engineering Services.

Fiscal Impact

Requested contracts will have no fiscal impact on the City. Tasks associated with private development projects will be funded by the associated developer. City-initiated tasks will be funded with already approved Capital Improvement Program (CIP) budgets and funding sources. The contracts do not guarantee the on-call consultants a minimum amount of work, work will be on an as needed basis. Having a number of on-call contractors is advisable to ensure work can be performed in a timely fashion and to promote competitive proposals.

Background and Analysis

Since 2018, the City has maintained on-call contracts with environmental consultants and traffic engineering consultants for a variety of private development projects and City related projects and tasks. On-call contracts reduce the need to hire consultants on a project-by-project basis, and reduces overall project timelines, lowering costs and improving efficiency. Additionally, having multiple contracts enables staff flexibility to work with each consultants' strengths or specific focus areas.

Environmental Consultants

The City has a wide range of planning related projects that are reviewed by staff. All projects are required to comply with CEQA, oftentimes with specialized supporting studies that document any biological resources, noise impacts, or other resource areas. Since 2018, the City has maintained contracts with three multi-disciplinary firms (Dudek, ECORP, and DeNovo) and two single focus firms (Bollard and Foothill Associates). Their contract terms are set to expire in May 2023. The City is opting to renew its contract with each of its current consultants, except for Foothill Associates. Staff proposes to enter into three-year on-call contracts with each of the remaining firms with the option for an additional two one-year extensions.

In January 2023, the City released an RFQ for On-Call Environmental Review Services. By the posted cutoff date of February 3, 2023, 18 statements of qualifications (SOQs) were received from highly qualified firms. Each statement was reviewed in accordance with the evaluation criteria listed in the RFQ and staff recommends entering into agreements with the following firms for On-Call Environmental Review Services:

Multi-Disciplinary Firms

DeNovo Planning Group
Dudek
ECORP Consulting
Helix Environmental Planning
Raney Management

Single Focus Firms

Bollard Acoustical Consultants (Noise)

Task orders for each firm will be managed by the Planning Division and may include biological resource analysis/wetland delineations, noise analysis, preparation of initial studies, negative declarations, mitigated negative declarations, Environmental Impact Reports or affiliated CEQA work. For developer-sponsored projects, the developer will be required to enter into a reimbursement agreement and submit a deposit for the cost associated with the task order. The full costs of the task order will be the responsibility of the developer.

Staff recommends annual maximum not-to-exceed amounts of \$350,000 for multi-disciplinary firms and \$150,000 for single focus firms per year for three years with the option of two one-year extensions (five years total) per contract. This contract structure will allow staff to move forward with projects in a timely and efficient manner. A contract amendment and Council approval is needed for any work beyond the \$350,000 for multi-disciplinary firms and \$150,000 for single focus firms annually. Fees will be paid by the applicant for individual development projects. City sponsored projects anticipated to cost over \$50,000 in environmental review services will issue separate request for proposals and be subject to City Council review and

approval. For unique or larger projects the City retains the right to issue a separate request for proposals independent of the On-Call Environmental Review Contracts.

Traffic Engineering

The City has a wide range of traffic engineering needs, many requiring specialized knowledge and quick response times. Since 2018, the City has maintained on-call contracts with three traffic engineering firms. These contracts are set to expire in May 2023.

In January 2023, the City released an RFQ for On-Call Traffic Engineering Services. On February 3, 2023, five statements of qualifications were received from highly qualified firms. Each statement was reviewed in accordance with the evaluation criteria listed in the RFQ and interviews were held with the highest ranking firms. Staff recommends entering into agreements with Fehr & Peers, Kimley-Horn & Associates, Inc, and Wood Rodgers, Inc. for a three-year period with the option for two additional one-year extensions.

Projects and task orders will be managed by the General Services Department and may include, among other tasks, traffic impact studies, site plan and parking design review, trip generation review, signal timing review, etc. For developer-sponsored projects the developer will be required to submit a deposit for the cost associated with the task order. The full costs of the task order will be the responsibility of the developer.

Staff recommends maximum not-to-exceed amounts of \$150,000 per year, for three years, with the option of two one-year extensions (five years total) per contract. This contract amount will allow staff to move forward with projects in a timely and efficient manner. A contract amendment and Council approval is needed for any work beyond \$150,000 annually.

Attachments

1. Resolution 2023-__, a Resolution of the City Council of the City of Citrus Heights authorizing the City Manager to execute Agreements with Bollard, De Novo, Dudek, ECORP, Helix, and Raney for On-Call Environmental Services and Fehr & Peers, Kimley-Horn & Associates, Inc., and Wood Rodgers, Inc. for On-Call Traffic Engineering Services
2. Consultant Services Agreement for On-Call Services 2023

Exhibits

- A. Environmental Consultant Scope of Work and Fee Schedules
- B. Traffic Engineering Consultant Scope of Work and Fee Schedules

RESOLUTION NO. 2023-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CITRUS HEIGHTS
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH BOLLARD,
DE NOVO, DUDEK, ECORP, HELIX, AND RANEY FOR ON-CALL ENVIRONMENTAL
SERVICES AND FEHR & PEERS, KIMLEY-HORN & ASSOCIATES, INC., AND WOOD
RODGERS, INC. FOR ON-CALL TRAFFIC ENGINEERING SERVICES**

WHEREAS, the City has a wide range of environmental review and traffic engineering needs, many requiring specialized knowledge and quick response times;

WHEREAS, in January 2023, the City circulated a request for qualifications for selection of the most qualified consultants;

WHEREAS, standard City procurement procedures were followed for selection of the most qualified consultants;

WHEREAS, the cost for these services will be passed through to developers or utilize existing approved budgets and funding sources, with annual maximum not-to-exceed amounts of \$350,000 for multi-disciplinary firms and \$150,000 for single focus firms; and

WHEREAS, the City now desires to enter into professional services agreements with Bollard, De Novo, Dudek, ECORP, Helix, Raney, Fehr & Peers, Kimley-Horn & Associates, Inc., and Wood Rodgers, Inc..

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Citrus Heights, the City Manager is hereby authorized to execute agreements for on-call Environmental Review Services with Bollard, De Novo, Dudek, ECORP, Helix, Raney, and on-call Traffic Engineering Services with Fehr & Peers, Kimley-Horn & Associates, Inc., and Wood Rodgers, Inc. in a form approved by the City Attorney.

The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED by the City Council of the city of Citrus Heights, California, this 13th day of April, 2023, by the following vote, to wit:

| | |
|-----------------|-------------------------|
| AYES: | Council Members: |
| NOES: | Council Members: |
| ABSTAIN: | Council Members: |
| ABSENT: | Council Members: |

Tim Schaefer, Mayor

ATTEST:

Amy Van, City Clerk

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF CITRUS HEIGHTS AND
[NAME OF CONSULTANT]**

[Environmental Review] or [Traffic Engineering] On-Call Services 2023

THIS Agreement (“Agreement”) for consulting services is made by and between the City of CITRUS HEIGHTS (“City”) and [Name of Consultant] (“Consultant”) (together referred to as the “Parties”) as of July 1, 2023 (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2026 with options to extend the duration of this agreement for up to two additional one-year terms, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure Consultant performs services in accordance with the Standard of Performance, Consultant shall, immediately upon receiving City’s request, reassign such persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Consultant’s obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed three hundred fifty thousand dollars \$350,000.00 (Environmental) or one hundred fifty thousand dollars \$150,000.00 (Traffic Engineering) per year at the rates set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This yearly dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant’s estimated costs of providing the services required

hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the City Manager, or his or her designee:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

2.3 Final Payment. Consultant shall submit its final invoice within 60 days of completing its services. Consultant's failure to submit its final invoice within this 60 day period shall constitute Consultant's waiver of any further billings to, or payments from, City.

2.4 Reimbursable Expenses. Reimbursable expenses, if any, are specified in Exhibit B and included in the total compensation referenced in Section 2. Expenses not listed in Exhibit B are not chargeable to, or reimbursable by, City.

2.5 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.6 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written authorization from the City Manager, or his or her designee.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
- b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.
- d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 per occurrence or claim covering the Consultant's errors and omissions.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 **All Policies Requirements.**

4.4.1 **Submittal Requirements.** Consultant shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 **Acceptability of Insurers.** All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 **Deductibles and Self-Insured Retentions.** Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.

4.4.4 **Wasting Policies.** No policy required herein (except for professional liability insurance under section 4.3) shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 General Requirement. To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel reasonably acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, costs and fees of litigation, (collectively, "Liability") of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant in performance of the services under this Agreement, except such Liability caused by the sole negligence, or willful misconduct of City. However, notwithstanding the above, if Consultant is deemed a "design professional," as defined by Civil Code 2782.8, the cost to defend charged to the Consultant shall not exceed the Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the Consultant shall meet and confer with other parties regarding any unpaid defense costs.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damage or claims for damages whether or not such insurance policies shall be determined to apply.

- 5.2 **PERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City.
- 6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Consultant shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.
- 7.3 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.
- 7.4 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information,

marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Upon ten days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.
- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by the parties hereto.
- 8.3 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City Manager, or his or her designee. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City Manager, or his or her designee.
- 8.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.
- 8.5 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

- 8.5.1 Immediately terminate the Agreement;
- 8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.5.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.
- 8.5.5 The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement, and the City may use, reuse or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential drafts and will not be released to third parties by Consultant without prior written approval of City.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall

be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Sacramento County or in the United States District Court for the Eastern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

10.7 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.8 Notices. Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested,. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Consultant: [Name of Consultant]
[Consultant Address]
[Consultant Address]
ATTN: [Consultant Contact]

City: City of Citrus Heights
6360 Fountain Square Drive
Citrus Heights, CA 95621
ATTN: City Manager

10.9 Professional Seal. Where applicable in the determination of the City Manager, or his or her designee, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled “Seal and Signature of Registered Professional with report/design responsibility.”

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there are any inconsistencies between this Agreement, the Exhibits, and Consultant’s proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibits and the Consultant’s Proposal, the Exhibits shall control.

Exhibit A Scope of Services
Exhibit B Compensation Schedule

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.13 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date.

CITY OF CITRUS HEIGHTS

CONSULTANT

Ashley J. Feeney, City Manager

[Consultant Contact]

Attest:

Amy Van, City Clerk

Approved as to Form:

Ryan Jones, City Attorney

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT

By: _____

Title: _____

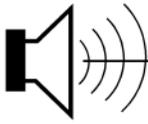
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EXHIBIT A

SCOPE OF SERVICES

The Scope of Work for Multi-disciplinary firms will include a wide range of environmental review tasks including but not limited to:

- Initial Studies/Environmental Assessments
- EIR/EA (CEQA/NEPA)
- Negative Declaration, Mitigated Negative Declaration, Finding of No Significant Impacts and associated environmental document preparation
- Environmental Permitting (Army Corps of Engineers, Regional Water Quality Control Board, Department of Fish and Wildlife)
- Air Quality Studies
- Biological Resources, Wetland Delineations, and Cultural Resources Assessments
- Noise Studies
- Native American Consultations (AB 52)
- Development of Mitigation Monitoring Plans
- Other tasks as assigned



**Bollard Acoustical Consultants, Inc. (BAC)
Fee Schedule & Consulting Terms
Effective January 2023**

| <u>Staff / Expense Item</u> | <u>Rate</u> |
|-------------------------------------|--------------------|
| Principal Consultant (Bollard) | \$275 / hr. |
| Principal Consultant (Gotchet) | \$225 / hr. |
| Associate Consultant | \$175 / hr. |
| Principal Consultant Legal Work | \$400 / hr. |
| Technician | \$125 / hr. |
| Clerical Support Staff | \$75 / hr. |
| Mileage | ¢62.5 / mile |
| Per Diem Charges (meals & lodging) | \$250 / day |
| Sound Level Meter Charge (<1 month) | \$50 / day / meter |
| Sound Level Meter Charge (>1 month) | \$35 / day / meter |

Insurance Coverage

Bollard Acoustical Consultants, Inc. maintains general and professional liability insurance policies with two million dollars coverage each and maintains automobile liability insurance coverage at one million dollars. We provide certificates of insurance to our clients upon request at no charge.

Request for Retainers

For new private-sector clients, Bollard Acoustical Consultants, Inc. requires a retainer of 50% of the contract amount prior to beginning work on the project.

Invoicing and Terms of Payment

Bollard Acoustical Consultants, Inc. reserves the right to submit monthly invoices for services and expenses which have been incurred when project time-lines are expected to exceed 30 days. Payment for professional services is due within 30 days of the invoice date, and past due thereafter. Past due invoices will incur interest at the rate of 1.5% per month on the balance due.

Commitment to the Environment

In our ongoing effort to minimize our environmental footprint and reduce costs, we will transmit project correspondence electronically via e-mail – including this proposal, draft and final reports (including graphics and appendices), and the invoice for professional services rendered. Paper copies of our work products will not automatically be generated. However, if you require a paper copy of any project work product or project-related correspondence, we will gladly provide one upon request. Please partner with us by transmitting all project correspondence to us electronically as well.

FIRM'S BILLING STRUCTURE

| | |
|-------------------|-----------|
| Principal | \$175-200 |
| Principal Planner | \$150-175 |
| Project Manager | \$125-150 |
| Senior Planner | \$105-150 |
| Associate Planner | \$95-115 |
| Assistant Planner | \$85-105 |
| GIS Analyst | \$75-95 |

Expert witness and legal research/assistance is billed at double the base rate.

HOURLY BILLING RATES FOR KEY STAFF ASSIGNED

| | |
|------------------------------------|-------|
| Steve McMurtry, Principal | \$185 |
| Ben Ritchie, Principal | \$185 |
| Beth Thompson, Principal | \$185 |
| Christina Erwin, Principal Planner | \$175 |
| Elise Carroll, Senior Planner | \$145 |
| William Crenshaw, Senior Planner | \$145 |
| Josh Smith, Senior Planner | \$145 |

Pricing Proposal

Table 1. outlines our rates for key personnel.

Table 1. Rate Schedule

| Role | Name | Billing Category | Rate/Hour |
|-------------------------------|-------------------------------|-------------------------------------|-----------|
| Principal in Charge | Steve Peterson, AICP, LEED AP | Project Director/Environmental | \$265 |
| Project Manager | Katherine Waugh, AICP | Senior Specialist IV | \$235 |
| CEQA/NEPA Lead | Brian Grattidge | Senior Specialist II | \$210 |
| CEQA/NEPA | Christine Kronenberg, AICP | Project Director/Environmental | \$265 |
| CEQA/NEPA | Kirsten Burrowes | Specialist III | \$165 |
| CEQA/NEPA | Angelica Chiu | Analyst V | \$135 |
| Biology Lead | Mike Henry, PhD | Project Director/Environmental | \$265 |
| Biology | Allie Sennett | Specialist III | \$165 |
| Biology | Laura Burris | Senior Specialist I | \$200 |
| Urban Forestry/Arborist | Scott Eckardt, RPF | Senior Specialist IV | \$235 |
| Air Quality/ Greenhouse Gases | Matthew Morales | Senior Specialist II | \$210 |
| Air Quality/ Greenhouse Gases | Ian McIntire | Specialist IV | \$175 |
| Hazards | Nicole Peacock, PE, PG | Principal Hydrogeologist/Engineer I | \$275 |
| Hydrology | Jonathan Martin | Sr. Hydrogeologist III/Engineer III | \$240 |
| Cultural Resources/AB 52 | Adam Giacinto | Senior Specialist II | \$210 |
| Cultural Resources/AB 52 | Ross Owen, RPA | Analyst IV | \$125 |
| Historic Resources | Katie Haley, MA | Senior Specialist I | \$200 |
| Historic Resources | Fallin Steffen, MPS | Analyst IV | \$125 |
| Noise | Mike Carr, INCE | Specialist V | \$185 |
| Noise | Jonathan Leech, AICP, PG | Project Director/Environmental | \$265 |

Commitment to the City's Projects

ECORP's Program Manager appraises all contributing Task Managers of project goals, obstacles, and timelines through a Project initiation meeting and regular monthly or bi-monthly check-ins to enable prioritization of the City's needs when any one team member may face increased demands. The Program Manager will utilize these meetings to foresee and coordinate fill-ins as necessary to meet City project deadlines. ECORP is able to draw upon a direct and ongoing example of demonstrated commitment to the City's projects. As displayed through Mr. Rodriguez's current leadership as Task Manager of the Sylvan Corners Subdivision, Ms. Bermudez, Senior Planner for the City, receives regular timeline updates, same-day email and phone call responses to project questions, and is copied on all ECORP correspondence with City subcontractors to ensure all project staff are concurrently aware of the City's evolving needs.

References

- ◆ Casey Kempenaar, MPA, AICP, Community Development Director, City of Citrus Heights, 6360 Fountain Square Drive, Citrus Heights, CA 95621, (916) 725-2448; ckempensaar@citrusheights.net (Project: Citrus Height On-Call Master Services Agreement, City of Citrus Heights, Sacramento County)
- ◆ David Tilley, Principal Planner, City of West Sacramento, 1110 West Capitol Avenue, West Sacramento, CA 95691, (916) 617-4645; davidt@cityofwestsacramento.org (Project: West Capitol Avenue Property Permanent Supportive Housing Project, West Sacramento, Yolo County)
- ◆ Daniel O'Brien, Manager of Environmental Services, Environmental Services Unit, California Department of General Services, Real Estate Services Division, 707 Third Street, 4th Floor, Mailstop 4-509, West Sacramento, CA 95605, (916) 376-1603; daniel.obrien@dgs.ca.gov (Project: Environmental Services Retainer, Northern and Southern California Region)
- ◆ Corrine King, Principal Planner, San Joaquin County Community Development Department, 1810 E Hazelton Ave, Stockton, CA 95205, (209) 468-3121; cking@sjgov.org (Project: Environmental Impact Report for the Gill Medical Center, San Joaquin County)
- ◆ Ignacio (Nash) Gonzalez, County of Mendocino Planning and Building Services, 501 Low Gap Road, Room 1440, Ukiah, CA 95482, (707) 234-6650; gonzalezn@co.mendocino.ca.us (Project: Vineyard Crossing Subdivision and Planned Development Environmental Impact Report, Mendocino County)

PRICING PROPOSAL

| | |
|---------------------|-------|
| Principal IV | \$325 |
| Principal III..... | \$275 |
| Principal II..... | \$240 |
| Principal I..... | \$225 |
| Senior IV | \$210 |
| Senior III | \$190 |
| Senior II | \$175 |
| Senior I | \$160 |
| Staff III | \$150 |
| Staff II | \$140 |
| Staff I | \$135 |
| Associate III | \$125 |
| Associate II | \$115 |
| Associate I | \$105 |

| | |
|----------------------------------|-------|
| Assistant III | \$100 |
| Assistant II | \$95 |
| Assistant I | \$85 |
| Technician III | \$80 |
| Technician II | \$75 |
| Technician I | \$65 |
| GIS Specialist III | \$165 |
| GIS Specialist II | \$140 |
| GIS Specialist I | \$120 |
| GIS Technician | \$100 |
| Technical Editor | \$155 |
| Publications Specialist II | \$120 |
| Publications Specialist I | \$100 |
| Accountant III | \$160 |
| Accountant II | \$135 |
| Accountant I | \$115 |
| Clerical | \$90 |

Technical classification includes biologists, regulatory permitting specialists, archaeologists, architectural historians, paleontologists, air quality/greenhouse gas specialists, noise specialists, planners, CEQA/NEPA specialists, UAS pilots, and other technical professionals.

Expense Reimbursement/Other:

1. Computer, facsimile, and telephone are included in the billing rates, and there is no additional charge.
2. Reproduction, equipment and other direct expenses are reimbursed at cost plus a 14% administrative handling charge (excluding mileage).
3. The hourly rates for Subconsultants will be billed at the hourly rate indicated, plus a 12% administrative handling charge.
4. Mileage will be billed at the current IRS rate, adjusted annually.
5. Per Diem, depending upon location, may be charged where overnight stays are required.
6. Expert Witness Testimony, including Depositions, is billed at time and a half.
7. Non-standard invoicing will be billed at the hourly rates for support personnel.

3 RATE SCHEDULE

Following are hourly rates per employment category which will be in effect for the contract term.

| Employment Category | Rate | Employment Category | Rate |
|---|-----------|-------------------------------------|-----------|
| Principal | \$230-300 | Noise/Air Quality Specialist | \$130-145 |
| Principal Acoustician | \$215-225 | Environmental Compliance Specialist | \$85-125 |
| Principal Biologist | \$225-290 | Senior Archaeologist | \$125-170 |
| Principal Landscape Architect | \$190-210 | Senior Architectural Historian | \$165-175 |
| Principal Planner | \$220-290 | Archaeology Field Director | \$125-135 |
| Principal Regulatory Specialist | \$225-290 | Architectural Historian | \$120-155 |
| Principal Cultural Resources Specialist | \$190-210 | Staff Archaeologist | \$80-125 |
| Safety Manager | \$210-220 | Senior Landscape Architect | \$145-160 |
| Senior Fisheries Scientist | \$250-255 | Landscape Architect | \$120-140 |
| Senior Noise/Air Quality Specialist | \$200-220 | Landscape Planner I-III | \$110-120 |
| Senior Project Manager I-III | \$165-230 | Senior GIS Specialist | \$150-185 |
| Senior Scientist | \$155-195 | GIS Specialist I-III | \$110-140 |
| Senior Regulatory Specialist | \$160-170 | Graphics | \$115-125 |
| Project Manager I-III | \$135-175 | Technical Editor | \$110-125 |
| Assistant Project Manager | \$120-145 | Operations Manager | \$100-140 |
| Regulatory Specialist | \$105-150 | Word Processor I-III | \$90-100 |
| Environmental Planner I-III | \$105-135 | Clerical | \$65-75 |
| Biologist I-V | \$100-155 | | |

Certain identifiable direct costs will be charged to the project at cost plus ten percent. Examples of direct costs include subconsultants, vehicle or equipment rentals, parking, per diem and lodging, mileage (at IRS rates), communications, reproduction, and supplies. There will be additional charges for use of noise monitors, GPS, and other field equipment, as well as for plotting, color printing, and aerial photographs.

IV. PRICING PROPOSAL

Please find the most up to date billing rates for Raney below. Raney will provide the City of Citrus Heights with a complete scope of services, including schedule and cost estimate by task based on hours for each project. The tasks will be summarized in the Technical Scope of Services and costs by task will be included in a cost spreadsheet. The costs will be based on the estimates of time for each task provided in the chart. Costs will be billed on a time and materials basis up to the maximum established budget for each phase, following Raney standard billing rates as outlined below in *Raney 2023 Billing Rates*. It should be noted that hourly rates quoted at the commencement of any specific project shall remain valid throughout the duration of a particular project. Raney reserves the right to update our billing rates annually, which will be reflected in the scopes of services provided for individual projects. Billing rates for Raney's sub-consultants can be found in *Appendix B* through *Appendix E*.

ENVIRONMENTAL 2023 BILLING RATES

The following is a summary of Raney, a division of Raney Planning & Management, Inc., Billing Rates for the provision of environmental services. Please note that Raney will provide a complete scope of services and cost estimate by task based on hours, upon request.

| | |
|---|------------|
| Tim Raney, AICP, President | \$215/hour |
| Cindy Gnos, AICP, Senior Vice President | \$195/hour |
| Nick Pappani, Vice President | \$175/hour |
| Rod Stinson, Vice President | \$175/hour |
| Angela DaRosa, Division Manager | \$165/hour |
| Kevin Valente, AICP, Senior Associate | \$145/hour |
| Associate | \$125/hour |
| Administrative | \$75/hour |

AIR QUALITY 2023 BILLING RATES

The following is a summary of the Billing Rates for the provision of air quality and GHG analysis services. Please note that Raney will provide a complete scope of services and cost estimate by task based on hours, upon request.

| | |
|---------------------------------------|------------|
| Rod Stinson, Air Quality Specialist | \$165/hour |
| Angela DaRosa, Air Quality Specialist | \$165/hour |
| Air Quality Technician | \$145/hour |

OTHER COST INFORMATION

- Overhead charges for technical sub-consultants, travel, and copying/printing: 10%
- Travel: Billed at cost
 - It should be noted that Raney charges mileage at the Federal Standard Mileage Rate provided by the IRS.
- Copying and Printing: Billed at cost
 - Black & White (8.5" x 11"): 15¢/per page
 - Color (8.5" x 11"): 30¢/per page
 - Oversized prints (11" x 17"): 30¢/per page

EXHIBIT B

ON-CALL TRAFFIC ENGINEERING SERVICES 2023

SCOPE OF WORK

The selected consultant(s) will not be guaranteed a set number of projects or hours in any given year. The scope of work for on-call traffic engineering services will vary greatly. Some projects will be managed by the City's General Services Department and others will be managed by the Community Development Department. The consultant shall be capable of delivering a range of services related to transportation and traffic engineering. Potential services include, but is not limited to:

- Transportation impact studies consistent with the City's TIS guidelines
- Traffic modeling/traffic operation analysis
- Signal timing review and develop coordination plans
- Peer review of transportation impact studies for development projects
- Level of service impact analysis and CEQA related documentation
- Trip generation review
- Temporary Traffic Control Plan Reviews in compliance with the CAMUTCD and City/County requirements
- Planning commission/City Council testimony
- Traffic calming studies and design considerations
- Traffic demand management
- Traffic safety studies
- Parking demand analysis
- Traffic signal fiber and communication design and review
- VMT analysis and policy development
- Site plan and parking design review
- Multi-modal impact fee application and development

If the City determines on-call traffic engineering services are necessary, the City will contact the selected consultant to develop a scope of work specific to the particular project. Once a scope of work is agreed to, City staff will execute a task order enabling the consultant to commence work on the individual project.

3

SECTION THREE

Pricing Proposal



| Classification | Hourly Rate |
|-------------------------------|---------------------|
| Principal | \$240.00 - \$455.00 |
| Senior Associate | \$205.00 - \$365.00 |
| Associate | \$175.00 - \$310.00 |
| Senior Engineer/Planner | \$160.00 - \$260.00 |
| Engineer/Planner | \$120.00 - \$210.00 |
| Senior Engineering Technician | \$150.00 - \$260.00 |
| Senior Project Accountant | \$170.00 - \$230.00 |
| Senior Project Coordinator | \$130.00 - \$220.00 |
| Project Coordinator | \$105.00 - \$205.00 |
| Technician | \$120.00 - \$205.00 |
| Intern | \$95.00 - \$170.00 |

- *Other Direct Costs / Reimbursable expenses are invoiced at cost plus 10% for handling.*
- *Personal auto mileage is reimbursed at the then current IRS approved rate (65.5 cents per mile as of January 1, 2023).*
- *Voice & Data Communications (Telephone, fax, computer, e-mail, etc.) are invoiced at cost as a percentage of project labor.*

Fehr & Peers reserves the right to change these rates at any time with or without advance notice.



Kimley-Horn and Associates, Inc.

Hourly Labor Rate Schedule

| Classification | Rate |
|--------------------------|---------------|
| Analyst I | \$125 - \$185 |
| Analyst II | \$185 - \$240 |
| Professional | \$240 - \$280 |
| Senior Professional I | \$280 - \$340 |
| Senior Professional II | \$330 - \$410 |
| Senior Technical Support | \$110 - \$290 |
| Technical Support | \$100 - \$180 |
| Support Staff | \$85 - \$150 |

Effective through April 30, 2026 and subject to annual escalation thereafter, starting May 1, 2026.

Other Direct Costs: Outside Printing/Reproduction, Delivery Services/USPS, Misc. Field Equipment/Supplies, and Travel Expenses will be billed at cost plus 10 percent or per the contract. Mileage will be billed at the Federal Rate.

Sub-Consultants will be billed per the Contract



EXHIBIT "B"



**CITY OF CITRUS HEIGHTS
ON-CALL TRAFFIC ENGINEERING SERVICES FEE SCHEDULE**

| CLASSIFICATION | STANDARD RATE |
|---|----------------------|
| Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* II | \$300 |
| Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* I | \$265 |
| Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* II | \$240 |
| Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* I | \$230 |
| Project Engineer/Geologist/Surveyor/Planner/GIS/LA* II | \$215 |
| Project Engineer/Geologist/Surveyor/Planner/GIS/LA* I | \$205 |
| Engineer/Geologist/Surveyor/Planner/GIS/LA* II | \$195 |
| Engineer/Geologist/Surveyor/Planner/GIS/LA* I | \$180 |
| Assistant Engineer/Geologist/Surveyor/Planner/GIS/LA* | \$150 |
| Designer | \$95 |
| Senior CAD Technician/Graphics Designer II | \$180 |
| Senior CAD Technician/Graphics Designer I | \$160 |
| CAD Technician/Graphics Designer | \$140 |
| Project Coordinator | \$155 |
| Administrative Assistant | \$120 |
| 1 Person Survey Crew | \$235 |
| 2 Person Survey Crew | \$340 |
| 3 Person Survey Crew | \$435 |
| Consultants, Outside Services, Materials & Direct Charges | Cost Plus 10% |
| Overtime Work, Expert Witness Testimony and Preparation | Rate Plus 50% |

*LA = Landscape Architect

Blueprints, reproductions, and outside graphic services will be charged at vendor invoice. Auto mileage will be charged at the IRS standard rate, currently 65.5 cents per mile.

Fee Schedule subject to change January 1, 2024.



CITY OF CITRUS HEIGHTS
CITY COUNCIL STAFF REPORT
MEMORANDUM

DATE: April 13, 2023
TO: Mayor and City Council Members
Ashley J. Feeney, City Manager
FROM: Amy Van, City Clerk
SUBJECT: **Appointment to Sacramento Groundwater Authority**

Summary and Recommendation

Staff recommends the City Council confirm the appointment of members of the Citrus Heights Water District Board to serve on the Sacramento Groundwater Authority Board.

| Organization | Representative | Alternate |
|---|-----------------------|-------------------|
| Sacramento Groundwater Authority | Caryl F. Sheehan | Raymond A. Riehle |

Fiscal Impact

There is no fiscal impact associated with this action.

Background and Analysis

The Joint Powers Agreement creating the Sacramento Groundwater Authority (SGA) provides a process for appointments to its governing board by the local cities and the County of Sacramento. The City of Citrus Heights is designated as the appointing body for elected representatives from the Citrus Heights Water District (CHWD) to serve on the SGA.

On January 18, 2023, the CHWD Board of Directors discussed the appointments and are requesting the City Council confirm the appointments as indicated above. The appointments are for a term of one year.

Caryl Sheehan has served on the CHWD Board of Directors and SGA Board since 2014. Raymond Riehle has served on the CHWD Board of Directors since 2015.

Attachments

1. Citrus Heights Water District Staff Report January 18, 2023

CITRUS HEIGHTS WATER DISTRICT

DISTRICT STAFF REPORT TO BOARD OF DIRECTORS JANUARY 18, 2023 REGULAR MEETING

SUBJECT : UPDATE TO 2023 APPOINTMENTS OF BOARD REPRESENTATIVES AND ALTERNATES
 STATUS : Action Item
 REPORT DATE : January 11, 2023
 PREPARED BY : Brittney Moore, Administrative Services Manager/Chief Board Clerk

OBJECTIVE:

Consider one update to appointment of members of the Board of Directors, Officers or staff to serve as District representatives to various organizations.

BACKGROUND AND ANALYSIS:

Appointment of Representatives

In December, the Board of Directors appointed its Members, Officers, or staff to serve as District representatives and/or alternates to various organizations as follows:

| 2023 Worksheet | | | |
|---|----------|-------------------|---|
| Organization | | Representative | Alternate |
| Association of California Water Agencies Joint Powers Insurance Authority (ACWA/JPIA) | Director | David C. Wheaton | Raymond A. Riehle |
| | Staff | Brittney Moore | Kayleigh Shepard |
| Association of California Water Agencies (ACWA) Region 4 | | Caryl F. Sheehan | David C. Wheaton |
| Citrus Heights Regional Chamber of Commerce Government Issues Committee | | Lea Park-Kim | Brittney Moore |
| San Juan Family of Agencies | Director | Raymond A. Riehle | Caryl F. Sheehan |
| | Staff | Hilary Straus | General Manager Appointee Based on Issue |
| Regional Water Authority (RWA) | Director | Raymond A. Riehle | Caryl F. Sheehan |
| | Staff | Hilary Straus | Rebecca Scott |
| Sacramento Groundwater Authority (SGA)* | | Caryl F. Sheehan | David C. Wheaton |
| Sacramento Water Forum | | Rebecca Scott | Jace Nunes |

*Changes must be confirmed by City of Citrus Heights

RECOMMENDATION:

Update the Regional Water Authority Director Representative and Alternate Director Representative as noted below:

| 2023 Worksheet—Updated | | | |
|--|----------|-----------------------|--|
| Organization | | Representative | Alternate |
| Association of California Water Agencies Joint Powers Insurance Authority (ACWA/JPIA) | Director | David C. Wheaton | Raymond A. Riehle |
| | Staff | Brittney Moore | Kayleigh Shepard |
| Association of California Water Agencies (ACWA) Region 4 | | Caryl F. Sheehan | David C. Wheaton |
| Citrus Heights Regional Chamber of Commerce Government Issues Committee | | Lea Park-Kim | Brittney Moore |
| San Juan Family of Agencies | Director | Raymond A. Riehle | Caryl F. Sheehan |
| | Staff | Hilary Straus | General Manager Appointee Based on Issue |
| Regional Water Authority (RWA) | Director | Caryl F. Sheehan | Raymond A. Riehle |
| | Staff | Hilary Straus | Rebecca Scott |
| Sacramento Groundwater Authority (SGA)* | | Caryl F. Sheehan | Raymond A. Riehle |
| Sacramento Water Forum | | Rebecca Scott | Jace Nunes |

*Changes must be confirmed by City of Citrus Heights

ACTION:

Moved by Director _____, Seconded by Director _____, Carried _____



CITY OF CITRUS HEIGHTS

CITY COUNCIL STAFF REPORT MEMORANDUM

DATE: April 13, 2023

TO: Mayor and City Council Members

FROM: Ryan Jones, City Attorney
Susan Talwar, Administrative Services Director

SUBJECT: **Proposed One-Time Payment to City Manager**

Summary and Recommendation

City Manager Ashley Feeney started as the City Heights City Manager on January 30, 2022. The City Council performed its initial annual review of City Manager Feeney during a closed session meeting before the March 23, 2023 regular City Council meeting. In light of the Council's positive evaluation of Mr. Feeney, the Council is considering a one-time payment to the City Manager equivalent to 5% of his base salary, which is equivalent to \$12,000.

The City does not provide automatic cost-of-living allowances or any built-in raises for its City Manager per his employment contract. The proposed payment is a non-PERSable event.

Pursuant to subsection (3) to Government Code § 54953(c), prior to the City Council taking final action, staff will provide an oral report summarizing the financial highlights of the proposal.

Fiscal Impact

The funds are available within the budget for this allocation.

Conclusion

Council approval of this item would give Director Talwar authority to issue the one-time payment to City Manager Feeney consistent with the terms above.



CITY OF CITRUS HEIGHTS

CITY COUNCIL STAFF REPORT MEMORANDUM

DATE: April 13, 2023

TO: Mayor and City Council Members

FROM: Ashley Feeney, City Manager
Ryan Jones, City Attorney

SUBJECT: **Proposed Amendment to the New Sylvan Purchase and Sale Agreement with Woodside Homes**

Summary and Recommendation

The City acquired a strategically located piece of property, known as the New Sylvan property (7137 Auburn Boulevard – former Sylvan Middle School site), in September 2019 with the intent to sell for the purpose of developing a project that continues the revitalization of Auburn Blvd. Pursuant to an Offering Memorandum, City Council approved the Purchase and Sale Agreement with Woodside Homes on January 14, 2021, to purchase the land to build single family homes. Included in the terms of the Agreement was an Outside Closing Date of March 31, 2023, which has been extended to April 17, 2023. Woodside Homes approached the City about entering into an Amendment to the Agreement to extend the Outside Closing Date to March 31, 2024.

As consideration for the proposed extension, Woodside agrees to deposit an additional \$200,000, which shall be immediately released to the City. In addition, clarifying language would be added to the Agreement regarding fulfilling the Surplus Lands Act requirement and addressing hazardous materials. Further, the entitlements that Woodside would need from the City before closing is refined and reduced. For instance, instead of requiring an approved grading, improvement plans and final map, the Amendment provides a more reasonable obligation to close, which includes an approved tentative map and conceptual architectural plans.

Fiscal Impact

Approval of this Amendment results in Woodside making an extension payment of \$200,000 to the City, which is not applicable to the purchase price, immediately releasable to the City from escrow and shall be paid within 5 days of signing the proposed Amendment.

Attachments

1. Amendment to the Purchase and Sale Agreement
2. Resolution No. 2023-____

RESOLUTION NO. 2023-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CITRUS HEIGHTS, CALIFORNIA, APPROVING AN AMENDMENT TO THE PURCHASE AGREEMENT OF SYLVAN PROPERTY WITH WOODSIDE HOMES

WHEREAS, the City acquired a strategically located piece of property, known as the New Sylvan property located at 7137 Auburn Boulevard, Citrus Heights (APN 211-0020-025-0000) (“Property”), in September 2019 with the intent to sell for the purpose of developing a project that continues the revitalization of Auburn Boulevard;

WHEREAS, the City of Citrus Heights and Woodside Homes (“Parties”) entered into the Purchase Agreement (“Agreement”) on January 15, 2021 for the Property described above (Exhibit A);

WHEREAS, included in the terms of the Agreement was an Outside Closing Date of March 31, 2023, which has been extended to April 17, 2023. Woodside Homes approached the City about entering into an Amendment to the Agreement to extend the Outside Closing Date to March 31, 2024;

WHEREAS, as consideration for the proposed extension, Woodside agrees to deposit an additional \$200,000, which shall be immediately released to the City. In addition, the Amendment provides clarifying language regarding fulfilling the Surplus Lands Act requirement and addressing hazardous materials. Further, the entitlements that Woodside needs from the City before closing is refined and reduced. Instead of requiring an approved grading, improvement plans and final map, the Amendment provides a more reasonable obligation to close, which includes an approved tentative map and conceptual architectural plans.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Citrus Heights approves and directs the City Manager to finalize negotiations and execute an Amendment to the Purchase Agreement with Woodside Homes related to the Property in substantially the form of Exhibit B, attached hereto and by this reference incorporated herein, and to execute all other necessary and related documents between the City of Citrus Heights and Woodside Homes required for this transaction.

The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED by the City Council of the City of Citrus Heights, California, this 13th day of April 2023, by the following vote, to wit:

AYES: **Council Members:**
NOES: **Council Members:**
ABSTAIN: **Council Members:**
ABSENT: **Council Members:**

Tim Schaefer, Mayor

ATTEST:

Amy Van, City Clerk

Exhibit A: Purchase Agreement, dated January 15, 2021

Exhibit B: Amendment to the Purchase and Sale Agreement

PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This PURCHASE AGREEMENT and JOINT ESCROW INSTRUCTIONS ("Agreement") is dated as of the 15th day of January, 2021 for identification purposes, by and between the City of Citrus Heights, a municipal corporation ("Seller") and Woodside 05N, LP, a California limited partnership ("Buyer"). Seller and Buyer shall be individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

RECITALS

A. Seller owns certain real property consisting of approximately 11.32 gross acres located in the city of Citrus Heights (the "City"), Sacramento county (the "County"), State of California, commonly known as APN 211-0020-025-0000, which real property is depicted on **Exhibit 1** and more particularly described in **Exhibit 2** (the "Property"). The term "Property" shall also include all of Seller's rights, title, and interest in and to all entitlements, tentative or final maps, easements, excepting therefrom public easements which are a matter of public record, mineral rights, oil and gas rights, water, water rights, air rights, development rights, and privileges appurtenant to said Property, and all improvements located thereon.

B. Seller desires to sell to Buyer and Buyer desires to purchase from Seller, the Property.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

2. PURCHASE AND SALE.

2.1 Purchase Price. The purchase price for the Property is Fifty Thousand and No/100ths Dollars (\$50,000.00) per single-family detached residential lot having minimum dimensions of 40' x 75' (each a "40' Lot" and collectively, the "40' Lots") and Thirty Thousand and No/100ths Dollars (\$30,000.00) per single-family detached residential lot having minimum dimensions of 35' x 75' (each a "35' Lot" and collectively, the "35' Lots") in the Approved Final Map, defined below (the "Purchase Price"). The 40' Lots and 35' Lots shall be individually referred to herein as a "Lot" and collectively herein as the "Lots." Assuming 69 - 40' Lots and 24 - 35' Lots in the Approved Final Map, the Purchase Price shall be Four Million One Hundred Seventy Thousand and No/100ths Dollars (\$4,170,000.00). The Purchase Price shall be payable in cash or other immediately available funds at the Close of Escrow.

3. ESCROW HOLDER. All amounts of money paid by Buyer shall be paid into an interest bearing escrow account (the "Escrow Account") to be established and maintained with First American Title Company, attn: Diane Burton, 4750 Willow Road, Suite 275, Pleasanton, CA 94588 (the "Escrow Holder").

4. PURCHASE DEPOSIT, PAYMENT, AND INDEPENDENT CONSIDERATION.

4.1 Deposit. Within three (3) business days after the Effective Date, as defined in Section 17.16, Buyer shall deposit with Escrow Holder in the Escrow Account, cash or cash equivalent in the sum of Two Hundred Thousand and No/100ths Dollars (\$200,000.00) (the "Initial Deposit"). On or before the end of the Due Diligence Period, defined below, Buyer shall provide Seller and Escrow Holder written

notice of its intent to continue with the transaction (the "Continuation Notice"). If Buyer provides the Continuation Notice, then, within three (3) business days thereafter Buyer shall deposit with Escrow Holder in the Escrow Account cash or cash equivalent in the sum of Two Hundred Thousand and No/100ths Dollars (\$200,000.00) (the "Additional Deposit" and together with the Initial Deposit collectively, the "Deposit"). Upon Buyer's payment of the Additional Deposit, if any, the Deposit shall then become non-refundable except as provided herein and shall be retained in the Escrow Account until the Closing. If the Closing occurs, the Deposit and all accrued interest thereon shall be applicable to the Purchase Price. In the event Buyer does not timely provide the Continuation Notice, Buyer shall be deemed to have disapproved of the due diligence review and this Agreement shall terminate pursuant to Section 15.1 hereof.

4.2 Payment of Balance of Purchase Price. Prior to the Close of Escrow, Buyer shall pay into the Escrow Account in cash or cash equivalent an amount equal to the Purchase Price, less the Deposit and all accrued interest thereon, plus the amount of the Independent Consideration, defined below (the "Purchase Price Balance"), which shall be released to Seller at Close of Escrow.

4.3 Independent Consideration. The Deposit includes the amount of One Hundred and No/100ths Dollars (\$100.00) (the "Independent Consideration") as independent consideration for Seller's performance under this Agreement and shall be retained by Seller in all instances. The Independent Consideration shall be non-refundable to Buyer as independent consideration for the rights and options extended to Buyer under this Agreement including, without limitation, the right and option to terminate the Agreement as provided in this Agreement. The Independent Consideration shall be released to Seller immediately following Buyer's deposit of such funds into Escrow. In all instances under this Agreement in which Buyer elects to terminate or is deemed to have terminated the Agreement and the Deposit is returned to Buyer as provided in this Agreement, Seller shall retain the Independent Consideration when the Deposit is returned to Buyer. The Independent Consideration shall not be applicable towards the Purchase Price or treated as consideration given by Buyer for any purpose other than stated in this Section 4.3. Buyer and Seller expressly acknowledge and agree that (i) the Independent Consideration plus Buyer's agreement to pay the costs provided in this Agreement has been bargained for as consideration for Seller's execution and delivery of this Agreement and for Buyer's review, inspection, and termination rights during the Due Diligence Period and (ii) such consideration is adequate for all purposes under any applicable law or judicial decision.

5. ESCROW AND CLOSING.

5.1 Opening Escrow. Within three (3) business days after the Effective Date the Parties shall open an escrow (the "Escrow") with Escrow Holder by the Parties depositing into Escrow: (i) the fully executed Agreement, or executed counterparts thereof and (ii) the Initial Deposit. Escrow Holder shall perform all Escrow and title services in connection with this Agreement. The date such fully executed Agreement and the Initial Deposit are received by Escrow Holder shall be deemed the "Opening of Escrow" and Escrow Holder shall advise Buyer and Seller (and other parties identified in Section 17.8) of such date in writing. This Agreement shall serve as escrow instructions. Any supplemental escrow instructions submitted by Escrow Holder shall incorporate this Agreement as a part thereof and shall contain such other standard and usual provisions as may be required by Escrow Holder; provided, however, that no supplemental escrow instructions shall modify or amend any provision of this Agreement, unless expressly set forth in a writing signed by both Buyer and Seller. In the event there is a conflict between any provisions contained in such supplemental escrow instructions and the provisions of this Agreement, the provisions of this Agreement shall control.

5.2 Closing Date. Close of Escrow shall occur ten (10) days after the later of: (i) January 31, 2022 or (ii) satisfaction of the Buyer's Conditions to Close, defined below; provided, however, in no event later than March 31, 2023 (the "Outside Closing Date"). The terms "Close of Escrow," "Close Escrow," and "Closing" shall refer to and mean the date on which the Grant Deed transferring title to the Property to Buyer is recorded in the Official Records of the County (the "Official Records").

6. CONDITIONS PRECEDENT TO CLOSING.

6.1 Escrow Fees/Prorations. Seller and Buyer shall allocate and pay the Escrow, title, and closing costs as follows: (a) Seller shall pay the cost for title insurance equal to the premium for an ALTA Standard Owner's Policy in the amount of the Purchase Price; (b) Buyer shall pay the cost for ALTA extended coverage, if requested by Buyer, and any binder or endorsements requested by Buyer; (c) Seller shall pay any documentary transfer tax required by law; (d) recording costs shall be paid for by Buyer; (e) Escrow Holder's escrow fees and all other customary escrow fees and costs shall be divided equally between Seller and Buyer; and (f) Buyer and Seller shall each pay their own legal and professional fees and fees of other consultants incurred by Buyer and Seller, respectively. Real property taxes and any assessments shall be prorated as of the Close of Escrow on the basis of thirty-day months. Seller's portion of such taxes and assessments may be paid using the proceeds from the Close of Escrow or by a reduction in the cash amount paid at the Close of Escrow.

6.2 Closing Documents. The Parties shall deposit the following with Escrow Holder prior to Close of Escrow:

6.2.1 Seller's Documents. Seller shall deposit:

6.2.1.1 The grant deed conveying fee title to the Property to Buyer subject only to the Permitted Exceptions (the "Grant Deed");

6.2.1.2 An affidavit or qualifying statement, which satisfies the requirements of Paragraph 1445 of the *Internal Revenue Code* of 1986, as amended, and the regulations thereunder (the "Non-Foreign Affidavit"); and

6.2.1.3 An executed assignment of the rights, title, and interests of Seller in and to the entitlements and related matters in the Property as set forth in **Exhibit 3** (the "Assignment to Buyer of Entitlements").

6.2.2 Buyer's Documents. Buyer shall deposit:

6.2.2.1 The Purchase Price Balance, plus Buyer's share of the closing costs, and escrow fees and charges.

6.2.3 Additional Documents. The Parties shall also deposit such additional documents and/or instructions as necessary to comply with the terms hereof.

6.3 Closing. Upon the Close of Escrow, Escrow Holder shall: (i) record the Grant Deed in the Official Records; (ii) pay any transfer taxes; (iii) instruct the County recorder to deliver the Grant Deed to Buyer following Close of Escrow; (iv) distribute to Seller, or as Seller may instruct, the cash proceeds of the transaction, less Seller's escrow and cash charges; (v) deliver to Buyer the Title Policy, defined below, subject only to the Permitted Exceptions; (vi) deliver to Buyer the executed Non-Foreign Affidavit; (vii) deliver to Buyer the executed Assignment to Buyer of Entitlements; and (viii) perform all other actions necessary to carry out the terms of this Agreement.

6.4 Buyer's Conditions to Close. Buyer's obligations hereunder to Close Escrow and purchase the Property are expressly conditioned upon the satisfaction of the following conditions ("Buyer's Conditions to Close"). Any approval to be given by Buyer shall be given, or not given, in the sole and absolute discretion of Buyer. Buyer's Conditions to Close are inserted for the sole benefit of Buyer and may be waived by Buyer giving notice thereof in writing to Seller.

6.4.1 Title. The Escrow Holder is ready, able, and willing to issue the Title Policy insuring title to the Property vested in Buyer subject only to the Permitted Exceptions.

6.4.2 Seller's Performance. Seller shall not be in breach of the terms of this Agreement.

6.4.3 Tenancies. Title to the Property is free and clear of all tenancies, licenses, use agreements, orchard keepers contracts, service contracts, and other rights or claims of possession.

6.4.4 Representations and Warranties. All representations and warranties made by Seller continue to be correct and are correct as of the Close of Escrow.

6.4.5 No Agreements Binding on the Property. During the pendency of Escrow, Seller shall have maintained the Property in substantially its current condition and shall not have further encumbered the Property or entered into, modified, or terminated any agreement binding upon or inuring to the benefit of the Property or the owner thereof which shall extend beyond the Close of Escrow without obtaining the prior written consent of Buyer.

6.4.6 Entitlements. Prior to the Close of Escrow, Buyer shall have obtained the Entitlements consistent with Section 7.4 below.

6.4.7 Environmental Permits. Prior to the Close of Escrow, Buyer shall have obtained the Environmental Permits consistent with Section 7.5 below.

6.4.8 Mutually Acceptable Affordable Housing Program. Prior to the Close of Escrow, Buyer and Seller shall have agreed upon a Mutually Acceptable Affordable Housing Program consistent with Section 7.6 below.

6.5 Seller's Conditions to Close. Seller's obligations hereunder to Close Escrow are expressly conditioned upon the satisfaction of the following conditions ("Seller's Conditions to Close"). Any approval to be given by Seller shall be given, or not given, in the sole and absolute discretion of Seller. Seller's Conditions to Close are inserted for the sole benefit of Seller and may be waived by Seller giving notice thereof in writing to Buyer.

6.5.1 Buyer's Obligations. Buyer shall not be in breach of the terms of this Agreement.

6.5.2 Representations and Warranties. All representations and warranties made by Buyer continue to be correct and are correct as of the Close of Escrow.

7. ACTIONS PENDING CLOSING.

7.1 Condition of Title/Preliminary Title Report. Within five (5) business days after the Effective Date, Escrow Holder shall prepare and deliver to Buyer a preliminary title report (the "Preliminary Report") for the Property. Upon receipt of the Preliminary Report together with complete and legible copies of all underlying documents identified or described as exceptions to title shown therein, Buyer shall have ten (10) business days within which to notify Seller in writing of Buyer's disapproval of any exception to title disclosed in the Preliminary Report ("Disapproved Exception"), except that all monetary encumbrances, excluding the lien of any real estate taxes and assessments which are not yet due and payable, shall be deemed Disapproved Exceptions. In the event the Preliminary Report is supplemented (a "Supplement"), Buyer shall have ten (10) business days after receipt of such Supplement together with complete and legible copies of all additional underlying documents described therein within which to notify Seller of any Disapproved Exception arising from any new matter shown in the Supplement. Any matter disclosed in the Preliminary Report or any Supplement that is not disapproved in writing within the above stated time frame will be deemed an "Approved Exception." The term "Permitted Exceptions" shall mean all exceptions appearing on the Preliminary Report, which are: (i) standard printed exceptions in the Title Policy; (ii) non-delinquent general and special real property taxes

and assessments (including any improvement bonds constituting a lien not yet due and payable); (iii) any Approved Exceptions; or (iv) any other liens, easements, encumbrances, covenants, conditions, and restrictions of record approved, or waived if a Disapproved Exception, by Buyer pursuant to this Section. Seller shall use its best commercially reasonable efforts to remove or cause the Escrow Holder to endorse over the Disapproved Exceptions, or shall notify Buyer and Escrow Holder of its election to not do so. The failure of Seller to notify Buyer and Escrow Holder of its election shall be deemed Seller's election not to remove or cause the Escrow Holder to endorse over the Disapproved Exceptions. If, despite Seller's commercially reasonable efforts to remove or to cause the Escrow Holder to endorse over a Disapproved Exception, Seller is unable to do so, or Seller elects to not do so, Seller will give Buyer notice of same within ten (10) business days after receipt of Buyer's Disapproved Exception(s), and Buyer shall then have the option, within five (5) business days to: (i) terminate this Agreement by written notice to Seller and Escrow Holder, in which case this Agreement shall terminate pursuant to Section 15.1, and the Parties shall have no further obligation to one another except those of Section 8 of this Agreement or (ii) waive its objection to the Disapproved Exception in question by so notifying Seller and Escrow Holder and proceed to Close of Escrow. Notwithstanding anything to the contrary set forth herein, if Seller fails to cure any Monetary Title Defect which is not caused by the activities of Buyer which can be cured by the payment of money, Buyer shall have the right at its sole option to cause such amount to be paid and deduct such amount from the Purchase Price. As used in this paragraph, the term "Monetary Title Defect" shall only include deeds of trust, mortgages, and any other security instruments recorded or filed against the Property or any part thereof, and judgments, mechanics, and materialmen's liens recorded or filed against the Property or any part thereof that are not caused by the activities of Buyer.

7.2 Title Policy. Buyer's obligation to proceed to Close of Escrow shall be conditioned upon the commitment by Escrow Holder to issue an ALTA Standard Owner's Policy of Title Insurance, or, at Buyer's written request and at Buyer's additional cost, an ALTA Extended Owner's Policy of Title Insurance showing title to the Property vested in Buyer with liability equal to the Purchase Price, subject only to the Permitted Exceptions (the "Title Policy"). Buyer acknowledges that its election to purchase an ALTA Extended Owner's Policy of Title Insurance will require a survey and Buyer agrees that Buyer is responsible for all costs in completing such survey and there will be no delay in Closing related to or arising from the completion of such survey.

7.3 Phase I Environmental Questionnaire. Buyer shall provide Seller a Phase I Environmental Questionnaire as part of Buyer's investigation of the Property. Seller agrees to complete the Phase I Environmental Questionnaire and return the same to Buyer within five (5) days after Seller's receipt thereof.

7.4 Entitlements. Prior to the Close of Escrow, Buyer shall, at Buyer's sole cost and expense, use good faith, commercially reasonable efforts to obtain the following: (i) City approval of a tentative map for the Property consistent with Buyer's intended development thereof (anticipated to have 69 – 40' Lots and 24 – 35' Lots), with conditions of approval reasonably acceptable to Buyer together with the expiration of all applicable and legally valid periods for the filing of an administrative appeal, judicial challenge, referendum petition, or request for reconsideration (each an "Entitlement Challenge") having expired without the filing of an Entitlement Challenge, or if an Entitlement Challenge is filed or otherwise arises, that such Entitlement Challenge is resolved on terms satisfactory to Buyer in its reasonable discretion (the "Approved Tentative Map"); (ii) City approval of a general plan amendment for the Property consistent with the Approved Tentative Map; (iii) City approval of a zoning change for the Property consistent with the Approved Tentative Map; (iv) City approval of Buyer's conceptual architectural plans for the homes to be constructed on the Property; (v) City approval of Buyer's grading plans, subdivision improvement plans, and right-of-way landscape plans (collectively, the "Improvements Plans") for the Property (such that permits for the Improvement Plans are ready to be issued to Buyer subject only to Buyer's payment of the standard fees associated therewith and Buyer's submittal of a valid WDID number for the project to be constructed on the Property); and (vi) City approval of a final map consistent with the Approved Tentative Map and its conditions together with the expiration of all applicable and legally valid periods for the filing of an Entitlement Challenge having expired without the filing of an Entitlement Challenge, or if an Entitlement Challenge is filed or otherwise arises, that such Entitlement Challenge is

resolved on terms satisfactory to Buyer in its reasonable discretion (the "Approved Final Map") (collectively, items (i) through (vi) inclusive are referred to herein as the "Entitlements").

7.5 Environmental Permits. Prior to the Close of Escrow, Buyer at Buyer's sole cost and expense, shall use good faith, commercially reasonable efforts to process all environmental permit applications related to Buyer's intended development of the Property (including, but not limited to, a Section 404 Discharge Permit for the Property with the Army Corps of Engineers and Section 1600 Streambed Alteration Permit for the Property with the California Department of Fish and Wildlife), each consistent with the Entitlements, such that they are ready to be issued to Buyer subject only to Buyer's payment of the standard fees associated therewith (collectively, the "Environmental Permits"). Buyer may elect, in its sole discretion, to pay the applicable fees and obtain the Environmental Permits prior to Close of Escrow.

7.6 Mutually Acceptable Affordable Housing Program. Prior to the Close of Escrow, Buyer and Seller shall use good faith, commercially reasonable efforts to negotiate a mutually acceptable affordable housing program applicable to the Property and Buyer's intended development of the Property (the "Mutually Acceptable Affordable Housing Program").

8. INVESTIGATION OF THE PROPERTY DURING THE DUE DILIGENCE PERIOD. Within five (5) business days after the Effective Date, Seller shall, without representation or warranty of any kind as to the accuracy, applicability, or usefulness thereof, provide Buyer with complete copies of all studies, reports, agreements, documents, plans, permits, and entitlements in Seller's possession concerning the Property and its improvement and development including, but not limited to, all engineering drawings, soils reports, earthquake studies, site history investigations, toxic or hazardous materials investigations or reports, planning studies, and title reports in Seller's possession, copies of the current year's tax bills related to the Property, and copies of all City resolutions and approval conditions pertaining to the Property (collectively, the "Due Diligence Materials"). Buyer shall have until 5:00 p.m. California time on the date that is ninety (90) days after the Effective Date (the "Due Diligence Period") to review the Due Diligence Materials, the Feasibility Studies (as defined below), and to determine, in Buyer's sole and absolute discretion, the suitability of the Property for Buyer's use and development (collectively, the "Feasibility Matters"). Without in any way limiting the generality of the foregoing, Buyer shall make such investigations and inquiries as Buyer deems reasonable and necessary to satisfy itself as to the Feasibility Matters, which may include verification of the completion or accuracy of the Due Diligence Materials, any governmental land regulations, zoning ordinances, architectural and design approvals, development costs, financial and market feasibility, the status of the entitlements for the Property, the amount and terms of any bonds, assessments, infrastructure fees, school fees, park fees, and any special taxes, fees, districts, and improvement obligations affecting the Property, the environmental conditions of the Property, and all aspects of the physical condition of the Property.

8.1 Access and Studies. At any time during the Due Diligence Period, Buyer, its agents, employees, consultants, contractors, subcontractors, and representatives shall have the right to enter upon all portions of the Property for the purpose of conducting such investigations, inspections, and tests of the Property and preparing such maps and surveys as Buyer deems necessary in order to determine the condition and suitability of the Property including, but not limited to, the Feasibility Matters and for all other purposes related to Buyer's acquisition and development of the Property. Without limiting the foregoing, Buyer shall have the right to perform a complete environmental audit of the Property, soils tests on any portion of the Property, and any other technical studies which may in Buyer's sole discretion be helpful in obtaining development approval for the Property (collectively, the "Feasibility Studies"). The Feasibility Studies may include environmental assessments, environmental impact reports, traffic studies, noise studies, water quality and availability studies, archeological and paleontological studies, seismic and slope stability studies, and other studies which may be necessary or appropriate in Buyer's sole discretion for Buyer to completely evaluate the condition of the Property.

8.1.1 Indemnity. Buyer hereby agrees to indemnify and hold Seller harmless from and against any and all loss, expense, claim, damage, and injury to persons or the Property (including attorney's fees and post judgment collection costs) to the extent arising from or related

to the exercise of Buyer's access rights under Section 8.1 by Buyer and its employees, consultants, engineers, authorized agents, and subcontractors onto the Property in connection with the performance of any investigation of the Property as contemplated herein.

8.1.2 Liens. Buyer will exercise its rights of access under this Section 8 in such a manner as to keep the Property free of materialmen's and mechanics' liens. If such a lien is recorded on the Property, Buyer may dispute such lien, provided that within ten (10) days after Buyer receives notice from Seller that such lien was recorded, Buyer will, at its sole cost, cause the effect of the lien to be removed from the Property. Upon such removal, at its sole cost, Buyer shall take whatever actions it deems necessary to pay, compromise, contest, litigate, or otherwise dispose of such third-party claim in a manner that keeps the Property and all portions thereof free of all claims.

8.1.3 Effects of Investigation. Notwithstanding anything set forth in this Agreement to the contrary, Buyer shall have no liability for diminution in value of the Property resulting from negative facts learned or disclosed to Buyer concerning the Property as a result of Buyer's due diligence activities.

9. RISK OF LOSS. If prior to Close of Escrow any damage or casualty occurs to the Property which results in a loss of value of the Property in excess of \$25,000 or materially interferes with Buyer's intended use of the Property, Buyer may, at its option, within ten (10) business days after Buyer's receipt of Seller's notice of the damage or casualty, elect either to: (i) terminate this Agreement, in which event all funds deposited into Escrow by Buyer which are held by Escrow Holder or have been released from Escrow shall be immediately returned to Buyer, the Parties shall share equally the expenses of canceling Escrow, and neither Party shall have any further rights or obligations hereunder except those obligations which expressly survive the termination of this Agreement or (ii) continue this Agreement in effect, in which event upon the Close of Escrow, Seller shall assign to Buyer and Buyer shall be entitled to any compensation, award, or other payments or relief resulting from such damage or casualty. Any damage or casualty that occurs after the Close of Escrow shall be the sole responsibility of Buyer.

10. REPRESENTATIONS, WARRANTIES, AND COVENANTS.

10.1 Seller's Representations, Warranties, and Covenants. In addition to the representations, warranties, and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants, and covenants to Buyer that the statements below in this Section, all of which shall survive the Closing, are each true as of the Effective Date, and, if to Seller's knowledge any such statement becomes untrue related to the Property prior to Closing, Seller shall so notify Buyer in writing and Buyer shall have three (3) business days thereafter to determine if Buyer wishes to proceed with the Closing. If Buyer determines it does not wish to proceed, then the terms of Section 15.3 shall apply.

10.1.1 Identity. Seller has the requisite right, capacity, power, and authority to enter into and carry out the terms of this Agreement without consent from any other party. Whenever phrases such as "to Seller's actual knowledge" or "Seller has no knowledge" or similar phrases are used in the representations and warranties in this Section 10.1, they will be deemed to refer exclusively to matters within the current actual (as opposed to constructive) knowledge of Christopher Boyd, City Manager and Colleen McDuffee, Community Development Director (collectively, "Seller's Representative"). No duty of inquiry or investigation on the part of Seller or Seller's Representative will be required or implied by the making of any representation or warranty which is so limited to matters within Seller's actual knowledge, and in no event shall Seller's Representative have any personal liability therefor.

10.1.2 Ownership; Encumbrances. Seller owns the Property in fee simple. Seller has not alienated, encumbered (other than the Approved Exceptions), transferred, leased, assigned, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any

agreement to do so, nor shall Seller do so prior to the Close of Escrow (except for any deed of trust or other voluntary monetary encumbrance which shall be removed at Close of Escrow).

10.1.3 Solvency. Seller is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute, and has not made a general assignment for the benefit of creditors.

10.1.4 No Development Impediments. Other than any conditions disclosed in any soils report or other documents provided by Seller to Buyer, to Seller's current actual knowledge, as of the Effective Date, Seller is not aware of any reason why the Property cannot be developed for residential use (e.g., zoning restrictions, flood plain limitations, building, development, construction, utility, or public health moratoria, etc.), and to Seller's knowledge, the Property does not contain any physical impediments to the development of the Property including, but not limited to, surface or subsurface deposits of garbage or other refuse or debris, any excavations or pits that have been completely or partially filled, or any unnatural surface or subsurface soil condition.

10.1.5 Hazardous Substances. To Seller's current actual knowledge, without a duty to investigate, there are no Hazardous Substances, or storage tanks containing Hazardous Substances, in, on, under, about, or within the Property. To Seller's current actual knowledge, there are no pending or threatened litigation, proceedings, or investigations before or by any administrative agency in which any person or entity alleges the presence, release, threat of release, placement on or in the Property or within the Property, or the generation, transportation, storage, treatment, or disposal at the Property or within the Property, of any Hazardous Substance. For purposes of this Agreement, the term "Hazardous Substances" means any matter which, as of the date of this Agreement, has been determined by any regulation, order, or rule, or any proposed regulation, order, or rule, promulgated by any governmental agency of appropriate jurisdiction, to constitute hazardous waste or hazardous substance or petroleum product under any federal, state, or local statute, law, rule, regulation, ordinance, or enactment of any governmental authority.

10.1.6 Pending Disputes. As of the Effective Date, to Seller's current actual knowledge, without a duty to investigate, there are no disputes, litigation, or proceedings pending or threatened concerning or related to the Property or to the obligations or rights of Seller in and to the Property.

10.1.7 No Liens or Encumbrances Not of Record. To Seller's current actual knowledge, without a duty to investigate, as of the Close of Escrow, there are no liens or encumbrances on, or claims to, or covenants, conditions, restrictions, easements, rights of way, or other matters affecting the Property, except as indicated in the Preliminary Report.

10.1.8 No Agreements Binding on the Property. During the pendency of Escrow, Seller shall have maintained the Property in substantially its current condition and shall not have further encumbered the Property, or entered into, modified, or terminated any agreement binding upon or inuring to the benefit of the Property or the owner thereof which shall extend beyond the Close of Escrow without obtaining the prior written consent of Buyer. The Property is not subject to any written agreement between Seller and any third-party for the transfer or sale of the Property to a third-party. Seller will not transfer or encumber the Property during the term of this Agreement except as provided in this Agreement.

10.1.9 Existing Agreements. To Seller's current actual knowledge, without a duty to investigate, there are no existing material defaults by Seller under any agreements, documents, covenants, conditions, restrictions, or any other documentation relating to the Property.

10.1.10 Conflicting Documents. Neither the execution and delivery of this Agreement and the documents and instruments, referenced herein, nor the occurrence of the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreement or instrument to which Seller is a party or affecting the Property.

10.1.11 Leases. Seller will not enter into any leases or other agreements affecting or relating to the rights of any party with respect to the possession of the Property which shall extend beyond the Close of Escrow without the written consent of Buyer.

10.1.12 Feasibility Documents. The documents delivered to Buyer pursuant to Section 8 are all of the documents owned by or under the control of Seller pertaining to the condition of the Property, and, to Seller's current actual knowledge, without a duty to investigate, there are no material inaccuracies in the information contained in such documents.

10.2 Buyer's Representations, Warranties, and Covenants. In addition to the representations, warranties, and covenants of Buyer contained in other sections of this Agreement, Buyer hereby represents, warrants, and covenants to Seller that the statements below in this Section are each true as of the Effective Date, and, if to Buyer's actual knowledge any such statement becomes untrue prior to Closing, Buyer shall so notify Seller in writing and Seller shall have three (3) business days thereafter to determine if Seller wishes to proceed with Closing. If Seller determines it does not wish to proceed, then the terms of Section 15.2 shall apply.

10.2.1 Identity. Buyer is a California limited partnership, lawfully in existence and in good standing, and registered with the State of California. Buyer has the full right, capacity, power, and authority to enter into and carry out the terms of this Agreement.

10.2.2 Solvency. Buyer is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute, and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

11. CONDEMNATION. If prior to Close of Escrow, any portion of the Property is taken by any entity by condemnation or with the power of eminent domain, or if the access thereto is reduced or restricted thereby (or is the subject of a pending taking which has not yet been consummated), Seller shall notify Buyer of such fact together with any information in Seller's possession or control related to such condemnation. In such event, Buyer shall have the right, in Buyer's sole discretion, to terminate this Agreement and the relevant Escrow upon written notice to Seller and Escrow Holder not later than five (5) business days after receipt of Seller's notice thereof. If this Agreement and Escrow are so terminated, then the terms of Section 15.1 shall apply. Alternatively, Buyer may proceed to consummate the relevant transaction provided for herein at Buyer's sole election, in which event Seller shall assign and turn over, and Buyer shall be entitled to receive and keep, any and all awards made or to be made in connection with such condemnation or eminent domain, and the Parties shall proceed to the Close of Escrow pursuant to the terms hereof, without any reduction in the Purchase Price.

12. LIQUIDATED DAMAGES. BUYER AND SELLER EACH AGREE THAT IN THE EVENT OF A MATERIAL DEFAULT OR BREACH HEREUNDER BY BUYER WHEREUPON BUYER FAILS OR REFUSES TO COMPLETE THE PURCHASE CONTEMPLATED IN THIS AGREEMENT, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THEREFORE, IN THE EVENT OF A MATERIAL DEFAULT OR BREACH BY BUYER, THE DEPOSIT (AS THE SAME MAY HAVE BEEN PAID AS OF THE DATE OF SUCH MATERIAL DEFAULT OR BREACH PURSUANT TO THE TERMS HEREOF) SHALL SERVE AS LIQUIDATED DAMAGES FOR SUCH MATERIAL BREACH OR DEFAULT BY BUYER. THE PARTIES AGREE THAT THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER OCCASIONED BY SUCH BREACH, INCLUDING COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HEREWITH. ACCORDINGLY, DELIVERY TO AND RETENTION OF THE DEPOSIT BY SELLER SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT OF SUCH A MATERIAL DEFAULT OR BREACH BY BUYER, AND SELLER WAIVES ANY AND ALL RIGHT TO SPECIFIC PERFORMANCE OR DAMAGES IN EXCESS OF THE LIQUIDATED AMOUNT.

Seller's Initials: 
Buyer's Initials: 

13. BROKERS. Should the Close of Escrow occur, Buyer agrees to pay a real estate commission to Sean Corcoran and TRI Commercial Real Estate by way of separate written agreement. Notwithstanding the foregoing, each Party agrees to indemnify, defend, protect, and hold the other harmless from and against all liabilities, costs, damages, and expenses including, without limitation, attorney's fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission or finder's fee.

14. ASSIGNMENT. The Parties hereto may not assign their respective rights or delegate their respective obligations hereunder without the prior written consent of the other Party provided; however, without further consent Buyer may assign its rights to a commonly controlled affiliate of Buyer or to a third-party with which Buyer enters into a land banking option arrangement.

15. TERMINATION. In addition to any other provisions in this Agreement that apply in the event of termination:

15.1 Termination by Buyer Prior to Expiration of Due Diligence Period. If Buyer elects to terminate this Agreement for any reason provided in this Agreement prior to the expiration of the Due Diligence Period, then: (i) this Agreement shall terminate and all rights Buyer may have had to acquire the Property shall automatically expire; (ii) Escrow Holder shall immediately return the Deposit and all accrued interest thereon to Buyer (without additional instruction from Seller); and (iii) Buyer and Seller will have no further obligation to each other related to the Property or this Agreement except as may have arisen from Buyer's exercise of its right of access under Section 8.1 and each of its subparts.

15.2 Termination for Other Than Seller's Default After the Expiration of the Due Diligence Period. If Buyer elects to terminate this Agreement for any reason other than Seller's default or a failure of Buyer's Conditions to Close after expiration of the Due Diligence Period but prior to Closing, then: (i) this Agreement shall terminate and all rights Buyer may have had to acquire the Property shall automatically expire; (ii) the terms of Section 12 shall apply; (iii) Buyer will pay any Escrow cancellation charges and the Escrow will be terminated; and (iv) Buyer and Seller will have no further obligation to each other related to the Property or this Agreement except as may have arisen from Buyer's exercise of its right of access under Section 8.1 and each of its subparts.

15.3 Termination Due to Seller's Default. If Seller defaults, then Buyer may elect to: (i) have the Deposit and all accrued interest thereon immediately returned to Buyer and Seller will immediately reimburse Buyer for its actual out-of-pocket costs, fees, expenses, and damages or (ii) seek specific performance. In no event shall Buyer be entitled to recover lost profits or appreciation or other consequential damages.

15.4 Termination For Failure of Buyer's Condition to Close. If Buyer elects to terminate this Agreement for failure of a Buyer's Condition to Close, then: (i) this Agreement shall terminate and all rights Buyer may have had to purchase the Property shall automatically expire; (ii) Escrow Holder or Seller, as the case may be, shall immediately return the Deposit and all accrued interest thereon to Buyer (without additional instruction from Seller); and (iii) Buyer and Seller will have no further obligation to each other related to the Property or this Agreement except as may have arisen from Buyer's exercise of its right of access under Section 8.1 and each of its subparts.

16. BANKRUPTCY; INSOLVENCY. In addition to any other grounds for default under this Agreement, the existence of any of the following shall constitute a material default under this Agreement. It shall be a material default by a Party if: (a) that Party shall voluntarily be adjudicated as bankrupt or insolvent; (b) that Party shall seek, consent to, or not contest the appointment of a receiver or trustee for itself or for all or any part of its property; (c) that Party shall file a petition seeking relief under the bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States, any state, or any other competent jurisdiction; (d) that Party shall make a general assignment for the benefit of its creditors; (e) a petition is filed against that Party seeking relief under the bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States, any state, or any other competent jurisdiction, and such petition is not dismissed within sixty (60) days immediately following the date of such filing; or (f) a court of competent jurisdiction enters an order, judgment, or decree appointing, without that Party's consent, a receiver or trustee for that Party, or for all or any part of that Party's property; and such petition, order, judgment, or decree is not discharged or stayed within sixty (60) days immediately following its entry.

17. MISCELLANEOUS.

17.1 Attorney's Fees. If any Party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief, or other litigation), the prevailing Party shall be entitled to recover its reasonable attorney's fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not), and shall include the right to recover such fees and costs incurred in any appeal and/or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorney's fees and costs.

17.2 Interpretation. This Agreement has been negotiated at arm's length and each Party has been represented or has had the opportunity to be represented by independent legal counsel in this transaction. Accordingly, each Party hereby waives any benefit under any rule of law or legal decisions that would require interpretation of any ambiguities in this Agreement against the Party drafting it.

17.3 Counting of Days. If a Party is required to complete the performance of an obligation under this Agreement by a date certain and such date is a Saturday, Sunday, or federal bank holiday (collectively, a "Nonbusiness Day"), then the date for the completion of such performance will be the next succeeding day that is not a Nonbusiness Day.

17.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns. The terms of this Section 17.4 shall survive the Close of Escrow and shall not merge with the Grant Deed.

17.5 Governing Law and Arbitration. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. If requested by either Party within thirty (30) days of the commencement of any action, any action brought to interpret or enforce this Agreement shall be determined by final binding arbitration in accordance with the rules of the American Arbitration Association and the Federal Arbitration Act provided, however, a Party may file an action in an appropriate court to seek a notice of pendency of action or other immediate relief. During the pendency of the arbitration proceeding, each Party shall pay one-half of the cost thereof. Upon the conclusion of the arbitration proceeding, the losing Party shall pay all of the remaining unpaid costs of the proceeding and reimburse the prevailing Party for any such costs previously paid by the prevailing Party. Such reimbursement shall be included in any judgment or final order issued in the arbitration proceeding. Except as otherwise required by law, each Party shall exercise its best efforts to keep the arbitration proceeding and the testimony and evidence presented therein confidential.

17.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject matter hereof and cannot be amended or modified except by a written instrument executed and delivered by the Parties. This Agreement upon full execution supersedes all prior oral and written agreements between the Parties. There are no representations, agreements, arrangements, or understandings, either oral or written, between or among the Parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. In addition, there are no representations, agreements, arrangements, or understandings, either oral or written, between or among the Parties upon which any Party is relying in entering this Agreement that are not fully expressed herein.

17.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provision or part thereof shall be stricken from this Agreement, and any such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is in keeping with the intent of the Parties as expressed herein.

17.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration, or other communication that either Party desires or is required to give to the other Party or any other person shall be in writing. Any such communication may be served personally, transmitted by facsimile, email (provided that any notice submitted by email shall be confirmed by delivery sent within one (1) business day thereafter of a copy of such notice by another method of delivery under this Section 17.8), nationally recognized overnight delivery service (e.g., Federal Express), or sent by prepaid, first class mail, return receipt requested to the Party's address as set forth below:

To Seller: City of Citrus Heights
Attn: Christopher W. Boyd, City Manager
6360 Fountain Square Drive
Citrus Heights, CA 95621
Fax: (916) 725-5779
Phone: (916) 725-2448
Email: cboyd@citrusheights.net

To Buyer: Woodside 05N, LP
Attn: Jim Bayless
111 Woodmere Road, Suite 190
Folsom, CA 95630
Fax: (916) 588-4906
Phone: (916) 850-1716
Email: jim@woodsidehomes.com

With copy to: Woodside Group, LLC
Attn: Legal Department
460 West 50 North, Suite 200
Salt Lake City, UT 84101
Fax: (801) 413-1761
Phone: (801) 869-3950
Email: legalnotices@woodsidehomes.com

To Escrow Holder: First American Title Company
Attn: Diane Burton
4750 Willow Road, Suite 275
Pleasanton, CA 94588
Fax: (866) 648-7806
Phone: (925) 201-6603
Email: dburton@firstam.com

Any such communication shall be deemed effective upon personal delivery, confirmed receipt of notice transmitted by facsimile during regular business hours, two (2) days after transmitting the notice by a nationally recognized overnight delivery service, or three (3) days after mailing in accordance with this Section. Any notice or document sent by email shall be deemed delivered on the date of transmission provided that (a) such e-mail is delivered by 5:00 p.m. California time and (b) a copy of such notice or document is sent by another method of delivery under this Section 17.8 within one (1) business day after transmission. Any Party may change its address by notice to the other Party. Each Party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section, and that any person to be given notice actually receives such notice. If a Party consists of more than one person, notice given in accordance with this Section shall constitute proper notice given to each constituent person of such Party.

17.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

17.10 Notice of Default. No Party shall be in default under this Agreement unless written notice of the alleged default is provided to the defaulting Party by the non-defaulting Party, which shall provide the defaulting Party five (5) days from receipt of such notice to cure the alleged default. If said default cannot be cured within five (5) days, the defaulting Party shall be granted such time as is commercially reasonable to cure said default so long as commercially reasonable efforts to cure the alleged default are commenced within five (5) days after receipt of the notice and thereafter diligently pursued to completion.

17.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a Party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned, or delayed.

17.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

17.13 Waivers. Any waiver by any Party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any Party. Consent by any Party to any act or omission by another Party shall not be construed as consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

17.14 Signatures/Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Agreement, facsimiles or scans sent by email in accordance with Section 17.8 shall be considered originals. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

17.15 Joint and Several Liability. To the extent any Party consists of more than one person, each constituent person of such Party shall be jointly and severally liable for the performance or satisfaction of such Party's obligations under this Agreement.

17.16 Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date this Agreement between the Parties is fully executed by all the Parties hereto (the "Effective Date").

17.17 Representations on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

17.18 Not an Offer. Delivery of unsigned copies of this Agreement is solely for the purpose of review by the Party to whom it is delivered, and neither such delivery nor any prior communications between the Parties, whether oral or written, shall in any way be construed as any offer by that Party, nor in any way imply that the Party is under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by Buyer constitutes an offer which shall not be deemed accepted by Seller unless and until Seller has signed this Agreement and delivered a duplicate original to Buyer.

17.19 IRC Section 1031 Tax Deferred Exchange. The Parties agree that if either Party is able to secure a tax benefit through a 1031 Tax Deferred Exchange, the Parties shall reasonably cooperate in order to complete the requirements of such an exchange, provided that neither of the Parties are delayed in the Close of Escrow, additional expense incurred, otherwise adversely affected thereby, and provided Buyer is not required to take title to any other real property. All fees and costs due to any accommodator or facilitator are to be paid by the Party requesting the exchange. The Party requesting such an exchange shall be solely responsible for ensuring that this Agreement remains in full force and effect, and that the Party consenting to the interim transfer is not adversely affected thereby, and for the legal sufficiency of the tax deferred exchange.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

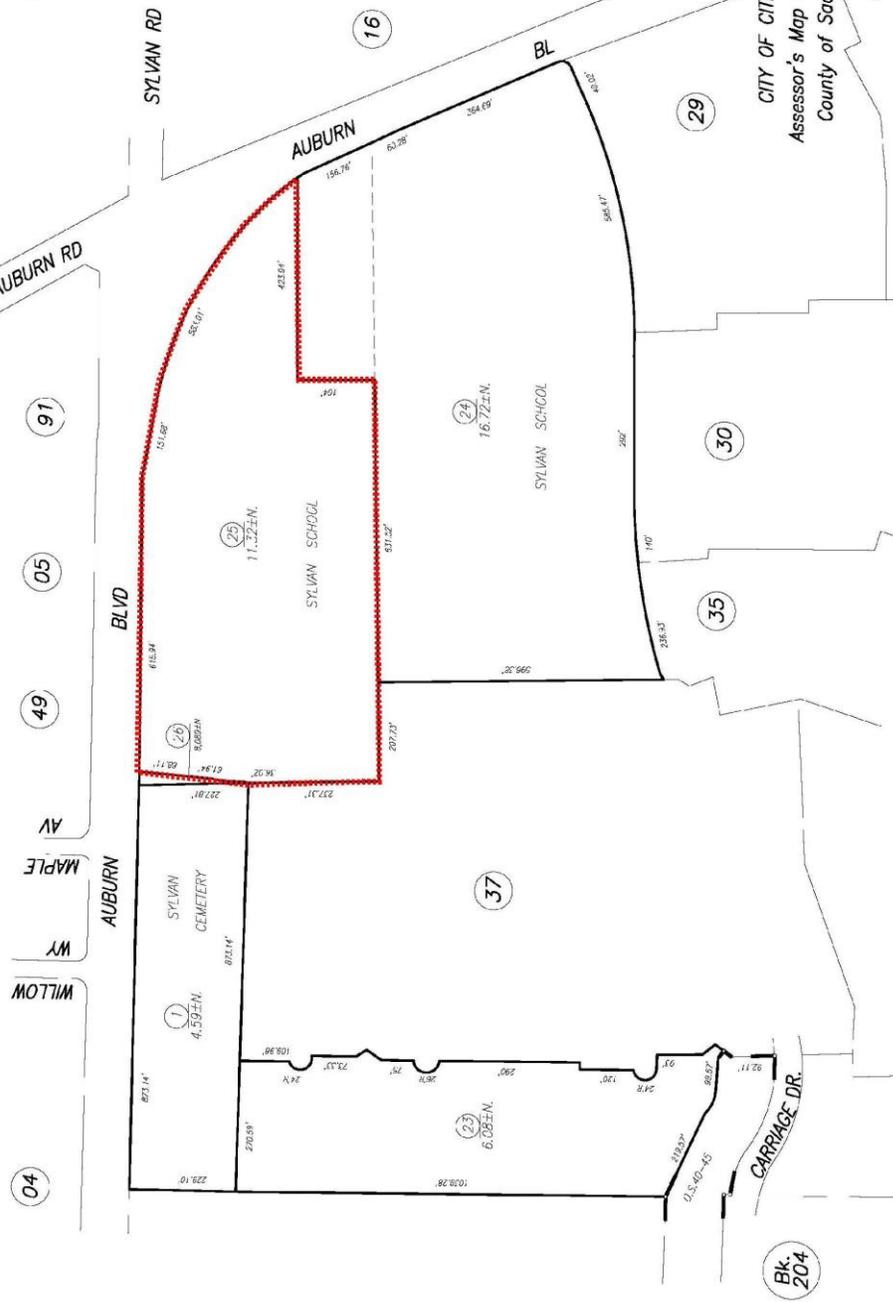
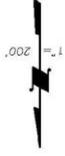
| <i>BUYER</i> | <i>SELLER</i> |
|--|---|
| WOODSIDE 05N, LP, a California limited partnership | CITY OF CITRUS HEIGHTS, a municipal corporation |
| By: WDS GP, Inc., a California corporation | By: <u>DocuSigned by: Christopher W. Boyd</u> |
| Its: General Partner | Name: <u>Christopher Boyd</u> |
| By: <u>DocuSigned by: Scott Hoisington</u> 37591E38E151 | Its: <u>City Manager</u> |
| Its: Vice President | Date: <u>January 15, 2021</u> |
| Date: <u>1/15/2021</u> | |

EXHIBIT 1 DEPICTION OF THE PROPERTY

211-002

POR. SEC'S. 26 & 27, T.10N., R.6E., M.D.B.& M.

DISCLAIMER: ASSessor'S PARCELS MAP FOR TAX Assessment PURPOSES ONLY AND DOES NOT CONSTITUTE A GUARANTEE OF ANY KIND REGARDING THE ACCURACY OF THE INFORMATION. FOR INFORMATION PURPOSES, THE INFORMATION IS PROVIDED FOR INFORMATION PURPOSES ONLY.



CITY OF CITRUS HEIGHTS
Assessor's Map Bk. 211 Pg. 002
County of Sacramento, Calif.
FEBRUARY 28, 2020

EXHIBIT 2
LEGAL DESCRIPTION OF THE PROPERTY

BEING LOCATED IN THE CITY OF CITRUS HEIGHTS AND BEING ALL THAT PORTION OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST M.D.M., , AND BEING DESCRIBED AS FOLLOWS:

ALL OF THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 91 OF SURVEYS AT PAGE 10 ON FILE IN THE OFFICE OF THE RECORDER, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA;

EXCEPTION 1

EXCEPTING THEREFROM THE FOLLOWING:

BEGINNING AT THE SOUTHWEST CORNER OF AFORESAID RECORD OF SURVEY SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY OF AUBURN BOULEVARD.

THENCE FROM SAID POINT OF BEGINNING THE FOLLOWING SIX (6) COURSES:

1. NORTH 00°31'32" WEST 397.07 FEET;
2. NORTH 00°28'32" WEST 120.90 FEET;
3. SOUTH 89°59'31" EAST 164.00 FEET;
4. SOUTH 00°01'16" WEST 423.94 FEET TO A POINT ON THE NORTHWESTERLY RIGHT OF WAY OF AUBURN BOULEVARD;
5. ALONG THE NORTHWESTERLY RIGHT OF WAY OF AUBURN BOULEVARD ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 760.00 FEET HAVING A CENTRAL ANGLE OF 01°30'47" WITH A ARC LENGTH OF 20.07 FEET SUBTENDED BY A CHORD OF SOUTH 55°28'46" WEST 20.07 FEET;
6. SOUTH 65°39'34" WEST 156.76 FEET TO THE POINT OF BEGINNING.

EXCEPTION 2

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID RECORD OF SURVEY THAT PORTION TRANSFERRED TO SYLVAN CEMETERY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF AFORESAID RECORD OF SURVEY IN BOOK 91 PAGE 10, BEING COMMON TO THE SOUTHEAST CORNER OF THE RECORD OF SURVEY IN BOOK 18 AT PAGE 25, SAID POINT BEING ON THE WESTERLY RIGHT OF WAY OF AUBURN BOULEVARD.

THENCE FROM SAID POINT OF BEGINNING THE FOLLOWING NINE (9) COURSES:

1. ALONG THE WESTERLY RIGHT OF WAY OF AUBURN BOULEVARD SOUTH 00°30'50" EAST 27.86 FEET;
2. LEAVING SAID RIGHT OF WAY NORTH 85°06'08" WEST 68.11 FEET;
3. NORTH 84°19'35" WEST 81.94 FEET;
4. NORTH 78°30'46" WEST 19.35 FEET;
5. NORTH 87°16'24" WEST 10.27 FEET;
6. NORTH 84°38'29" WEST 28.86 FEET;
7. SOUTH 89°51'39" WEST 10.14 FEET;
8. NORTH 77°53'57" WEST 10.75 FEET TO A POINT ON THE COMMON LINE BETWEEN RECORD OF SURVEY IN BOOK 91 AT PAGE 10 AND RECORD OF SURVEY IN BOOK 18 AT PAGE 25;
9. ALONG SAID COMMON LINE NORTH 88°49'27: EAST 227.81 FEET TO THE POINT OF BEGINNING.

CONTAINING: 493266.75 SQUARE FEET OR 11.32 ACRES +/-

BASIS OF BEARING FOR THIS DESCRIPTION IS IDENTICAL TO THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 91 OF SURVEYS AT PAGE 10 ON FILE IN THE OFFICE OF THE RECORDER, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

END OF DESCRIPTION

PREPARED BY: WARREN CONSULTING ENGINEERS, INC.
1117 WINDFIELD WAY, STE. 110
EL DORADO HILLS, CA 95762



EXHIBIT 3
ASSIGNMENT TO BUYER OF ENTITLEMENTS

Reference is hereby made to (a) that certain real property located in Sacramento County, California, and described in more detail as the "Property" in that certain PURCHASE AGREEMENT and JOINT ESCROW INSTRUCTIONS (the "Agreement") between Seller and Buyer (as such parties are defined below) dated as of January ____, 2021, (b) to the improvements located respectively thereon, and (c) to the rights, privileges, and entitlements respectively incident thereto.

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned ("Seller"), does hereby give, grant, bargain, sell, transfer, assign, convey, and deliver to WOODSIDE 05N, LP, a California limited partnership ("Buyer"), all of Seller's right, title, and interest in all assets, rights, materials, and/or claims used, owned, or held solely in connection with the use, management, development, or enjoyment of the Property including, without limitation: (i) the tentative map and final map and all entitlements, subdivision agreements, and other agreements relating solely to the development of the Property; (ii) all plans, specifications, maps, drawings, and other renderings relating solely to the Property; (iii) all warranties, claims, and any similar rights relating solely to and benefiting the Property or the assets transferred hereby; (iv) all development rights solely benefiting the Property; (v) all rights, claims, or awards solely benefiting the Property; (vi) all personal property located on or about the Property; and (vii) all rights to receive a reimbursement, credit, or refund from the applicable agency or entity of any deposits or fees paid in connection with the development of the Property except as provided otherwise in the Agreement (collectively, the "Assigned Rights").

Seller represents that to the best of its actual knowledge, without investigation, it is not aware of any material defaults under the Assigned Rights, and that all rights related to the Property are hereby assigned to Buyer. No rights in or under the Assigned Rights have been assigned or transferred to any other person or entity other than as set forth in this assignment. To the best of Seller's actual knowledge, Seller has not done any act or omitted to do any act, nor will do or omit to do any act, which might prevent Buyer from, or limit Buyer in, realizing any of the benefits of the Assigned Rights. Seller is not prohibited under any agreement with any other person or any judgment or decree from executing and delivering this assignment.

Seller hereby covenants that it will, at any time and from time to time upon written request therefore, execute and deliver to Buyer, its nominees, successor, and/or permitted assigns, any new or confirmatory instructions and do and perform any other acts which Buyer, its nominees, successors, and/or assigns, may reasonably request in order to fully transfer possession and control of, and protect the rights of Buyer, its nominees, successors, and/or assigns in, all the assets of Seller intended to be transferred and assigned hereby.

This ____ day of _____, 2021

SELLER:

City of Citrus Heights,
a municipal corporation

By: _____

Name: _____

Its: _____

Date: _____

**AMENDMENT NO. EIGHT
TO THE
PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

This AMENDMENT NO. EIGHT to the PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“Amendment No. Eight”) is entered into as of April ____, 2023, by and between the City of Citrus Heights, a municipal corporation (“Seller”), and Woodside 05N, LP, a California limited partnership (“Buyer”). Buyer and Seller may be individually termed a “Party” and collectively termed the “Parties.”

RECITALS

A. Seller and Buyer entered into that certain “Purchase Agreement and Joint Escrow Instructions” dated January 15, 2021, as amended by that certain “Amendment No. One to the Purchase Agreement and Joint Escrow Instructions” dated March 26, 2021, that certain “Amendment No. Two to the Purchase Agreement and Joint Escrow Instructions” dated June 14, 2021, that certain “Amendment No. Three to the Purchase Agreement and Joint Escrow Instructions” dated August 12, 2021, that certain “Amendment No. Four to the Purchase Agreement and Joint Escrow Instructions” having an effective date of October 8, 2021, that certain “Amendment No. Five to the Purchase Agreement and Joint Escrow Instructions” dated December 10, 2021, that certain “Amendment No. Six to the Purchase Agreement and Joint Escrow Instructions” dated January 27, 2022, and that certain “Amendment No. Seven to the Purchase Agreement and Joint Escrow Instructions” dated March 30, 2023 (collectively, the “Purchase Agreement”) in which Buyer agreed to purchase certain real property from Seller more fully described in the Purchase Agreement.

B. This Amendment No. Eight is intended to supplement and modify the provisions of the Purchase Agreement as to the matters explicitly addressed herein. All terms, conditions, and definitions set forth in the Purchase Agreement apply equally to the terms and conditions set forth in this Amendment No. Eight; except that, if a conflict arises regarding the modifications provided for herein, then the terms hereof shall prevail.

AGREEMENT

Wherefore, for adequate consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are each incorporated into the body of this Amendment No. Eight as if set forth in full.
2. **Extension of Outside Closing Date.** The Outside Closing Date referenced in Section 5.2 of the Purchase Agreement is extended from April 17, 2023, 5:00 pm Pacific Standard Time to March 31, 2024, 5:00 pm Pacific Standard Time.
3. **Extension Payment.** As consideration for the extension of the Outside Closing Date granted in Section 2 of this Amendment No. Eight, within five (5) business days after the full execution of this Amendment No. Eight, Buyer shall deposit with Escrow Holder in the Escrow Account, cash or cash equivalent in the sum of Two Hundred Thousand and No/100ths Dollars (\$200,000.00) (the “Extension Payment”) which shall be immediately released to Seller upon Escrow Holder’s receipt thereof. For purposes of clarity, the Extension Payment shall not be applicable to the Purchase Price and shall only be refundable to Buyer

in the event of a Seller default; in the event of a termination for any other reason including, but not limited to, a termination based on the failure of a Buyer's Condition to Close, Seller shall retain the Extension Payment.

4. **Entitlements.** Section 7.4 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

Prior to the Close of Escrow, Buyer shall, at Buyer's sole cost and expense, use good faith, commercially reasonable efforts to obtain the following: (i) City approval of a tentative map for the Property consistent with Buyer's intended development thereof (anticipated to have 69 – 40' Lots and 24 – 35' Lots), with conditions of approval reasonably acceptable to Buyer together with the expiration of all applicable and legally valid periods for the filing of an administrative appeal, judicial challenge, referendum petition, or request for reconsideration (each an "Entitlement Challenge") having expired without the filing of an Entitlement Challenge, or if an Entitlement Challenge is filed or otherwise arises, that such Entitlement Challenge is resolved on terms satisfactory to Buyer in its reasonable discretion (the "Approved Tentative Map"); (ii) City approval of a general plan amendment for the Property consistent with the Approved Tentative Map; (iii) City approval of a zoning change for the Property consistent with the Approved Tentative Map; and (iv) City approval of Buyer's conceptual architectural plans for the homes to be constructed on the Property (collectively, items (i) through (iv) inclusive are referred to herein as the "Entitlements"). Buyer agrees to submit said conception architectural plans to the City within sixty (60) days of execution of this Amendment No. Eight.

5. **Mutually Acceptable Affordable Housing Program.** As of the full execution of this Amendment No. Eight, the Parties anticipate that the Mutually Acceptable Affordable Housing Program will need to comply with the 15% affordability requirement pursuant to the Surplus Lands Act.

6. **Hazardous Substances.** The Parties acknowledge that prior to Buyer's delivery of the Continuation Notice, the Parties were aware of the environmental issues discussed in the following reports: (i) Phase I Environmental Site Assessment Auburn Boulevard (7137) Sacramento County APN 211-0020-025 Citrus Heights, California 95610, prepared by Youngdahl Consulting Group, Inc., dated February 2021 (Project No. E21036.000); (ii) Phase II Environmental Site Assessment Auburn Boulevard (7137), prepared by Youngdahl Consulting Group, Inc., dated April 27, 2021 (Project No. E21036.001); (iii) Phase II Environmental Site Assessment – Step-Out Soil Sampling Auburn Boulevard (7137), prepared by Youngdahl Consulting Group, Inc., dated June 8, 2021 (Project No. E21036.001); (iv) Remediation Plan Auburn Boulevard (7137), prepared by Youngdahl Consulting Group, Inc., dated September 10, 2021 (Project No. E21036.002); (v) Phase II Environmental Site Assessment Amendment Sylvan Corners, prepared by Youngdahl Consulting Group, Inc., dated January 21, 2022 (Project No. E21036.001); and (vi) Removal Action Completion Report 7137 Auburn Boulevard Citrus Heights, California 95621, prepared by GSI Environmental Inc., dated April 12, 2022 (GSI Job No.: 6086) (collectively, the "Known Environmental Issues"). The Parties acknowledge that Seller has fulfilled its obligation pursuant to Section 10.1 of the Purchase Agreement to notify Buyer of the Known Environmental Issues and Buyer elected to send the Continuation Notice with full knowledge of the Known Environmental Issues. The Parties agree that if Buyer purchases the Property, Buyer shall, from and after the Close of Escrow, accept the Property in its as-is condition

including the Known Environmental Issues and unknown environmental issues, if any (except to the extent, if any, exacerbated by Seller or its agents), subject only to the express terms of this Agreement. Other than described above, Seller represents and warrants that Seller is not aware of any other hazardous substances at the Property. Seller further represents and warrants that that Seller is not aware of any changes to the status of the Property since Buyer's deliver of the Continuation Notice.

7. **Confirmation.** Except as expressly modified herein, the Purchase Agreement remains in full force and effect.

8. **Counterparts.** This Amendment No. Eight may be executed in counterparts and facsimile copies of signatures shall be the same as originals.

IN WITNESS WHEREOF, this Amendment No. Eight is executed to be effective as of the date of the last of the Parties to sign below (the "Effective Date").

| <i>BUYER</i> | <i>SELLER</i> |
|--|--|
| <p>WOODSIDE 05N, LP, a California limited partnership</p> <p>By: WDS GP, Inc., a California corporation</p> <p>Its: General Partner</p> <p>By: _____ Michael LaFortune</p> <p>Its: Authorized Signer</p> <p>Date: _____</p> | <p>CITY OF CITRUS HEIGHTS, a municipal corporation</p> <p>By: _____ Ashley Feeney</p> <p>Its: City Manager</p> <p>Date: _____</p> |



CITY OF CITRUS HEIGHTS

CITY COUNCIL STAFF REPORT MEMORANDUM

DATE: April 13, 2023

TO: Mayor and City Council Members
Ashley J. Feeney, City Manager

FROM: Casey Kempenaar, Community Development Director
Alex Turcotte, Chief of Police
Alison Bermudez, Senior Planner

SUBJECT: **Proposed amendments to Article VIII of Chapter 22 of the Citrus Heights Municipal Code (Massage Establishments)**

Summary and Recommendation

Staff is proposing several amendments to the Municipal Code regarding the regulation of massage establishments. These include the placement of a cap on the number of massage establishments, modified regulations on facility operations and application requirements. These amendments are intended to address the current trend of oversaturation of massage establishments. While many massage businesses provide a valuable legal service to their customers, there are some operators that provide for illicit activities which the proposed amendments also seek to further address. The proposed amendments to the Municipal Code are intended to promote a health-based and professional business climate for owners, employees, patrons, and the community at large.

The following motions are recommended:

- Motion 1: Move to determine the proposed amendments are exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the Guidelines; and
- Motion 2: Move to introduce for first reading, read by title only and waive the full reading of Ordinance 2023-_____, as shown in Attachment 1, an Ordinance of the City Council of the City of Citrus Heights amending Article VIII of Chapter 22 of the Citrus Heights Municipal Code (Massage Establishments)

City Council Strategic Goal/Objective

This staff report aligns with the following Citrus Heights City Council Strategic Plan Goals:

- Enhance community vibrancy and engagement
- Preserve & enhance public safety

Fiscal Impact

The proposal to place a cap on the number of licenses issued for massage establishments will not have a direct fiscal impact. There is an indirect cost savings as the licensing fee paid by the applicant does not fully cover the cost associated with staff time processing each application.

There is no impact to the City’s sales tax revenue as massage services are non-taxable.

Background and Analysis

In 2009, the Legislature passed Senate Bill 731, which created the California Massage Therapy Council (“CAMTC”), a new entity with regulatory authority over the certification of massage practitioners throughout the state. SB 731 created uniform standards for these practitioners through a voluntary certification process and imposed limitations on the authority of cities to regulate and restrict massage establishments.

With the relaxation of regulations, many jurisdictions including Citrus Heights began to see an increase in the number of massage establishments. Many of these establishments brought an increase in illicit activities such as prostitution and sex trafficking. Late in 2014, the City placed a moratorium on massage establishments while the legislature continued to amend how local governments were able to regulate the profession. Prior to the establishment of the moratorium, the number of massage establishments in Citrus Heights had increased to over fifty. Eventually, the legislature restored local authority over massage establishments that previous legislative actions preempted, providing local governments’ greater authority to impose reasonable regulations on massage establishments. In September 2016, the City’s moratorium was lifted with the adoption of updated and more stringent licensing requirements.

Over the following two-year period, 2016 to 2018, the Police Department performed several undercover operations that led to the license revocation and closure of 18 massage establishments. Ultimately, in 2019, the City was at an all-time low of 16 massage establishment locations. While the undercover operations were very successful, they did require a significant dedication of resources from staff including the Police Department, Code Enforcement and Business Licensing. Additionally, while most of the revocations involved criminal activity, prosecution by the District Attorney’s office was rare.

Since 2021, the City has begun to see a steady and significant increase in the number of establishments. Although the City’s existing ordinance follows all best practices from the CAMTC, there has been a recent influx of massage establishments. As shown in the chart below, the City now has 29 establishments, over an 80% increase from the all-time low of 16 establishments in 2019.

| |
|------------------------------------|
| Massage Establishment Recap |
|------------------------------------|

| | |
|----------------------|---|
| 2015 | Over 50 locations |
| 2016 | Massage ordinance updated. Key components include requirement for therapists to be CAMTC certified AND locations which have a license revoked may not be used as a new massage business for 5 years |
| 2016-2018 | Sting operations resulting in 18 license revocations |
| 2019 | 16 locations (All-time low) |
| 2020 | 2 new locations added |
| 2021 | 8 new locations added |
| 2022 | 9 new locations added |
| 2023 (through March) | 2 new locations (3 pending) |
| CURRENT TOTAL | 29 (26 current/3 pending) |

When operated professionally and legally, massage establishments provide valuable health and therapeutic services to the public. However, as demonstrated by the number of massage establishments closed during the City’s undercover operations in 2017 – 2019, it is widely recognized that massage establishments have a history of harboring illegal activities. Although the CAMTC certification is intended to eliminate or reduce illegal activity, the certification system is unable to stop all illegal activity. The presence of establishments that engage in illicit activities change the character of neighborhoods, cause blight, and impact the local economy, as legitimate businesses refuse to operate or locate next to or near such illicit uses.

Project Description

To address the growing number of establishments within Citrus Heights, staff is proposing to place a cap on the number of massage establishments licensed to operate in the City. Staff is proposing a cap of one license issued for every 3,400 persons in the City, which would allow for a maximum of 25 locations. The proposed ratio is based upon a review of the number of existing licenses found in nearby jurisdictions. As demonstrated in the table below, Citrus Heights has the highest concentration of establishments with one location per 2,978 persons. Reviewing the surrounding jurisdictions as a whole, the existing concentration averages one location per 4,716 persons.

| Table 1 Current Number of Massage Establishment Licenses | | | |
|---|-------------------------------|-------------------------|-------------------------------|
| Jurisdiction | Population¹ | # Establishments | Per Capita Calculation |
| County of Sacramento | 604,272 | 153 | 1 per 3,975 persons |
| Rancho Cordova | 80,359 | 7 | 1 per 11,480 persons |
| Elk Grove | 176,972 | 13 | 1 per 13,613 persons |
| <i>CITRUS HEIGHTS</i> | <i>86,367</i> | <i>29</i> | <i>1 per 2,978 persons</i> |
| Total | 947,970 | 201 | 1 per 4,716 persons |

¹ Population based upon most recent population estimates from the Dept of Finance (1/1/2022)

Staff proposes to allow one license per 3,400 persons, but it is within the City Council’s purview to adjust the ratio (Attachment 3). In reviewing methodology, staff found references to other jurisdictions that have implemented a licensing cap based upon population. Based on this research, ratios ranged from one license per 3,000 persons to a low of one license per 10,000 persons. Most information garnered for the creation of the ordinance came from the city of Murrieta who recently implemented a ratio of one license per 5,000 persons. As noted earlier, the City was at an all-time low of 16 establishments in 2019, which is a ratio of one establishment per 5,400 persons.

The licensing of a massage establishment requires a significant amount of staff resources. Between all the departments involved with Massage Establishment licensing (business license clerk, building inspection, code enforcement) approximately 10 hours of staff time is required to process a new massage establishment license. However, in some cases, it takes 25-30 hours of staff time in processing a single application. With the significant rise in the number of Massage Establishment applications over the past year, it is a significant drain on resources.

Following the initial issuance of a massage establishment license, establishments receive an annual inspection at the time the license is up for renewal. These annual inspections commonly find violations such as door locks, improper clothing, incomplete/invalid paperwork, and an absent responsible party. While the annual inspections are an important part of the process, the off-calendared inspections have proven to make the most impact. However, given citywide staff demands, limited resources are available to perform the unscheduled visits. If the proposal to cap the number of establishments is approved and the City reaches the licensing cap, there would be a significant saving in staff time that could then be used to ensure current establishments are operating lawfully.

Proposed Changes

As discussed, the most significant change is the proposed licensing cap. However, the proposal does include other refinements and while majority of the proposed updates are clean-up items, below is a list of other key changes worth noting:

| Table 2 Key Changes Section 22 Regarding Massage Establishment Licensing and Operations² | | |
|--|---|--|
| 22.610 | Added new section which places a licensing cap on the number of licenses issued based upon the City’s population | The proposed licensing ratio is one license per 3,400 persons. <i>The City Council may propose an alternate ratio (see Attachment 3)</i> |
| 22.610(d) | Licensing exception that would allow the City Council to grant a massage establishment license meeting certain requirements | In response to concerns expressed by Sunrise MarketPlace, a provision was included to allow the City Council to grant a massage establishment license for a business |

² A complete list of changes is provided as Attachment 4.

| | | |
|----------|---|---|
| | | <p>concept that is “set apart” from other establishments, an example would be a therapeutic massage establishment that provides total body care services (massage, stretching, facials, aromatherapy and other rejuvenating treatments) such as a Massage Envy, Massage Heights, Spavia, or Squeeze.</p> <p>This process is modeled after and would be similar in nature to the existing Letter of Public Convenience and Necessity process the City has for the issuance of an alcohol license in areas that are determined to be “over-concentrated”.</p> |
| 22-610.5 | Added language allowing establishments in good standing to relocate for reasons out of their control i.e. building destruction, loss of lease, etc. | This section was added in response to the comments received from current establishment owners who were concerned that if they needed to relocate and the City was at its licensing cap, they would be forced to close. |
| 22-682 | Added language prohibiting the blocking of visibility into the establishment from any public facing view | Added to enhance the visibility into the facility for safety measures. |
| 22-687 | Removed restriction that prohibited video surveillance | This prohibition was removed at the request of the establishment owners who strongly felt the need for video surveillance for their safety and protection. This would allow the use of devices within the facility except the treatment rooms. The Police Department is supportive of this change. |

Outreach

Staff invited the public, current establishment license holders and property owners to a community workshop to learn more about the proposed update (Attachment 5). The workshop attendees had numerous questions about the proposal and provided feedback along with suggested revisions.

The most significant questions related to how it would affect their existing business, what would happen if they lost their lease, and the strong desire to allow video recording for their safety. It should be noted that staff had translation services available and the FAQ sheet was provided in Russian and Vietnamese (Attachment 6). As outlined in Table 2, staff amended the draft ordinance based upon feedback received at this workshop.

Staff received feedback from Sunrise MarketPlace who expressed concerns the licensing cap would deter potential new higher end massage franchises from locating in their trade area. After consideration of alternatives, staff amended the proposal to include a licensing exception, similar to the licensing exception currently in place for liquor licenses that would allow the City Council to grant the license should the applicant be able to demonstrate their business was “set apart” from similar businesses. An example included in the ordinance of how a business may set themselves apart is to provide total body services in addition to massage. Examples of total body services include facials, aromatherapy and other rejuvenating treatments commonly provided in conjunction with massage.

Environmental Determination

This project is categorically exempt from the California Environmental Quality Act (CEQA Guidelines Section 15061(b) (3)) in that adoption of the proposed Ordinance will not result in any impacts on the physical environment; and under the general rule that the proposed amendments to the Municipal Code do not have the potential to have a significant effect on the environment.

Attachments

1. Ordinance
Exhibit A- Redline Ordinance
2. Ordinance (Clean copy)
3. Methodology Examples
4. Complete List of Changes
5. Community Meeting Flyer
6. Frequently Asked Questions

ORDINANCE NO. 2023-__

**AN ORDINANCE OF THE CITY OF CITRUS HEIGHTS
AMENDING ARTICLE VIII OF CHAPTER 22 OF THE CITRUS HEIGHTS CODE
RELATING TO MASSAGE ESTABLISHMENTS**

The City Council of the City of Citrus Heights does ordain as follows:

SECTION 1. Amendment. Article VIII (Massage Establishments) of Chapter 22 (Businesses) of the Citrus Heights City Code are hereby amended in the manner stated in the attached Exhibit A.

SECTION 2. Severability. If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 3. Effective Date and Notice. This ordinance shall take effect thirty (30) days after its adoption, provided it is published in full or in summary within fifteen (15) days of its adoption, in a newspaper of general circulation published and circulated in the City of Citrus Heights.

PASSED AND ADOPTED by the City Council of the City of Citrus Heights this _____ day of _____, 2023 by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

Tim Schaefer, Mayor

Amy Van, City Clerk

ARTICLE VIII. MASSAGE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 22-600. Title.

This article shall be known as the "Massage Establishment Licensing Law of the City of Citrus Heights."

Sec. 22-601. Authority.

This article is enacted pursuant to Chapter 6, Part 1 of Division 1 of Title 5 of the California Government Code (commencing with Section 51030).

Sec. 22-602. Purpose and intent.

The purpose of this article is to provide for the orderly regulation of the business of massage and massage therapists in the city, and to protect the public's health and safety by establishing certain licensing standards pertaining to massage therapy business activities within the City of Citrus Heights and to recognize massage therapy as a legitimate business occupation and health-related service.

Sec. 22-603. Construction of this article with other city codes.

To the extent that there is any conflict between the provisions of this article and the provisions of any other section(s) of this Code, the provisions of this article shall prevail.

Sec. 22-604. Definitions.

The definitions contained in this section shall govern the construction of this article. Words contained in this article but not defined by this section shall be construed according to the ordinary and common usage of the word, taking into consideration the context of the language and the definition of the word as provided in a standard English language dictionary:

Applicant means ~~the owner of the massage establishment. The applicant may be a sole proprietor, partnership, firm, association, joint stock company, corporation, limited liability corporation, or other business entity to be responsible for the operation of the massage establishment. any person who applies for a license as required by this article. In the event the applicant is a non-natural person (e.g., a corporation), the term applicant shall also include the responsible person legally authorized to act on behalf of the applicant and, submit an application to the city pursuant to this article.~~

~~*Approved national massage organization or association* means an organization recognized by the City of Citrus Heights, specifically the: American Massage Therapy Association (AMTA) or the Associated Bodywork and Massage Professionals (ABMP), or a similar organization which requires: completion of at least 100 hours of massage training or experience; possession of practioner's liability insurance coverage in the minimum amount of \$2,000,000.00 per event; adherence to a code of ethics; and renewal of an annual membership.~~

Business license administrator means the City of Citrus Heights Business License Administrator or his/her designee.

California Massage Therapy Council or CAMTC means the nonprofit organization created pursuant to Business and Profession Code § 4600 et seq. to regulate and issue massage practitioner and therapist certificates.

CAMTC certificate or *certificate* means the certificate, or conditional certificate, issued by the California Massage Therapy Council to massage therapists and to massage practitioners that entitles the holder to practice massage. When used in this article, "CAMTC certification" or "CAMTC-certified" means a person who has a valid, unexpired CAMTC certificate.

CAMTC identification card means a valid and unexpired identification card issued by the California Massage Therapy Council containing a certificate holder's name, photograph, and certification number.

Certificate holder means a person who has a valid, unexpired certificate from, and who is in good standing with, the California Massage Therapy Council.

Chief of police means the Citrus Heights Police Department Chief of Police or his/her designee.

City means the City of Citrus Heights.

City clerk means the City Clerk of the City of Citrus Heights or his/her designee.

City council means the City Council of the City of Citrus Heights.

Compensation means a payment, loan, advance, donation, contribution, deposit, or gift of money, or anything of value.

Employee means a person who performs any massage service on the premises of a massage establishment on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise and whether or not the person is paid a salary, wage or other compensation by the massage establishment.

Home occupation massage therapist means a massage therapist who engages in the business of massage therapy in his/her home or residence, or who engages in massage therapy in both his/her home or residence and in a massage establishment.

Lease means an executed agreement between the applicant and the property owner and/or representative of the owner, authorizing the use of the premises for a massage establishment. The lessee and the applicant shall be the same person or entity.

Licensee means any person operating or maintaining a massage establishment pursuant to a massage establishment license.

Massage means any method of placing pressure on, or friction against, or manipulating, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body below the neck with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in the practice of massage.

Massage establishment means a fixed place of business where any person engages in or carries on massage in exchange for any form of compensation.

Massage establishment license or *license* means a license issued by the business license administrator and required pursuant to this article, to operate or maintain a massage establishment within the city, issued to the massage establishment's responsible person.

Massage school means a facility that teaches the theory, ethics, practice, profession or work of massage.

Massage therapist means any person who gives or administers a massage to another person, for any form of consideration whatsoever. Unless otherwise specified, "massage therapist" includes those persons with CAMTC certification and those individuals classified by his/her school of education as bodyworkers, bodywork therapists, massage practitioner, bodywork practitioner, or massage technicians.

Off-premises massage therapist means massage therapists who provide off-premises massage services and who are self-employed and/or who contract with or work for a business other than a massage establishment. Massage therapists who conduct massage as a home occupation are engaged in off-premises massage therapist businesses.

Owner means each of the following:

- (1) For a sole proprietorship, the sole owner of the business;

- (2) For a business association, each owner of more than ten percent of the business;
- (3) For a corporation, each stockholder of the corporation and each officer and director of the corporation;
- (4) For a limited liability company, each member of the company; and
- (5) For a partnership, each partner, including limited partners, and where a partner is a corporation, the provisions pertaining to a corporate applicant in division (3) apply.

Person means any individual, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

~~*Recognized massage school* means a facility that (1) teaches the theory, ethics, practice, profession or work of massage; (2) requires a resident course of study before the student shall be furnished with a diploma or a certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning; and (3) meets the minimum standards for training and curriculum in massage and related subjects and that was either recognized by the Bureau of Private Postsecondary and Vocational Education pursuant to former Section 94739 of the California Education Code prior to July 1, 2007, and on the date the received his/her certificate, or is recognized by the department of consumer affairs, by an institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior colleges of the Western Association for Schools and Colleges and that is one of the following: (a) a public institution, (b) an institution incorporated and lawfully operating as a nonprofit public benefit corporation under the State of California laws, and that is not managed by an entity for profit; (c) a for-profit institution; (d) an institution incorporated that does not meet all of the criteria in subparagraph (b) that is incorporated and lawfully operating as a nonprofit public benefit corporation, that has been continuously operating since April 15, 1997; (d) a college or university of the state of higher education system, as defined in Education Code § 100850; or (e) a school of greater or equal training that is approved by the corresponding agency recognized by the U.S. Department of Education. Schools or institutions of learning offering a correspondence course not requiring actual attendance shall not be deemed a recognized massage school. The applicant shall provide the documentation necessary, to the satisfaction of the business license administrator, to provide proof that his/her school is a recognized massage school.~~

~~*Public necessity* means the demonstration that a business concept for a proposed new massage establishment is unique to Citrus Heights and set apart from other establishments (i.e. therapeutic massage establishment providing total body care services such as stretching, facials, aromatherapy, and other rejuvenating treatments)~~

Reflexology means a non-invasive complementary modality involving the use of alternating pressure applied to the reflexes within the reflex maps of the body located on the feet, hands, and outer ears.

Responsible person means ~~the sole proprietor of a massage establishment or~~ the person who holds a valid and unrevoked CAMTC certificate and is designated by the sole proprietor, partnership, firm, association, joint stock company, corporation, limited liability corporation, or other business entity to be responsible for the operation of the massage establishment. A responsible person is considered to be any person who supervises, inspects, directs, organizes, manages or controls or is in any way responsible for, or in charge of, the business for which the license is required.

Specified anatomical areas means, less than completely and opaquely covered: Human genitals, public regions, buttocks, or female breasts below a point immediately above the top of the areola, and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

~~*Transfer of Ownership of a Massage Establishment* means when one business owner sells an existing legally established massage business to another entity. Massage establishments which cease operation and the business owner no longer has a valid lease for the specific location, is not eligible to be considered for transfer of ownership. Transfer of Ownership requires new owners to obtain a new massage establishment license.~~

Sec. 22-605. Exemptions from article.

This article shall not apply to the following classes of persons and, except as provided in subsections (4), (5) and (7) below, a massage establishment license or CAMTC certificate shall not be required of such persons while engaged in the performance of the duties of their respective professions, but such persons must comply with the sanitation and decency requirements of this article:

- (1) Physicians, surgeons, nurses, chiropractors, osteopaths, acupuncturists, naturopathic doctors and physical therapists who are duly licensed to practice their respective professions in the state, and massage therapists working under the direct supervision of such duly licensed physicians, surgeons, chiropractors, osteopaths, acupuncturists, naturopathic doctors and physical therapists;
- (2) Trainers of any amateur, semiprofessional or professional athlete or athletic team;
- (3) Hospitals, nursing homes, or persons working in any such establishments;
- (4) Barbers or cosmetologists lawfully carrying out their particular occupation or business, and holding a valid, unrevoked license or certificate of registration issued by the State of California and where massage comprises not more than 25 percent of the square footage of the establishment; however, any massage therapist engaged in massage at such establishment shall be required to obtain a CAMTC certificate;
- (5) Athletic clubs or fitness facilities, where such facility is designed and equipped for indoor sports, exercise, or physical education and where massage comprises not more than ten percent of the square footage of the establishment shall not be required to obtain license pursuant to this article; however, any massage therapists engaged in massage at such establishment shall be required to obtain a CAMTC certificate;
- (6) A recognized school of massage which: (i) teaches the theory, ethics, practice, profession and work of massage; (ii) requires a residence course of study to be given before the student is furnished with a diploma or certificate of learning or completion; and (iii) has been approved pursuant to Education Code § 94915, or, if said school is not located in California, has complied with the standards commensurate with those specified in Education Code § 94915;
- (7) Reflexologists performing reflexology; however, any reflexologist engaged in massage shall be required to obtain a CAMTC certificate.

Sec. 22-606. Application of article to persons practicing massage under a license or permit issued by the city as of the effective date of this article; grandfather clause.

- (a) For purposes of this section, "massage therapist permit" or "permit" means a permit issued to a person by the city prior to the effective date of Ordinance No. 2016-010, and which authorized such person to practice massage therapy within the city.
- (b) For purposes of this section, "massage establishment license" or "license" means a license issued prior to the effective date of Ordinance No. 2016-010, which exempted the license holder from obtaining a massage therapist permit under the prior version of this article.
- (c) Any person holding a valid, unsuspended and unrevoked massage therapist permit or massage establishment license issued by the city pursuant to the prior version of this article for the purpose of practicing massage or operating a massage business, and who has held the permit or license continually for five or more years as of the effective date of Ordinance No. 2016-010, shall be exempt from the requirement to possess a CAMTC certificate to practice massage within the city, provided all of the following criteria are met:
 - (1) No substantiated complaints have been lodged with the city regarding the permit or license holder under this article;

- (2) The permit or license was valid and in good standing as of the effective date of Ordinance No. 2016-010; and
- (3) The holder of the permit or license continues to maintain a valid, unsuspended and unrevoked permit or license issued by the city, and continues to meet all conditions and qualifications specified in the prior version of this article, including, but not limited to, insurance requirements, continuing education from a CAMTC approved school, tuberculosis skin testing, and cardiopulmonary resuscitation. This exemption shall no longer apply if such permit or license is suspended, revoked, or not renewed.

~~(d) Any person holding a valid, unsuspended and unrevoked massage therapist permit or massage establishment license issued by the city pursuant to the prior version of this article for the purpose of practicing massage or operating a massage business, and who has held the permit or license for less than five years as of the effective date of Ordinance No. 2016-010, shall be temporarily exempt from the requirement to possess a CAMTC certificate to practice massage within the city until November 1, 2017, provided all of the following criteria are met:~~

~~(1) No substantiated complaints have been lodged with the city regarding the permit or license holder under this article;~~

~~(2) The permit or license was valid and in good standing as of the effective date of Ordinance No. 2016-010; and~~

~~(3) The holder of the permit or license continues to maintain a valid, unsuspended and unrevoked permit or license issued by the city during the temporary exemption period, and continues to meet all conditions and qualifications specified in the prior version of this article, including, but not limited to, insurance requirements, continuing education, tuberculosis skin testing, and cardiopulmonary resuscitation. The temporary exemption shall no longer apply if such permit or license is suspended, revoked, or not renewed.~~

(de) The business license administrator shall process applications for renewal of massage therapist permits or massage establishment licenses during applicable exemption periods, and may deny the renewal of, suspend, or revoke such permits or licenses, pursuant to the prior version of this article.

(ef) Each massage establishment shall comply with all provisions of this article as if the license holder ~~or employed permit holder~~ holds a CAMTC certificate, including, but not limited to, providing information about a license permit holder on its massage establishment license application, listing the employee on its register of employees, and posting an original copy of the employee's license permit in a conspicuous public place on the premises.

(fg) Except as expressly stated in this section, all terms and conditions of this article, including but not limited to, ~~general business license and~~ massage establishment license requirements, sanitation and decency provisions, and grounds for suspension, revocation, or denial, shall apply to all massage establishments and therapists in the jurisdiction, regardless of the date of issuance of the initial massage therapist permit or massage establishment license.

(gh) For purposes of this section, "prior version of this article" means this article, as it existed from December 10, 2009, to the effective date of Ordinance No. 2016-010 (noninclusive).

Secs. 22-607—22-6089. Reserved

DIVISION 2. LICENSES AND CERTIFICATIONS

Sec. 22-60910. ~~Message establishment—General business license and~~ message establishment license required.

Except as otherwise provided by this article, it is unlawful for any person to operate, engage in, carry on, or allow the operation of a message establishment without having a valid and unexpired ~~general business license issued pursuant to article II of this chapter and a~~ message establishment license issued pursuant to this article. A person shall be deemed to operate or conduct a business and violate this article if the person, without the required ~~general business license and~~ message establishment license in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for, or in charge of, the business for which the license is required.

Sec. 22-610. Message establishment license cap.

- (a) The number of message establishments allowed in the City shall not exceed one (1) message establishment per every 3,400 inhabitants of the City and rounded to the nearest whole number. For purposes of this Section, the total number of inhabitants of the City shall be determined by the most current published data available from the California State Department of Finance, as of the date an application for a message establishment license is filed. The total number of message establishments in existence shall be determined by the most current licensing data available to the City.
- (b) The license cap shall not apply to message establishment licenses issued for massage as an accessory use or licenses issued as a home occupation.
- (c) Message establishments legally in existence on the effective date of this ordinance may continue to operate, including through transfer of ownership, regardless of license cap, provided the message establishment maintains a valid, unexpired and unrevoked message establishment license.
- (d) The City Council shall have the authority to authorize the granting of a message establishment license that would exceed the licensing cap if the applicant demonstrates the location will serve as a public necessity.

Sec. 22-610.5 Applicability of license cap due to relocation.

The business license administrator may grant a message establishment license to an existing message establishment in good standing with must relocation due to situations out of the control of the message establishment owner (i.e. building destruction, termination of lease, etc.).

Sec. 22-611. Term of message establishment license.

A message establishment license issued pursuant to this article shall be valid for a period of one year from the date of its issuance and shall then automatically expire unless renewed pursuant to the terms of this article.

Sec. 22-612. ~~Applicant/license holder must be the responsible person.~~ Non CAMTC Applicants must identify Responsible Person.

Applicants for a message establishment license who are non-CAMTC certified shall identify a responsible person(s) who holds a valid and unrevoked CAMTC certificate on the application. The responsible person(s) must be on premises during all hours of operation. The responsible person shall understand and comply with all regulations pertaining to this article. The applicant for a message establishment license shall be the responsible person, who shall hold a valid and unexpired CAMTC certificate. The responsible person shall also provide documentation to the city evidencing that the business, corporation, partnership or entity that owns the message establishment has designated him or her as the responsible person. If the license is issued, the responsible person shall hold a valid and unexpired CAMTC certificate throughout the term of the license.

Sec. 22-613. Massage establishment license application; application filing.

Applications for a massage establishment license to operate a massage establishment shall be filed on a form by the applicant and shall contain such information as required by the business license administrator, including but not limited to, all of the following information:

- (a) The name, address, and telephone number of the massage establishment.
- (b) The name, residence address and telephone number, and business address and telephone number of each owner of the massage establishment.
- (c) The name, residence address and telephone number for each person identified as the responsible person for the massage establishment.
- (d) The form of business under which the applicant will be conducting the massage establishment, i.e., sole proprietorship, corporation, general or limited partnership, limited liability company, or other form. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable.
- (e) The name, address, and telephone number of the owner of the real property upon, in, or from which the certified massage establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's property.
- (f) A description of the proposed massage establishment, including the type of treatments to be administered.
- (g) A list stating the number of massage therapists the applicant intends to employ at the establishment, the full name, date of birth, current address, and telephone number of each person who will perform massage at the establishment, the identification number and expiration date of each therapist's CAMTC certificate, and how many massage therapists the applicant intends to be working on-site performing massages simultaneously.
- (h) For each owner of the massage establishment who is a CAMTC-certified massage professional, a copy of his or her current certification from the CAMTC as a certified massage practitioner or as a certified massage therapist and a copy of his or her current CAMTC-issued identification card.
- (i) For each owner of the massage establishment who is not a CAMTC-certified massage professional, shall file an application for a background check, including the following:
 - (1) The individual's legal name, height, weight, color of eyes, and hair;
 - (2) A copy of a valid and current driver's license and/or identification issued by a state or federal government agency or other photographic identification bearing a bona fide seal by a foreign government showing, to the satisfaction of the city, that the individual is at least 18 years of age;
 - (3) The individual's business, occupation or employment history for the five years immediately preceding the date of the application;

- (4) The name and address of any massage establishment or similar business owned or operated by the person whether inside or outside the city or state;
- (5) The massage or similar business license history of the individual, including whether such person, in previously operating in this city or another city, county or state under a license or permit, has had such license or permit revoked or suspended, and the reasons and dates for any such revocation or suspension;
- (6) All criminal convictions, except minor traffic violations;
- (7) Two identical passport photos; and
- (8) The individual shall be fingerprinted, and such fingerprints shall be submitted to the department of justice for a criminal background check.

- (j) A floor plan showing the layout of the massage establishment, to the specifications required by the community development department.
- (k) Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial.
- (l) Information demonstrating that the location of the proposed establishment is approved for occupancy as required by the applicable building and fire codes as described in Sec. 22-683.
- (m) Such other information as may be required by the permit authority to determine compliance with any other eligibility requirements for issuance of the license as specified by federal, state, or local law.
- (n) A statement that within the last five years the applicant has not failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.

~~(a) Applications for a massage establishment license to operate a massage establishment shall be filed on a form by the responsible person and shall contain such information as required by the business license administrator, including but not limited to, all of the following information:~~

- ~~(1) The full legal name and any other names used by the responsible person.~~
- ~~(2) The business name, address and telephone number of the proposed massage establishment for which the license is sought.~~
- ~~(3) The current residential address and telephone number of the responsible person, and the two previous residential addresses and business addresses, if any.~~
- ~~(4) If the proposed massage establishment business is:
 - ~~a. A sole proprietorship, the responsible person shall provide the name of the sole owner of the business (if different from the responsible person).~~
 - ~~b. A partnership, the responsible person shall state the partnership's complete name, address, the name of each owner, whether the partnership is general or limited, and a copy of the partnership agreement, if any.~~
 - ~~c. A corporation, the responsible person shall state the corporation's complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California,~~~~

~~the names and capacity of all officers and directors, the name of each owner, and the name of the registered corporate agent and the address of the registered office for service or process.~~

- ~~d. A business association, the responsible person shall state the business association's complete legal name and the name of each owner.~~
 - ~~e. A limited liability company, the responsible person shall state the company's complete legal name and the name of each owner.~~
 - ~~f. Another type of business entity, the responsible person shall state the entity's complete legal name and the name of each owner.~~
- ~~(5) A list stating the number of massage therapists the applicant intends to employ at the establishment, the full name, date of birth, current address, and telephone number of each person who will perform massage at the establishment, the identification number and expiration date of each therapist's CAMTC certificate, and how many massage therapists the applicant intends to be working on-site performing massages simultaneously.~~
- ~~(6) Except as specified in subsection (d), each owner of a massage establishment shall file an application for a background check, including the following:~~
- ~~a. The individual's legal name, height, weight, color of eyes, and hair;~~
 - ~~b. A copy of a valid and current driver's license and/or identification issued by a state or federal government agency or other photographic identification bearing a bona fide seal by a foreign government showing, to the satisfaction of the city, that the individual is at least 18 years of age;~~
 - ~~c. The individual's business, occupation or employment history for the five years immediately preceding the date of the application;~~
 - ~~d. The name and address of any massage establishment or similar business owned or operated by the person whether inside or outside the city or state;~~
 - ~~e. The massage or similar business license history of the individual, including whether such person, in previously operating in this city or another city, county or state under a license or permit, has had such license or permit revoked or suspended, and the reasons and dates for any such revocation or suspension;~~
 - ~~f. All criminal convictions, except minor traffic violations;~~
 - ~~g. Two identical passport photos; and~~
 - ~~h. The individual shall be fingerprinted, and such fingerprints shall be submitted to the department of justice for a criminal background check.~~
- ~~(7) A statement as to whether the proposed business intends to provide massage services off-site.~~
- ~~(8) Information demonstrating that the proposed business is consistent with the applicable land use designation and city zoning code.~~
- ~~(9) A floor plan showing the layout of the massage establishment, to the specifications required by the community and economic development department.~~
- ~~(10) An acknowledgement signed by the responsible person and each owner of the massage establishment that all information contained in the application is true and correct; that the responsible person shall be responsible for all conduct of the business's employees; and acknowledging that the failure of the business, responsible person, any owner, or any employee to comply with Business and Professions Code § 4600 et seq., and any local, state, or federal law, including CAMTC rules or regulations and the provisions of this article, may result in revocation of the massage establishment license.~~

~~(11) Such other identification and information as may be required by the city to verify the truth of the matters specified in this section, or any additional information required to show that the applicant has met the minimum qualifications to be licensed pursuant of this article.~~

~~(b) An application is deemed complete and validly filed when the business license administrator has received all information required by this Code, including the results of the department of justice criminal background check, and has received any fees associated with the application or application processing. However, where a building permit is necessary as a prerequisite to occupancy of a building, the massage establishment license application is not complete and validly filed until proof of submittal of the building permit application is provided to the business license administrator.~~

~~(c) If an owner is a CAMTC certificate holder, submission of a copy of the CAMTC certificate and CAMTC identification card shall deem the person exempt from the requirements set forth in subsection (a)(6) of this section.~~

Sec. 22-614. Massage therapists—CAMTCState certification required.

Except as otherwise provided in this article, it is unlawful for any person to perform massage without having a valid and unexpired CAMTC certificate.

Sec. 22-615. Massage establishment license fees; duplicate licenses.

- (a) The business license administrator shall impose nonrefundable fees to recover the administrative costs of processing applications; issuing and renewing massage establishment licenses; and administering this chapter. Such fees shall be established by resolution of the city council, amended from time to time. To the extent the city council determines practical, such fees may vary depending on the type of license for the sole purpose of apportioning relative regulatory costs to parties regulated.
- (b) The business license administrator shall impose nonrefundable fees to recover the costs of issuing duplicate copies of massage establishment business licenses. Such fees shall be established by resolution of the city council, amended from time to time.

Sec. 22-616. Background investigation.

Under this article, the chief of police shall investigate the background of each owner, as deemed appropriate. The owner shall pay fees for fingerprinting or investigation required by the city for such services. If an owner is a CAMTC certificate holder, the chief of police shall waive the background investigation for that owner. The chief of police shall evaluate each application to evaluate whether an owner's involvement in the operation of the business involves an unreasonable risk to the health, safety or general welfare of the public.

Sec. 22-617. Issuance of licenses; transferability.

- (a) The business license department shall issue the massage establishment license if the applicant meets the requirements of this chapter and no grounds for denial exist under Section 22-619. not later than 60 days after the date a complete application is filed, unless grounds for denial established in this article or otherwise applicable code sections exist.
- (b) A massage establishment license shall not be transferable or assignable from one person to another, or from one location to another. A new massage establishment license application shall be required for any change in the identity of the responsible person and/or owner(s).
- (c) No massage establishment license shall be issued for a change in ownership the identity of the responsible person and/or owner, if the massage establishment, or another massage establishment operating at the same location, is under investigation by a law enforcement agency. Upon completion of the law enforcement agency's investigation, the business license administrator shall process the application for change in ownership the identity of the responsible person and/or owner in accordance with this article.

Sec. 22-618. Conditions on massage establishment license; procedure for imposition of conditions.

- (a) The business license administrator may issue a massage establishment license upon such conditions relating to the method or manner of operation of the business as he/she deems necessary to adequately protect members of the public in their patronage or dealings with the business or to reduce the incidence, detect the commission, or identify perpetrators of crime. Such conditions may be imposed at the time an establishment license is initially issued, upon renewal of the license, or at any time during the term of the license.
- (b) Written notice of conditions imposed on the establishment license and the reasons for the conditions shall be provided to the applicant or license holder.
- (c) Conditions imposed at the issuance of the establishment license become effective immediately following the date of service of the notice thereof. The applicant is entitled to appeal the conditions within the time and manner prescribed; however, the massage establishment license shall not be effective until the appeal is finally determined.
- (d) Conditions imposed at the time of renewal or during the term of the massage establishment license become effective 15 days following the date of service of the notice thereof; however, if an appeal is filed within the time and manner prescribed, the conditions shall not become effective until the appeal is finally determined.

Sec. 22-619. Grounds for denial of massage establishment license.

- (a) The business license administrator shall deny an initial application for a massage establishment license or an application for renewal of a massage establishment license if the business license administrator finds in writing:
 - (1) That the applicant, massage establishment licensee, responsible person and/or owners of the massage business, have engaged in unlawful activity, or been convicted of any of the following offenses or convicted of an offense outside the state that would have constituted any of the following offenses if committed within the state:
 - a. Penal Code §§ 266i, 315, 316, 318 or 647(b) of the state or that the massage personnel or the owners of a massage establishment are required to register under Penal Code § 290;
 - b. Any felony offense involving the sale of a controlled substance specified in the Health and Safety Code §§ 11054, 11055, 11056, 11057 or 11058;
 - c. Any crime or unlawful activity, on the basis of which the chief of police reasonably concludes that by reason of the nature of the crime or activity, the applicant's operation of a massage establishment would pose a risk of harm to the public;
 - (2) That the applicant/responsible person, owners and/or employees of the massage business have engaged in unprofessional conduct, including but not limited to, personal conduct or operation of a business resulting in denial of a license, revocation, suspension, restriction, or any other disciplinary action taken against an applicant, licensee, responsible person, owner and/or employee by the city, by another state, by any other governmental agency, or by CAMTC;
 - 3) Within the last five years, the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.

- (43) That the massage establishment is not operated in a manner, or housed within a building, which complies with all city, state, federal or otherwise applicable, codes, rules, regulations or laws, or CAMTC rules or regulations;
- (54) That the applicant failed to provide information in connection with the application requested by the city, preventing the chief of police from making his or her determination as to suitability to conduct work at the business;
- (65) That the applicant does not meet the qualifications necessary for issuance of a massage establishment license as required by this Code;
- (76) That statements made in the application or any information submitted supplementary to the application are incorrect or untrue;
- (87) That the responsible person is under the age of 18 years of age;
- (98) That, based on specific facts identified by the chief of police, the chief of police reasonably concludes that the operation of the proposed massage establishment would pose a risk to the public, that the applicant would not conduct the business in a law abiding or professional manner, and/or that the operation of the proposed business would subject patrons of the business to a risk of harm or criminal, deceitful or otherwise unethical practices;
- (109) That another massage establishment is or was operating at that same location and any of the following are true:
 - a. The other business's massage establishment license is suspended or was revoked or denied renewal for cause within the previous five years;
 - b. The other business's owner had a massage establishment license suspended, revoked, or denied for cause within the previous five years;
 - c. The business license administrator has served a notice of suspension, revocation, or denial of renewal regarding the other business's massage establishment license within the previous 15 days; or
 - d. An appeal from a notice of suspension, revocation, or denial of renewal is pending;
- (b) In addition to the above grounds for denial of a massage establishment license, the business license administrator shall also deny an application for renewal of a massage establishment license if he/she determines that:
 - (1) One or more conditions applicable to the previous license have been violated;
 - (2) The business and/or its employees do not comply with city, state, federal or otherwise applicable, codes, rules, regulations or laws, including CAMTC rules or regulations.

Sec. 22-620. Method of denial of massage establishment license.

- (a) The business license administrator's denial of an initial application or application for renewal of a massage establishment license shall be in writing, with the reasons stated therefor. Written notice of the denial, together and a copy of this division, or any applicable code provisions applicable to the license, shall be sent to the applicant.
- (b) Denial of an initial application or application for renewal of a massage establishment license shall prohibit operation of the business at any location within the city.
- (c) With respect to denial of an application for renewal of a massage establishment license the immediately preceding license shall be deemed to be in full force and effect for a period of 15 days following the date of service upon the applicant of the notice of denial. If the licensee files an appeal within the time and manner

prescribed, the immediately preceding massage establishment license shall continue in full force and effect until the appeal is finally determined.

Sec. 22-621. Updated therapist list; proof of certification.

- (a) Prior to any new employee performing massage at a massage establishment, a massage establishment shall provide the business license administrator with an updated list stating the number of massage therapists employed at the establishment, the full name, date of birth, current address, and telephone number of each person who performs or will perform massage at the establishment, the identification number and expiration date of each therapist's CAMTC certificate, and how many massage therapists the applicant intends to be working on-site performing massages simultaneously.
- (b) Every massage therapist shall, prior to performing massage at any massage establishment in the city, appear in person before the business license administrator ~~or his or her designee~~ and present a copy of his or her CAMTC certificate and CAMTC identification card. The business license administrator ~~or his or her designee~~ shall verify that the massage therapist appears on the list of employees provided by a massage establishment; verify the massage therapist's identity; and photocopy the therapist's CAMTC certificate and CAMTC identification card.
- (c) A massage establishment shall notify the business license administrator in writing of the name and CAMTC identification number of each massage provider who is no longer an employee of the massage establishment within five days of that person no longer being employed at the business.

Secs. 22-622—22-629. Reserved.

DIVISION 3. RENEWAL OF MASSAGE ESTABLISHMENT LICENSES

Sec. 22-630. Massage establishment license renewal.

- (a) At least 60 days prior to expiration of a massage establishment license, the business license administrator shall mail the licensee an application for renewal. The application for renewal shall be on a form provided by the business license administrator, and shall include the following:
 - (1) A current list stating all massage therapists employed by the massage establishment as of the renewal date, including each individual's full name, date of birth, current address, and telephone number, the identification number and expiration date of each therapist's CAMTC certificate, and how many massage therapists perform massages simultaneously;
 - (2) A copy of each massage therapist's unexpired CAMTC certificate; and
 - (3) A description of any and all improvements which the applicant has made upon the premises since the last massage establishment license was issued.
- (b) The licensee shall file the application for renewal, and any required fees, with the business license administrator prior to the expiration of the immediately preceding license.
- (c) The business license administrator shall investigate and process an application for renewal of a massage establishment license in the same manner as an initial application for a massage establishment license. Within 60 days of receiving a complete application, the business license administrator shall issue the massage establishment license unless grounds for denial identified in this article exist.
- (d) With respect to any application for renewal which is filed on or before the date of expiration of the immediately preceding license, the business license administrator shall extend the term of the immediately preceding license, without charge, during the period of any investigation required in order to determine whether the license should be renewed.

Sec. 22-631. Added application fee for late renewals.

An application for a renewal of a massage establishment license will be deemed received late and subject to a penalty of 50 percent of the application fee if the complete application, including all fees, is not received by the ~~business license administrator finance department~~ within 60 days of the date of expiration of the immediately preceding license. If a licensee continues to operate without a valid license, the licensee may be subject to all other penalties authorized by the City Code, up to and including denial or revocation of a ~~general business license or~~ massage establishment license.

Secs. 22-632—22-639. Reserved.

DIVISION 4. REVOCATION OR SUSPENSION OF MASSAGE ESTABLISHMENT LICENSE

Sec. 22-640. Grounds for revocation or suspension.

A massage establishment license may be suspended for not longer than one year or revoked during its term if the business license administrator finds in writing:

- (1) That pursuant to section 22-619, grounds for denial of an initial application for a massage establishment license exist, including but not limited to, untrue statements made in the application or conviction of a crime that would inhibit the person's ability to conduct the business in a law abiding manner; or
- (2) The business has operated in a manner, or is housed on premises or within a building which violates or is in violation of any city, state, federal, or otherwise applicable codes, rules, regulations or laws, or CAMTC rules or regulations, including, but not limited to, violations by the responsible person or employees; or
- (3) The licensee has violated one or more conditions imposed upon the license.
- (4) If the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.

Sec. 22-641. Method of revocation or suspension.

- (a) The ~~business license administrator finance department~~ may revoke a massage establishment license by issuing written notice of the suspension or revocation, stating the reasons therefor, and serving the notice and a copy of this article or any otherwise applicable code sections, upon the holder of the license.
- (b) The revocation or suspension shall become effective 15 days following the date of service upon the licensee of the notice of revocation or suspension. If the licensee files an appeal within the time and manner prescribed, the license shall remain in effect until the appeal is finally determined.
- (c) A massage establishment license may be temporarily suspended pending disposition of an appeal, if any, if the business license administrator finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health, safety or welfare of the public caused by exercise of the license. If the business license administrator orders a temporary suspension, the notice of suspension shall be delivered to each place of business licensed, served upon the licensee, and shall contain the following:
 - (1) The finding justifying the temporary suspension;

- (2) The time, date, and place at which the licensee may appear in advance of the commencement of the temporary suspension for the purpose of showing cause to the hearing officer as to why the suspension is not necessary; and
- (3) The time and date on which the temporary suspension commences, which shall not be earlier than 24 hours following the time and date of delivery of the notice.

Sec. 22-642. Appeals.

- (a) The holder of a massage establishment license or applicant for a massage establishment license may appeal from the following:
 - (1) The denial of an initial application or renewal of a massage establishment license;
 - (2) The imposition of conditions on an initial massage establishment license at the time of issuance;
 - (3) The imposition of conditions on a massage establishment license at the time of renewal of the license or during the term of the license;
 - (4) The suspension or revocation of a massage establishment license; or
 - (5) The determination that the licensing requirements of this division apply to any person or business.
- (b) An appeal pursuant to this section shall be in writing, shall state the specific reasons for the appeal and the grounds asserted for relief, and be accompanied by a non-refundable appeals processing fee set by city council resolution. The appeal shall be filed with the business license administrator no later than 15 days after the date of service of the notice providing the grounds for appeal. The failure to file an appeal within the time or in the manner prescribed in this section, or to include the appeals processing fee, waives the right to appeal.

Sec. 22-643. Appeal hearing.

- (a) No later than 30 days following the filing of a timely appeal, a hearing shall be held to determine whether the appeal shall be granted. The city shall provide the appellant written notice of the time, date, and place of the hearing no later than ten days before the hearing date.
- (b) The business license administrator shall have the burden of proof during the hearing, and prove that by a preponderance of the evidence that grounds for the business license administrator's action exist. The provisions of the California Administrative Procedure Act, Government Code § 11500 et seq., and formal rules of evidence do not apply at the hearing. At the conclusion of the hearing, the hearing officer shall prepare a written decision which either grants or denies the appeal and contains findings of fact and conclusions. The written decision shall be filed with the business license administrator no later than ten days following the date on which the hearing is closed. The business license administrator shall, within five days of the filing of such decision, serve the applicant or licensee with notice and copy of the written decision.
- (c) With regard to an appeal from the imposition of conditions during the term of a massage establishment license, or on an application for renewal of a massage establishment business license, the business license administrator must demonstrate by substantial evidence the necessity of the conditions. If the imposition of such conditions is upheld, the hearing officer shall specifically provide findings regarding the evidence within the record supporting the determination.

Sec. 22-644. Finality of determination.

- (a) With respect to appeals from the denial of an initial application for a massage establishment license, or the imposition of conditions on an initial application for a massage establishment license, the hearing officer's decision is final upon service of the hearing officer's decision upon the appellant.

- (b) With respect to an appeal from the denial of a renewal of a massage establishment license, from the imposition of conditions on a massage establishment license at the time of renewal or during the term of the business license, or from the revocation of a massage establishment license, the hearing officer's decision is final 15 days after service of the hearing officer's decision on the appellant, unless city council review is requested either by the business license administrator or appellant.

Sec. 22-645. Request for review by city council.

- (a) To request city council review of the hearing officer's decision, the applicant for a license, licensee, or business license administrator shall file a written request with the city clerk within 15 days following the date of service of the hearing officer's decision. The request for review shall state in detail the reasons for review, the error alleged in the hearing officer's decision, and include a copy of the hearing officer's decision attached to the request for review, and an appeals processing fee as set by city council resolution.
- (b) Upon receipt of a request for review by city council, the city clerk shall schedule city council review not later than 30 calendar days following the date of filing of the notice of appeal. The city clerk shall provide notice of the time and date of the hearing to the appellant at least ten days in advance. The city council shall be authorized to deny the introduction of evidence and decide the matter after oral argument presented during the hearing, to admit supplementary evidence with respect to challenges or particular findings, or reject the findings and conclusions and conduct a de novo hearing. The determination by the city council granting or denying the appeal shall be final and shall be accompanied by findings of fact and conclusions, which may consist of an adoption by reference of those by the hearing officer.
- (c) The city council is authorized to order the issuance or renewal of the massage establishment license, the revocation of the massage establishment license, suspension of the massage establishment license, or order the massage establishment license to remain in effect upon such terms and conditions as the city council deems necessary and appropriate.

Sec. 22-646. Effect of revocation or denial of an application for renewal.

- (a) The revocation of a massage establishment license or denial of renewal of a massage establishment license for cause shall terminate the right of the licensee to engage in the business authorized by the license anywhere within the city for a period of five years following the effective date of revocation or denial. At the conclusion of such period, the former holder may file a written application for issuance of a new license with the business license administrator. The business license administrator may grant or deny the application pursuant to such terms and conditions necessary to ensure compliance with the law, including conditions relating to the rehabilitation of the applicant.
- (b) ~~The revocation of a massage establishment license or denial of renewal of a massage establishment license for cause shall automatically and without notice also revoke or deny renewal of each general business license issued for the same business at each location where the business is located. Reserved.~~
- (c) Reserved.
- (d) ~~Any location in which a massage establishment license is revoked, or denied renewal for cause, shall be prohibited obtaining a massage establishment license in the same location for a period of five years. The revocation of a massage establishment's general business license or massage establishment license, or denial of renewal of a massage establishment license for cause, shall prohibit the operation of a massage establishment in that same location for a period of five years. The revocation of a massage establishment's general business license or massage establishment license, or denial of renewal of a massage establishment license for cause, shall also prohibit a massage establishment, or any other business establishment operating in the same location, from using the same name and/or same phone number as the revoked or denied massage establishment for a period of five years.~~
- (e) ~~If a massage establishment's general business license or massage establishment license is revoked or renewal of a massage establishment license is denied for cause, neither the spouse, child, brother, sister or~~

~~parent of the holder of the revoked license nor a person possessing an ownership interest in the business for which the license was revoked or who was an employee thereof shall be entitled to issuance of a massage establishment license for the business.~~

- (f) For purposes of this article, denial of renewal of a massage establishment license "for cause" means denial of renewal pursuant to subsections (a)(1)—(3) or (b) of section 22-619.

Sec. 22-647. Operation with revoked, suspended, or non-renewed license.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the application of massage or the operation of a massage establishment if such person's license has been revoked, suspended, or denied renewal.

Secs. 22-648, 22-649. Reserved.

DIVISION 5. OFF-PREMISES MASSAGE THERAPISTS

Sec. 22-650. Requirements for home occupation massage therapists.

- (a) It shall be unlawful to conduct massage therapy as a home occupation massage therapist without obtaining a valid and unrevoked CAMTC certificate and a home occupation business license pursuant to this Code. A home occupation massage therapist who lives within the city and operates out of his/her home must comply with the city's zoning and business license procedures.
- (b) Home occupation massage therapists shall comply with all of the provisions of this article, except that a home occupation massage therapist need not comply with the facilities requirements of section 22-683.
- (c) The location at which the home occupation massage therapist conducts his/her massage therapy business shall be subject to inspections pursuant to section 22-688.

Sec. 22-651. Requirements for off-premises massage therapists.

- (a) It shall be unlawful to conduct massage therapy as an off-premises massage therapist without obtaining a valid and unrevoked CAMTC certificate.
- (b) An off-premises massage therapist shall comply with all of the provisions of this article except that an off-premises massage therapist need not comply with the facilities requirements of section 22-663.
- (c) Whenever an off-premises massage therapist conducts his/her massage business at any business or commercial establishment that is open to the public, that portion of the business or commercial establishment at which the off-premises massage therapist conducts his/her massage therapy business shall be subject to inspections pursuant to section 22-668. Whenever the off-premises massage therapist conducts his/her massage business at any place other than a business or commercial establishment that is open to the public, the city's agents may enter and inspect the premises or property to the extent authorized by law.

Sec. 22-652. Exemption for businesses at which off-premises massage therapy business is conducted.

- (a) The owner and/or operator of a business at which off-premises massage therapy is conducted is not required to obtain a massage establishment license pursuant to this article, as long as the primary purpose of the business is not massage therapy. The business shall not be required to remain closed during the particular hours provided in this article; however, massage therapy shall only occur during the regular business hours of that business.

- (b) The ~~business license administrator-finance department~~, with input from any other department of the city, or any other appropriate agency or entity, shall be vested with discretion in determining the primary purpose of the business. If ~~the business license administrator-finance department~~ determines a business is operating as a massage establishment, notice of such determination and notice of the requirement to obtain a massage establishment license shall be sent to the business.

Sec. 22-653. Special and charitable events within the city.

- (a) Massage therapists holding a valid and unexpired CAMTC certificate may volunteer their massage services at special events, charitable events, or non-profit events that have obtained required permits from the city. The holders of CAMTC certificates may volunteer at these events without having to obtain any additional permits from the city.
- (b) Each massage therapist shall wear his/her CAMTC identification card on his/her outermost garment when working as a massage therapist at a special or charitable event in the city.

Secs. 22-654—22-679. Reserved.

DIVISION 6. OPERATION OF BUSINESS AND CONDITIONS OF FACILITIES

Sec. 22-680. Compliance with article.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the application of massage or the operation of a massage establishment in violation of the terms of this article, or in violation of any of the terms and conditions of any license issued pursuant to this article.

Sec. 22-681. Closed hours.

It is unlawful for a massage establishment to be open and carry on massage operations between the hours of 9:00 p.m. and 8:00 a.m. of the following day. All customers, patrons and visitors must be excluded from the massage establishment premises during those hours.

Sec. 22-682. Alcoholic beverages.

It is unlawful for any person to sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage, as defined in the Business and Professions Code § 23004, on the premises of any massage establishment or in conjunction with any massage business.

Sec. 22-683. Massage establishment facilities.

Except as otherwise provided by this article a massage establishment license shall not be issued until an inspection by the city reveals that the establishment complies with each of the following minimum requirements:

- (1) The premises and restrooms comply with the current California Building Standards Code, beginning with Title 17 of the California Code of Regulations. All plumbing and electrical installations in the massage establishment must have been installed under permit and inspection by the building department, and installed in accordance with the California Building Standards Code.
- (2) In any massage establishment which employs more than two massage therapists performing on-site massages simultaneously, separate restroom facilities shall be provided for each gender in convenient locations. All restroom facilities shall be equipped with self-closing doors opening in the direction of ingress to such facilities.

Upon a showing of good cause, the community development director may exempt a massage establishment from the requirement to maintain separate restroom facilities.

(3) No massage establishment located in a building or structure with exterior windows and/or doors facing a public street, highway, walkway, or parking area shall block visibility into the interior reception area through the use of curtains, screens, closed blinds, tints or any other material that obstructs, blurs or unreasonably darkens the view into the premises.

(4) No exterior door which is regularly used by the public for ingress or egress shall be locked during business hours, unless the massage establishment is owned by only one (1) individual with one (1) or no employees or independent contractors, provided that any such exterior door is equipped with panic hardware or other similar equipment that would provide an accessible form of egress in the event of an emergency.

Sec. 22-684. Sanitation and decency.

- (a) Every portion of a massage establishment, including appliances and apparatus, shall be kept clean and be operated in a sanitary condition.
- (b) All massage establishments shall provide clean laundered sheets and towels in sufficient quantity which shall be laundered after each use, and stored in a sanitary manner. Receptacles shall be provided for the storage of soiled linens and paper towels.
- (c) Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each business day. Bathtubs shall be thoroughly cleaned after each use.
- (d) Massages may not be carried on within any separate cubicle, room, booth or area within a massage establishment, which is fitted with a ~~temporary or permanently-affixed lock of any kind. door capable of being locked. Additionally, except when there is no staff available to assure security for massage therapy patrons and staff who are behind closed doors, all reception and hallway doors must remain unlocked during business hours.~~
- (e) All massage therapists shall wear garments which cover the entire body, exclusive of the head, neck, arms, legs, hands and feet. The massage therapist must be fully covered from a point not more than four inches above the center of the kneecap to the base of the neck, excluding the arms. Such garments shall not be transparent and must be maintained in a clean and sanitary condition.

Sec. 22-685. Prohibited conduct.

- (a) It is unlawful for any massage therapist, to directly or indirectly, offer, administer, touch, or perform massage to a customer's specified anatomical areas.
- (b) A patron's specified anatomical areas must be fully draped at all times while any employee of the massage establishment, massage therapist or person is in the massage therapy cubicle or room.
- (c) It is unlawful for any massage therapist to perform massage without first draping the client. If at any time the draping falls off or is removed, the massage must stop until the client is redraped.

Sec. 22-686. Register and list of services.

- (a) The licensee of a massage establishment shall maintain a current register of all persons employed as massage therapists by the massage establishment, on a form provided by the city. The register shall include the full name, date of birth, current address, phone number, CAMTC certificate number, and the CAMTC

certificate expiration date of each employee. This register shall be available for inspection to city personnel at all times during regular business hours.

- (b) A list of the services available and the price of such services shall be posted in an open and conspicuous public place on the premises. The services shall be described in readily understandable language. No massage establishment owner, operator, manager or person in charge of, or in control of, the massage establishment shall permit, and no massage therapist shall offer to perform, any services other than those posted.
- (c) For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by police officers, or other city officials charged with enforcement of this chapter. These records may not be used by any massage practitioner or operator for any purpose other than as records of service provided and may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of one year, and be immediately available for inspection during business hours.

~~Sec. 22-687. Prohibition against warning devices.~~

~~The presence of any device which can be utilized as an early warning system, to alert the employees or operator of a massages establishment to the presence of law enforcement or local authorities on the premises is prohibited in any massage establishment. Such prohibited devices include, but are not limited to, light or music dimmers, electronic detection devices, external or internal video equipment and alarm systems other than those used for fire alarms.~~

Sec. 22-687. Recording of activities prohibited.

No part of a Massage Establishment where massage, massage services, or massage therapy are being conducted shall be equipped with any electronic, mechanical or artificial device capable of being used for recording or videotaping, for monitoring the activities, conversation, or other sounds in the treatment room or room used by customers, except in the designated reception areas.

Sec. 22-688. Inspections.

Representatives of the city, including but not limited to members of the police department and any fire protection district of jurisdiction, may, at any time, with or without prior notice, inspect the subject premises and investigate the manner of the operation of the massage establishment to insure that it is operating in compliance with this article.

Sec. 22-689. Massage establishment license and CAMTC certificate posting requirements; identification cards.

- (a) The original massage establishment license and original CAMTC certificate for each massage therapist working at the establishment shall be displayed in a conspicuous public place on the premises. It shall be unlawful to display photocopies of licenses or certificates. The massage establishment licensee shall be responsible for ensuring each massage therapist's certificate is displayed in a conspicuous place on the premises.
- (b) Each massage therapist must wear his or her CAMTC identification card on his/her outermost garment when working in a massage establishment or at a business for the purpose of performing massage.

Sec. 22-690. Change of business name or location.

Except as otherwise provided by this article, no person granted a license pursuant to this article shall operate under any name or conduct his, her or its business at any location not specified in his/her or its license. If the business name, facilities and/or location is changed, a new license shall be obtained.

Sec. 22-691. Schools of massage.

~~No massage establishment shall operate as a massage school. A massage establishment and a massage school shall not share the same facilities. No massage establishment shall use the facilities or premises of a school of massage in connection with the operation of a massage establishment. Students in training at a recognized school of massage may perform a massage on a member of the general public while on the premises of the school of massage in compliance with the following requirements:~~

~~(1) The student performs the massage only under the direct personal supervision of an instructor certified by: The California Department of Consumer Affairs Bureau for post-secondary and vocational education, a state-approved educational facility, an approved national massage organization or association, or similar organization; and~~

~~(2) Massage is performed in compliance with sections 22-683 and 22-684 of this article.~~

Sec. 22-692. Prohibited advertising practices.

- (a) It is a violation of this article for any person who does not possess a valid and unexpired CAMTC certificate, and for any massage establishment that employs or retains such a person, to:
 - (1) State or advertise or put out any sign, card, or other device, or to represent to the public through any print or electronic media, that such person is certified, registered or licensed by a governmental agency as a massage therapist; or
 - (2) Hold oneself out of use the title of "certified massage therapist" or "certified massage practitioner" or any other term, such as "licensed," "registered," or "CMT," that implies or suggests that the person is the holder of a certificate issued by CAMTC.
- (b) No massage business shall place, publish or distribute, or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective clients that any service is available other than those services listed as an available service pursuant to section 22-686, nor shall any massage business employ language in the text of such advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter.

Sec. 22-693. Employment of minors prohibited.

- (a) No massage establishment shall employ any person under 18 years of age as a massage therapist or in any other capacity.
- (b) This section shall not prohibit a business, where massage is not the primary purpose of the business, from employing individuals under 18 years of age. However, massage therapists must still be at least 18 years of age.

Sec. 22-694. Massage therapy services rendered to minors prohibited.

No massage therapist shall perform, cause to be performed, or allow to be performed, any massage on any person under the age of 18, except at the special instance, request, and with the express written consent of a parent, guardian, or other person in lawful custody of the minor upon whose behalf the massage service is requested.

Secs. 22-695—22-699. Reserved.

DIVISION 7. ENFORCEMENT

Sec. 22-700. Separate offense for each day.

Any person who violates any provision of this article shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

Sec. 22-701. Public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this article shall be and is hereby declared a public nuisance and may be abated by the city pursuant to the city's neighborhood enhancement code, chapter 50 of this Code.

Sec. 22-702. Criminal penalties.

Violations of this article are hereby declared to be infractions except that notwithstanding any other provision of this article or state law, any such violation may, in the discretion of the prosecuting attorney, be charged and prosecuted as a misdemeanor. A conviction of an infraction shall be punishable by fine as follows: Upon a first conviction, a fine not exceeding \$100.00; upon the second conviction within one year of a prior conviction, by a fine not exceeding \$200.00; upon any subsequent conviction within one year of two prior convictions, by a fine of not exceeding \$500.00. Any person convicted of a misdemeanor shall be punishable by a fine of not more than \$1,000.00 or by imprisonment not to exceed six months, or both.

Sec. 22-703. Civil injunction.

The violation of any provision of this article shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of city, create a cause for injunctive relief.

ARTICLE VIII. MASSAGE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 22-600. Title.

This article shall be known as the "Massage Establishment Licensing Law of the City of Citrus Heights."

Sec. 22-601. Authority.

This article is enacted pursuant to Chapter 6, Part 1 of Division 1 of Title 5 of the California Government Code (commencing with Section 51030).

Sec. 22-602. Purpose and intent.

The purpose of this article is to provide for the orderly regulation of the business of massage and massage therapists in the city, and to protect the public's health and safety by establishing certain licensing standards pertaining to massage therapy business activities within the City of Citrus Heights and to recognize massage therapy as a legitimate business occupation and health-related service.

Sec. 22-603. Construction of this article with other city codes.

To the extent that there is any conflict between the provisions of this article and the provisions of any other section(s) of this Code, the provisions of this article shall prevail.

Sec. 22-604. Definitions.

The definitions contained in this section shall govern the construction of this article. Words contained in this article but not defined by this section shall be construed according to the ordinary and common usage of the word, taking into consideration the context of the language and the definition of the word as provided in a standard English language dictionary:

Applicant means the owner of the massage establishment. The applicant may be a sole proprietor, partnership, firm, association, joint stock company, corporation, limited liability corporation, or other business entity to be responsible for the operation of the massage establishment.

Business license administrator means the City of Citrus Heights Business License Administrator or his/her designee.

California Massage Therapy Council or CAMTC means the nonprofit organization created pursuant to Business and Profession Code § 4600 et seq. to regulate and issue massage practitioner and therapist certificates.

CAMTC certificate or certificate means the certificate, or conditional certificate, issued by the California Massage Therapy Council to massage therapists and to massage practitioners that entitles the holder to practice massage. When used in this article, "CAMTC certification" or "CAMTC-certified" means a person who has a valid, unexpired CAMTC certificate.

CAMTC identification card means a valid and unexpired identification card issued by the California Massage Therapy Council containing a certificate holder's name, photograph, and certification number.

Certificate holder means a person who has a valid, unexpired certificate from, and who is in good standing with, the California Massage Therapy Council.

Chief of police means the Citrus Heights Police Department Chief of Police or his/her designee.

City means the City of Citrus Heights.

City clerk means the City Clerk of the City of Citrus Heights or his/her designee.

City council means the City Council of the City of Citrus Heights.

Compensation means a payment, loan, advance, donation, contribution, deposit, or gift of money, or anything of value.

Employee means a person who performs any massage service on the premises of a massage establishment on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise and whether or not the person is paid a salary, wage or other compensation by the massage establishment.

Home occupation massage therapist means a massage therapist who engages in the business of massage therapy in his/her home or residence, or who engages in massage therapy in both his/her home or residence and in a massage establishment.

Lease means an executed agreement between the applicant and the property owner and/or representative of the owner, authorizing the use of the premises for a massage establishment. The lessee and the applicant shall be the same person or entity.

Licensee means any person operating or maintaining a massage establishment pursuant to a massage establishment license.

Massage means any method of placing pressure on, or friction against, or manipulating, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body below the neck with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in the practice of massage.

Massage establishment means a fixed place of business where any person engages in or carries on massage in exchange for any form of compensation.

Massage establishment license or license means a license issued by the business license administrator and required pursuant to this article, to operate or maintain a massage establishment within the city, issued to the massage establishment's responsible person.

Massage school means a facility that teaches the theory, ethics, practice, profession or work of massage. *Massage therapist* means any person who gives or administers a massage to another person, for any form of consideration whatsoever. Unless otherwise specified, "massage therapist" includes those persons with CAMTC certification and those individuals classified by his/her school of education as bodyworkers, bodywork therapists, massage practitioner, bodywork practitioner, or massage technicians.

Off-premises massage therapist means massage therapists who provide off-premises massage services and who are self-employed and/or who contract with or work for a business other than a massage establishment. Massage therapists who conduct massage as a home occupation are engaged in off-premises massage therapist businesses.

Owner means each of the following:

- (1) For a sole proprietorship, the sole owner of the business;
- (2) For a business association, each owner of more than ten percent of the business;
- (3) For a corporation, each stockholder of the corporation and each officer and director of the corporation;
- (4) For a limited liability company, each member of the company; and
- (5) For a partnership, each partner, including limited partners, and where a partner is a corporation, the provisions pertaining to a corporate applicant in division (3) apply.

Person means any individual, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

Public necessity means the demonstration that a business concept for a proposed new massage establishment is unique to Citrus Heights and set apart from other establishments (i.e. therapeutic massage establishment providing total body care services such as stretching, facials, aromatherapy, and other rejuvenating treatments)

Reflexology means a non-invasive complementary modality involving the use of alternating pressure applied to the reflexes within the reflex maps of the body located on the feet, hands, and outer ears.

Responsible person means the person who holds a valid and unrevoked CAMTC certificate and is designated by the sole proprietor, partnership, firm, association, joint stock company, corporation, limited liability corporation, or other business entity to be responsible for the operation of the massage establishment. A responsible person is considered to be any person who supervises, inspects, directs, organizes, manages or controls or is in any way responsible for, or in charge of, the business for which the license is required.

Specified anatomical areas means, less than completely and opaquely covered: Human genitals, public regions, buttocks, or female breasts below a point immediately above the top of the areola, and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Transfer of Ownership of a Massage Establishment means when one business owner sells an existing legally established massage business to another entity. Massage establishments which cease operation and the business owner no longer has a valid lease for the specific location, is not eligible to be considered for transfer of ownership. Transfer of Ownership requires new owners to obtain a new massage establishment license.

Sec. 22-605. Exemptions from article.

This article shall not apply to the following classes of persons and, except as provided in subsections (4), (5) and (7) below, a massage establishment license or CAMTC certificate shall not be required of such persons while engaged in the performance of the duties of their respective professions, but such persons must comply with the sanitation and decency requirements of this article:

- (1) Physicians, surgeons, nurses, chiropractors, osteopaths, acupuncturists, naturopathic doctors and physical therapists who are duly licensed to practice their respective professions in the state, and massage therapists working under the direct supervision of such duly licensed physicians, surgeons, chiropractors, osteopaths, acupuncturists, naturopathic doctors and physical therapists;
- (2) Trainers of any amateur, semiprofessional or professional athlete or athletic team;
- (3) Hospitals, nursing homes, or persons working in any such establishments;
- (4) Barbers or cosmetologists lawfully carrying out their particular occupation or business, and holding a valid, unrevoked license or certificate of registration issued by the State of California and where massage comprises not more than 25 percent of the square footage of the establishment; however, any massage therapist engaged in massage at such establishment shall be required to obtain a CAMTC certificate;
- (5) Athletic clubs or fitness facilities, where such facility is designed and equipped for indoor sports, exercise, or physical education and where massage comprises not more than ten percent of the square footage of the establishment shall not be required to obtain license pursuant to this article; however, any massage therapists engaged in massage at such establishment shall be required to obtain a CAMTC certificate;
- (6) A recognized school of massage which: (i) teaches the theory, ethics, practice, profession and work of massage; (ii) requires a residence course of study to be given before the student is furnished with a diploma or certificate of learning or completion; and (iii) has been approved pursuant to Education Code § 94915, or, if said school is not located in California, has complied with the standards commensurate with those specified in Education Code § 94915;

- (7) Reflexologists performing reflexology; however, any reflexologist engaged in massage shall be required to obtain a CAMTC certificate.

Sec. 22-606. Application of article to persons practicing massage under a license or permit issued by the city as of the effective date of this article; grandfather clause.

- (a) For purposes of this section, "massage therapist permit" or "permit" means a permit issued to a person by the city prior to the effective date of Ordinance No. 2016-010, and which authorized such person to practice massage therapy within the city.
- (b) For purposes of this section, "massage establishment license" or "license" means a license issued prior to the effective date of Ordinance No. 2016-010, which exempted the license holder from obtaining a massage therapist permit under the prior version of this article.
- (c) Any person holding a valid, unsuspended and unrevoked massage therapist permit or massage establishment license issued by the city pursuant to the prior version of this article for the purpose of practicing massage or operating a massage business, and who has held the permit or license continually for five or more years as of the effective date of Ordinance No. 2016-010, shall be exempt from the requirement to possess a CAMTC certificate to practice massage within the city, provided all of the following criteria are met:
 - (1) No substantiated complaints have been lodged with the city regarding the permit or license holder under this article;
 - (2) The permit or license was valid and in good standing as of the effective date of Ordinance No. 2016-010; and
 - (3) The holder of the permit or license continues to maintain a valid, unsuspended and unrevoked permit or license issued by the city, and continues to meet all conditions and qualifications specified in the prior version of this article, including, but not limited to, insurance requirements, continuing education from a CAMTC approved school, tuberculosis skin testing, and cardiopulmonary resuscitation. This exemption shall no longer apply if such permit or license is suspended, revoked, or not renewed.
- (d) The business license administrator shall process applications for renewal of massage therapist permits or massage establishment licenses during applicable exemption periods, and may deny the renewal of, suspend, or revoke such permits or licenses, pursuant to the prior version of this article.
- (e) Each massage establishment shall comply with all provisions of this article as if the license holder holds a CAMTC certificate, including, but not limited to, providing information about a license holder on its massage establishment license application, listing the employee on its register of employees, and posting an original copy of the employee's license in a conspicuous public place on the premises.
- (f) Except as expressly stated in this section, all terms and conditions of this article, including but not limited to, massage establishment license requirements, sanitation and decency provisions, and grounds for suspension, revocation, or denial, shall apply to all massage establishments and therapists in the jurisdiction, regardless of the date of issuance of the initial massage therapist permit or massage establishment license.
- (g) For purposes of this section, "prior version of this article" means this article, as it existed from December 10, 2009, to the effective date of Ordinance No. 2016-010 (noninclusive).

Secs. 22-607—22-608. Reserved

DIVISION 2. LICENSES AND CERTIFICATIONS

Sec. 22-609. Massage establishment—massage establishment license required.

Except as otherwise provided by this article, it is unlawful for any person to operate, engage in, carry on, or allow the operation of a massage establishment without having a valid and unexpired massage establishment license issued pursuant to this article. A person shall be deemed to operate or conduct a business and violate this article if the person, without the required massage establishment license in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for, or in charge of, the business for which the license is required.

Sec. 22-610. Massage establishment license cap.

- (a) The number of massage establishments allowed in the City shall not exceed one (1) massage establishment per every 3,400 inhabitants of the City and rounded to the nearest whole number. For purposes of this Section, the total number of inhabitants of the City shall be determined by the most current published data available from the California State Department of Finance, as of the date an application for a massage establishment license is filed. The total number of massage establishments in existence shall be determined by the most current licensing data available to the City.
- (b) The license cap shall not apply to massage establishment licenses issued for massage as an accessory use or licenses issued as a home occupation.
- (c) Massage establishments legally in existence on the effective date of this ordinance may continue to operate, including through transfer of ownership, regardless of license cap, provided the massage establishment maintains a valid, unexpired and unrevoked massage establishment license.
- (d) The City Council shall have the authority to authorize the granting of a massage establishment license that would exceed the licensing cap if the applicant demonstrates the location will serve as a public necessity.

Sec. 22-610.5 Applicability of license cap due to relocation.

The business license administrator may grant a massage establishment license to an existing massage establishment in good standing with must relocation due to situations out of the control of the massage establishment owner (i.e. building destruction, termination of lease, etc.).

Sec. 22-611. Term of massage establishment license.

A massage establishment license issued pursuant to this article shall be valid for a period of one year from the date of its issuance and shall then automatically expire unless renewed pursuant to the terms of this article.

Sec. 22-612. Non CAMTC Applicants must identify Responsible Person.

Applicants for a massage establishment license who are non-CAMTC certified shall identify a responsible person(s) who holds a valid and unrevoked CAMTC certificate on the application. The responsible person(s) must be on premises during all hours of operation. The responsible person shall understand and comply with all regulations pertaining to this article.

Sec. 22-613. Massage establishment license application; application filing.

Applications for a massage establishment license to operate a massage establishment shall be filed on a form by the applicant and shall contain such information as required by the business license administrator, including but not limited to, all of the following information:

- (a) The name, address, and telephone number of the massage establishment.

- (b) The name, residence address and telephone number, and business address and telephone number of each owner of the massage establishment.
- (c) The name, residence address and telephone number for each person identified as the responsible person for the massage establishment.
- (d) The form of business under which the applicant will be conducting the massage establishment, i.e., sole proprietorship, corporation, general or limited partnership, limited liability company, or other form. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable.
- (e) The name, address, and telephone number of the owner of the real property upon, in, or from which the certified massage establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's property.
- (f) A description of the proposed massage establishment, including the type of treatments to be administered.
- (g) A list stating the number of massage therapists the applicant intends to employ at the establishment, the full name, date of birth, current address, and telephone number of each person who will perform massage at the establishment, the identification number and expiration date of each therapist's CAMTC certificate, and how many massage therapists the applicant intends to be working on-site performing massages simultaneously.
- (h) For each owner of the massage establishment who is a CAMTC-certified massage professional, a copy of his or her current certification from the CAMTC as a certified massage practitioner or as a certified massage therapist and a copy of his or her current CAMTC-issued identification card.
- (i) For each owner of the massage establishment who is not a CAMTC-certified massage professional, shall file an application for a background check, including the following:
 - (1) The individual's legal name, height, weight, color of eyes, and hair;
 - (2) A copy of a valid and current driver's license and/or identification issued by a state or federal government agency or other photographic identification bearing a bona fide seal by a foreign government showing, to the satisfaction of the city, that the individual is at least 18 years of age;
 - (3) The individual's business, occupation or employment history for the five years immediately preceding the date of the application;
 - (4) The name and address of any massage establishment or similar business owned or operated by the person whether inside or outside the city or state;
 - (5) The massage or similar business license history of the individual, including whether such person, in previously operating in this city or another city, county or state under a license or permit, has had such license or permit revoked or suspended, and the reasons and dates for any such revocation or suspension;
 - (6) All criminal convictions, except minor traffic violations;

- (7) Two identical passport photos; and
 - (8) The individual shall be fingerprinted, and such fingerprints shall be submitted to the department of justice for a criminal background check.
- (j) A floor plan showing the layout of the massage establishment, to the specifications required by the community development department.
 - (k) Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial.
 - (l) Information demonstrating that the location of the proposed establishment is approved for occupancy as required by the applicable building and fire codes as described in Sec. 22-683.
 - (m) Such other information as may be required by the permit authority to determine compliance with any other eligibility requirements for issuance of the license as specified by federal, state, or local law.
 - (n) A statement that within the last five years the applicant has not failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.

Sec. 22-614. Massage therapists—CAMTC certification required.

Except as otherwise provided in this article, it is unlawful for any person to perform massage without having a valid and unexpired CAMTC certificate.

Sec. 22-615. Massage establishment license fees; duplicate licenses.

- (a) The business license administrator shall impose nonrefundable fees to recover the administrative costs of processing applications; issuing and renewing massage establishment licenses; and administering this chapter. Such fees shall be established by resolution of the city council, amended from time to time. To the extent the city council determines practical, such fees may vary depending on the type of license for the sole purpose of apportioning relative regulatory costs to parties regulated.
- (b) The business license administrator shall impose nonrefundable fees to recover the costs of issuing duplicate copies of massage establishment business licenses. Such fees shall be established by resolution of the city council, amended from time to time.

Sec. 22-616. Background investigation.

Under this article, the chief of police shall investigate the background of each owner, as deemed appropriate. The owner shall pay fees for fingerprinting or investigation required by the city for such services. If an owner is a CAMTC certificate holder, the chief of police shall waive the background investigation for that owner. The chief of police shall evaluate each application to evaluate whether an owner's involvement in the operation of the business involves an unreasonable risk to the health, safety or general welfare of the public.

Sec. 22-617. Issuance of licenses; transferability.

- (a) The business license department shall issue the massage establishment license if the applicant meets the requirements of this chapter and no grounds for denial exist under Section 22-619.
- (b) A massage establishment license shall not be transferable or assignable from one person to another, or from one location to another.

- (c) No massage establishment license shall be issued for a change in ownership if the massage establishment, or another massage establishment operating at the same location, is under investigation by a law enforcement agency. Upon completion of the law enforcement agency's investigation, the business license administrator shall process the application for change in ownership in accordance with this article.

Sec. 22-618. Conditions on massage establishment license; procedure for imposition of conditions.

- (a) The business license administrator may issue a massage establishment license upon such conditions relating to the method or manner of operation of the business as he/she deems necessary to adequately protect members of the public in their patronage or dealings with the business or to reduce the incidence, detect the commission, or identify perpetrators of crime. Such conditions may be imposed at the time an establishment license is initially issued, upon renewal of the license, or at any time during the term of the license.
- (b) Written notice of conditions imposed on the establishment license and the reasons for the conditions shall be provided to the applicant or license holder.
- (c) Conditions imposed at the issuance of the establishment license become effective immediately following the date of service of the notice thereof. The applicant is entitled to appeal the conditions within the time and manner prescribed; however, the massage establishment license shall not be effective until the appeal is finally determined.
- (d) Conditions imposed at the time of renewal or during the term of the massage establishment license become effective 15 days following the date of service of the notice thereof; however, if an appeal is filed within the time and manner prescribed, the conditions shall not become effective until the appeal is finally determined.

Sec. 22-619. Grounds for denial of massage establishment license.

- (a) The business license administrator shall deny an initial application for a massage establishment license or an application for renewal of a massage establishment license if the business license administrator finds in writing:
 - (1) That the applicant, massage establishment licensee, responsible person and/or owners of the massage business, have engaged in unlawful activity, or been convicted of any of the following offenses or convicted of an offense outside the state that would have constituted any of the following offenses if committed within the state:
 - a. Penal Code §§ 266i, 315, 316, 318 or 647(b) of the state or that the massage personnel or the owners of a massage establishment are required to register under Penal Code § 290;
 - b. Any felony offense involving the sale of a controlled substance specified in the Health and Safety Code §§ 11054, 11055, 11056, 11057 or 11058;
 - c. Any crime or unlawful activity, on the basis of which the chief of police reasonably concludes that by reason of the nature of the crime or activity, the applicant's operation of a massage establishment would pose a risk of harm to the public;
 - (2) That the applicant/responsible person, owners and/or employees of the massage business have engaged in unprofessional conduct, including but not limited to, personal conduct or operation of a business resulting in denial of a license, revocation, suspension, restriction, or any other disciplinary action taken against an applicant, licensee, responsible person, owner and/or employee by the city, by another state, by any other governmental agency, or by CAMTC;
 - 3) Within the last five years, the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and

hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.

- (4) That the massage establishment is not operated in a manner, or housed within a building, which complies with all city, state, federal or otherwise applicable, codes, rules, regulations or laws, or CAMTC rules or regulations;
 - (5) That the applicant failed to provide information in connection with the application requested by the city, preventing the chief of police from making his or her determination as to suitability to conduct work at the business;
 - (6) That the applicant does not meet the qualifications necessary for issuance of a massage establishment license as required by this Code;
 - (7) That statements made in the application or any information submitted supplementary to the application are incorrect or untrue;
 - (8) That the responsible person is under the age of 18 years of age;
 - (9) That, based on specific facts identified by the chief of police, the chief of police reasonably concludes that the operation of the proposed massage establishment would pose a risk to the public, that the applicant would not conduct the business in a law abiding or professional manner, and/or that the operation of the proposed business would subject patrons of the business to a risk of harm or criminal, deceitful or otherwise unethical practices;
 - (10) That another massage establishment is or was operating at that same location and any of the following are true:
 - a. The other business's massage establishment license is suspended or was revoked or denied renewal for cause within the previous five years;
 - b. The other business's owner had a massage establishment license suspended, revoked, or denied for cause within the previous five years;
 - c. The business license administrator has served a notice of suspension, revocation, or denial of renewal regarding the other business's massage establishment license within the previous 15 days; or
 - d. An appeal from a notice of suspension, revocation, or denial of renewal is pending;
- (b) In addition to the above grounds for denial of a massage establishment license, the business license administrator shall also deny an application for renewal of a massage establishment license if he/she determines that:
- (1) One or more conditions applicable to the previous license have been violated;
 - (2) The business and/or its employees do not comply with city, state, federal or otherwise applicable, codes, rules, regulations or laws, including CAMTC rules or regulations.

Sec. 22-620. Method of denial of massage establishment license.

- (a) The business license administrator's denial of an initial application or application for renewal of a massage establishment license shall be in writing, with the reasons stated therefor. Written notice of the denial, together and a copy of this division, or any applicable code provisions applicable to the license, shall be sent to the applicant.
- (b) Denial of an initial application or application for renewal of a massage establishment license shall prohibit operation of the business at any location within the city.

- (c) With respect to denial of an application for renewal of a massage establishment license the immediately preceding license shall be deemed to be in full force and effect for a period of 15 days following the date of service upon the applicant of the notice of denial. If the licensee files an appeal within the time and manner prescribed, the immediately preceding massage establishment license shall continue in full force and effect until the appeal is finally determined.

Sec. 22-621. Updated therapist list; proof of certification.

- (a) Prior to any new employee performing massage at a massage establishment, a massage establishment shall provide the business license administrator with an updated list stating the number of massage therapists employed at the establishment, the full name, date of birth, current address, and telephone number of each person who performs or will perform massage at the establishment, the identification number and expiration date of each therapist's CAMTC certificate, and how many massage therapists the applicant intends to be working on-site performing massages simultaneously.
- (b) Every massage therapist shall, prior to performing massage at any massage establishment in the city, appear in person before the business license administrator and present a copy of his or her CAMTC certificate and CAMTC identification card. The business license administrator shall verify that the massage therapist appears on the list of employees provided by a massage establishment; verify the massage therapist's identity; and photocopy the therapist's CAMTC certificate and CAMTC identification card.
- (c) A massage establishment shall notify the business license administrator in writing of the name and CAMTC identification number of each massage provider who is no longer an employee of the massage establishment within five days of that person no longer being employed at the business.

Secs. 22-622—22-629. Reserved.

DIVISION 3. RENEWAL OF MASSAGE ESTABLISHMENT LICENSES

Sec. 22-630. Massage establishment license renewal.

- (a) At least 60 days prior to expiration of a massage establishment license, the business license administrator shall mail the licensee an application for renewal. The application for renewal shall be on a form provided by the business license administrator, and shall include the following:
 - (1) A current list stating all massage therapists employed by the massage establishment as of the renewal date, including each individual's full name, date of birth, current address, and telephone number, the identification number and expiration date of each therapist's CAMTC certificate, and how many massage therapists perform massages simultaneously;
 - (2) A copy of each massage therapist's unexpired CAMTC certificate; and
 - (3) A description of any and all improvements which the applicant has made upon the premises since the last massage establishment license was issued.
- (b) The licensee shall file the application for renewal, and any required fees, with the business license administrator prior to the expiration of the immediately preceding license.
- (c) The business license administrator shall investigate and process an application for renewal of a massage establishment license in the same manner as an initial application for a massage establishment license. Within 60 days of receiving a complete application, the business license administrator shall issue the massage establishment license unless grounds for denial identified in this article exist.
- (d) With respect to any application for renewal which is filed on or before the date of expiration of the immediately preceding license, the business license administrator shall extend the term of the immediately preceding license, without charge, during the period of any investigation required in order to determine whether the license should be renewed.

Sec. 22-631. Added application fee for late renewals.

An application for a renewal of a massage establishment license will be deemed received late and subject to a penalty of 50 percent of the application fee if the complete application, including all fees, is not received by the business license administrator within 60 days of the date of expiration of the immediately preceding license. If a licensee continues to operate without a valid license, the licensee may be subject to all other penalties authorized by the City Code, up to and including denial or revocation of a massage establishment license.

Secs. 22-632—22-639. Reserved.

DIVISION 4. REVOCATION OR SUSPENSION OF MASSAGE ESTABLISHMENT LICENSE

Sec. 22-640. Grounds for revocation or suspension.

A massage establishment license may be suspended for not longer than one year or revoked during its term if the business license administrator finds in writing:

- (1) That pursuant to section 22-619, grounds for denial of an initial application for a massage establishment license exist, including but not limited to, untrue statements made in the application or conviction of a crime that would inhibit the person's ability to conduct the business in a law abiding manner; or
- (2) The business has operated in a manner, or is housed on premises or within a building which violates or is in violation of any city, state, federal, or otherwise applicable codes, rules, regulations or laws, or CAMTC rules or regulations, including, but not limited to, violations by the responsible person or employees; or
- (3) The licensee has violated one or more conditions imposed upon the license.
- (4) If the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.

Sec. 22-641. Method of revocation or suspension.

- (a) The business license administrator may revoke a massage establishment license by issuing written notice of the suspension or revocation, stating the reasons therefor, and serving the notice and a copy of this article or any otherwise applicable code sections, upon the holder of the license.
- (b) The revocation or suspension shall become effective 15 days following the date of service upon the licensee of the notice of revocation or suspension. If the licensee files an appeal within the time and manner prescribed, the license shall remain in effect until the appeal is finally determined.
- (c) A massage establishment license may be temporarily suspended pending disposition of an appeal, if any, if the business license administrator finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health, safety or welfare of the public caused by exercise of the license. If the business license administrator orders a temporary suspension, the notice of suspension shall be delivered to each place of business licensed, served upon the licensee, and shall contain the following:
 - (1) The finding justifying the temporary suspension;

- (2) The time, date, and place at which the licensee may appear in advance of the commencement of the temporary suspension for the purpose of showing cause to the hearing officer as to why the suspension is not necessary; and
- (3) The time and date on which the temporary suspension commences, which shall not be earlier than 24 hours following the time and date of delivery of the notice.

Sec. 22-642. Appeals.

- (a) The holder of a massage establishment license or applicant for a massage establishment license may appeal from the following:
 - (1) The denial of an initial application or renewal of a massage establishment license;
 - (2) The imposition of conditions on an initial massage establishment license at the time of issuance;
 - (3) The imposition of conditions on a massage establishment license at the time of renewal of the license or during the term of the license;
 - (4) The suspension or revocation of a massage establishment license; or
 - (5) The determination that the licensing requirements of this division apply to any person or business.
- (b) An appeal pursuant to this section shall be in writing, shall state the specific reasons for the appeal and the grounds asserted for relief, and be accompanied by a non-refundable appeals processing fee set by city council resolution. The appeal shall be filed with the business license administrator no later than 15 days after the date of service of the notice providing the grounds for appeal. The failure to file an appeal within the time or in the manner prescribed in this section, or to include the appeals processing fee, waives the right to appeal.

Sec. 22-643. Appeal hearing.

- (a) No later than 30 days following the filing of a timely appeal, a hearing shall be held to determine whether the appeal shall be granted. The city shall provide the appellant written notice of the time, date, and place of the hearing no later than ten days before the hearing date.
- (b) The business license administrator shall have the burden of proof during the hearing, and prove that by a preponderance of the evidence that grounds for the business license administrator's action exist. The provisions of the California Administrative Procedure Act, Government Code § 11500 et seq., and formal rules of evidence do not apply at the hearing. At the conclusion of the hearing, the hearing officer shall prepare a written decision which either grants or denies the appeal and contains findings of fact and conclusions. The written decision shall be filed with the business license administrator no later than ten days following the date on which the hearing is closed. The business license administrator shall, within five days of the filing of such decision, serve the applicant or licensee with notice and copy of the written decision.
- (c) With regard to an appeal from the imposition of conditions during the term of a massage establishment license, or on an application for renewal of a massage establishment business license, the business license administrator must demonstrate by substantial evidence the necessity of the conditions. If the imposition of such conditions is upheld, the hearing officer shall specifically provide findings regarding the evidence within the record supporting the determination.

Sec. 22-644. Finality of determination.

- (a) With respect to appeals from the denial of an initial application for a massage establishment license, or the imposition of conditions on an initial application for a massage establishment license, the hearing officer's decision is final upon service of the hearing officer's decision upon the appellant.

- (b) With respect to an appeal from the denial of a renewal of a massage establishment license, from the imposition of conditions on a massage establishment license at the time of renewal or during the term of the business license, or from the revocation of a massage establishment license, the hearing officer's decision is final 15 days after service of the hearing officer's decision on the appellant, unless city council review is requested either by the business license administrator or appellant.

Sec. 22-645. Request for review by city council.

- (a) To request city council review of the hearing officer's decision, the applicant for a license, licensee, or business license administrator shall file a written request with the city clerk within 15 days following the date of service of the hearing officer's decision. The request for review shall state in detail the reasons for review, the error alleged in the hearing officer's decision, and include a copy of the hearing officer's decision attached to the request for review, and an appeals processing fee as set by city council resolution.
- (b) Upon receipt of a request for review by city council, the city clerk shall schedule city council review not later than 30 calendar days following the date of filing of the notice of appeal. The city clerk shall provide notice of the time and date of the hearing to the appellant at least ten days in advance. The city council shall be authorized to deny the introduction of evidence and decide the matter after oral argument presented during the hearing, to admit supplementary evidence with respect to challenges or particular findings, or reject the findings and conclusions and conduct a de novo hearing. The determination by the city council granting or denying the appeal shall be final and shall be accompanied by findings of fact and conclusions, which may consist of an adoption by reference of those by the hearing officer.
- (c) The city council is authorized to order the issuance or renewal of the massage establishment license, the revocation of the massage establishment license, suspension of the massage establishment license, or order the massage establishment license to remain in effect upon such terms and conditions as the city council deems necessary and appropriate.

Sec. 22-646. Effect of revocation or denial of an application for renewal.

- (a) The revocation of a massage establishment license or denial of renewal of a massage establishment license for cause shall terminate the right of the licensee to engage in the business authorized by the license anywhere within the city for a period of five years following the effective date of revocation or denial. At the conclusion of such period, the former holder may file a written application for issuance of a new license with the business license administrator. The business license administrator may grant or deny the application pursuant to such terms and conditions necessary to ensure compliance with the law, including conditions relating to the rehabilitation of the applicant.
- (b) Reserved.
- (c) Reserved.
- (d) Any location in which a massage establishment license is revoked, or denied renewal for cause, shall be prohibited obtaining a massage establishment license in the same location for a period of five years.
- (e)
- (f) For purposes of this article, denial of renewal of a massage establishment license "for cause" means denial of renewal pursuant to subsections (a)(1)—(3) or (b) of section 22-619.

Sec. 22-647. Operation with revoked, suspended, or non-renewed license.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the application of massage or the operation of a massage establishment if such person's license has been revoked, suspended, or denied renewal.

Secs. 22-648, 22-649. Reserved.

DIVISION 5. OFF-PREMISES MASSAGE THERAPISTS

Sec. 22-650. Requirements for home occupation massage therapists.

- (a) It shall be unlawful to conduct massage therapy as a home occupation massage therapist without obtaining a valid and unrevoked CAMTC certificate and a home occupation business license pursuant to this Code. A home occupation massage therapist who lives within the city and operates out of his/her home must comply with the city's zoning and business license procedures.
- (b) Home occupation massage therapists shall comply with all of the provisions of this article, except that a home occupation massage therapist need not comply with the facilities requirements of section 22-683.
- (c) The location at which the home occupation massage therapist conducts his/her massage therapy business shall be subject to inspections pursuant to section 22-688.

Sec. 22-651. Requirements for off-premises massage therapists.

- (a) It shall be unlawful to conduct massage therapy as an off-premises massage therapist without obtaining a valid and unrevoked CAMTC certificate.
- (b) An off-premises massage therapist shall comply with all of the provisions of this article except that an off-premises massage therapist need not comply with the facilities requirements of section 22-663.
- (c) Whenever an off-premises massage therapist conducts his/her massage business at any business or commercial establishment that is open to the public, that portion of the business or commercial establishment at which the off-premises massage therapist conducts his/her massage therapy business shall be subject to inspections pursuant to section 22-668. Whenever the off-premises massage therapist conducts his/her massage business at any place other than a business or commercial establishment that is open to the public, the city's agents may enter and inspect the premises or property to the extent authorized by law.

Sec. 22-652. Exemption for businesses at which off-premises massage therapy business is conducted.

- (a) The owner and/or operator of a business at which off-premises massage therapy is conducted is not required to obtain a massage establishment license pursuant to this article, as long as the primary purpose of the business is not massage therapy. The business shall not be required to remain closed during the particular hours provided in this article; however, massage therapy shall only occur during the regular business hours of that business.
- (b) The business license administrator, with input from any other department of the city, or any other appropriate agency or entity, shall be vested with discretion in determining the primary purpose of the business. If the business license administrator determines a business is operating as a massage establishment, notice of such determination and notice of the requirement to obtain a massage establishment license shall be sent to the business.

Sec. 22-653. Special and charitable events within the city.

- (a) Massage therapists holding a valid and unexpired CAMTC certificate may volunteer their massage services at special events, charitable events, or non-profit events that have obtained required permits from the city. The holders of CAMTC certificates may volunteer at these events without having to obtain any additional permits from the city.

- (b) Each massage therapist shall wear his/her CAMTC identification card on his/her outermost garment when working as a massage therapist at a special or charitable event in the city.

Secs. 22-654—22-679. Reserved.

DIVISION 6. OPERATION OF BUSINESS AND CONDITIONS OF FACILITIES

Sec. 22-680. Compliance with article.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the application of massage or the operation of a massage establishment in violation of the terms of this article, or in violation of any of the terms and conditions of any license issued pursuant to this article.

Sec. 22-681. Closed hours.

It is unlawful for a massage establishment to be open and carry on massage operations between the hours of 9:00 p.m. and 8:00 a.m. of the following day. All customers, patrons and visitors must be excluded from the massage establishment premises during those hours.

Sec. 22-682. Alcoholic beverages.

It is unlawful for any person to sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage, as defined in the Business and Professions Code § 23004, on the premises of any massage establishment or in conjunction with any massage business.

Sec. 22-683. Massage establishment facilities.

Except as otherwise provided by this article a massage establishment license shall not be issued until an inspection by the city reveals that the establishment complies with each of the following minimum requirements:

- (1) The premises and restrooms comply with the current California Building Standards Code, beginning with Title 17 of the California Code of Regulations. All plumbing and electrical installations in the massage establishment must have been installed under permit and inspection by the building department, and installed in accordance with the California Building Standards Code.
- (2) In any massage establishment which employs more than two massage therapists performing on-site massages simultaneously, separate restroom facilities shall be provided for each gender in convenient locations. All restroom facilities shall be equipped with self-closing doors opening in the direction of ingress to such facilities.

Upon a showing of good cause, the community development director may exempt a massage establishment from the requirement to maintain separate restroom facilities.
- (3) No massage establishment located in a building or structure with exterior windows and/or doors facing a public street, highway, walkway, or parking area shall block visibility into the interior reception area through the use of curtains, screens, closed blinds, tints or any other material that obstructs, blurs or unreasonably darkens the view into the premises.
- (4) No exterior door which is regularly used by the public for ingress or egress shall be locked during business hours, unless the massage establishment is owned by only one (1) individual with one (1) or no employees or independent contractors, provided that any such exterior door is equipped with panic hardware or other similar equipment that would provide an accessible form of egress in the event of an emergency.

Sec. 22-684. Sanitation and decency.

- (a) Every portion of a massage establishment, including appliances and apparatus, shall be kept clean and be operated in a sanitary condition.
- (b) All massage establishments shall provide clean laundered sheets and towels in sufficient quantity which shall be laundered after each use, and stored in a sanitary manner. Receptacles shall be provided for the storage of soiled linens and paper towels.
- (c) Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each business day. Bathtubs shall be thoroughly cleaned after each use.
- (d) Massages may not be carried on within any separate cubicle, room, booth or area within a massage establishment, which is fitted with a temporary or permanently-affixed lock of any kind.
- (e) All massage therapists shall wear garments which cover the entire body, exclusive of the head, neck, arms, legs, hands and feet. The massage therapist must be fully covered from a point not more than four inches above the center of the kneecap to the base of the neck, excluding the arms. Such garments shall not be transparent and must be maintained in a clean and sanitary condition.

Sec. 22-685. Prohibited conduct.

- (a) It is unlawful for any massage therapist, to directly or indirectly, offer, administer, touch, or perform massage to a customer's specified anatomical areas.
- (b) A patron's specified anatomical areas must be fully draped at all times while any employee of the massage establishment, massage therapist or person is in the massage therapy cubicle or room.
- (c) It is unlawful for any massage therapist to perform massage without first draping the client. If at any time the draping falls off or is removed, the massage must stop until the client is redraped.

Sec. 22-686. Register and list of services.

- (a) The licensee of a massage establishment shall maintain a current register of all persons employed as massage therapists by the massage establishment, on a form provided by the city. The register shall include the full name, date of birth, current address, phone number, CAMTC certificate number, and the CAMTC certificate expiration date of each employee. This register shall be available for inspection to city personnel at all times during regular business hours.
- (b) A list of the services available and the price of such services shall be posted in an open and conspicuous public place on the premises. The services shall be described in readily understandable language. No massage establishment owner, operator, manager or person in charge of, or in control of, the massage establishment shall permit, and no massage therapist shall offer to perform, any services other than those posted.
- (c) For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by police officers, or other city officials charged with enforcement of this chapter. These records may not be used by any massage practitioner or operator for any purpose other than as records of service provided and may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of one year, and be immediately available for inspection during business hours.

Sec. 22-687. Recording of activities prohibited.

No part of a Massage Establishment where massage, massage services, or massage therapy are being conducted shall be equipped with any electronic, mechanical or artificial device capable of being used for recording or videotaping, for monitoring the activities, conversation, or other sounds in the treatment room or room used by customers, except in the designated reception areas.

Sec. 22-688. Inspections.

Representatives of the city, including but not limited to members of the police department and any fire protection district of jurisdiction, may, at any time, with or without prior notice, inspect the subject premises and investigate the manner of the operation of the massage establishment to insure that it is operating in compliance with this article.

Sec. 22-689. Massage establishment license and CAMTC certificate posting requirements; identification cards.

- (a) The original massage establishment license and original CAMTC certificate for each massage therapist working at the establishment shall be displayed in a conspicuous public place on the premises. It shall be unlawful to display photocopies of licenses or certificates. The massage establishment licensee shall be responsible for ensuring each massage therapist's certificate is displayed in a conspicuous place on the premises.
- (b) Each massage therapist must wear his or her CAMTC identification card on his/her outermost garment when working in a massage establishment or at a business for the purpose of performing massage.

Sec. 22-690. Change of business name or location.

Except as otherwise provided by this article, no person granted a license pursuant to this article shall operate under any name or conduct his, her or its business at any location not specified in his/her or its license. If the business name, facilities and/or location is changed, a new license shall be obtained.

Sec. 22-691. Schools of massage.

No massage establishment shall operate as a massage school. A massage establishment and a massage school shall not share the same facilities.

Sec. 22-692. Prohibited advertising practices.

- (a) It is a violation of this article for any person who does not possess a valid and unexpired CAMTC certificate, and for any massage establishment that employs or retains such a person, to:
 - (1) State or advertise or put out any sign, card, or other device, or to represent to the public through any print or electronic media, that such person is certified, registered or licensed by a governmental agency as a massage therapist; or
 - (2) Hold oneself out of use the title of "certified massage therapist" or "certified massage practitioner" or any other term, such as "licensed," "registered," or "CMT," that implies or suggests that the person is the holder of a certificate issued by CAMTC.
- (b) No massage business shall place, publish or distribute, or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective clients that any service is available other than those services listed as an available service pursuant to section 22-686, nor shall any massage business employ language in the text of such advertising that would

reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter.

Sec. 22-693. Employment of minors prohibited.

- (a) No massage establishment shall employ any person under 18 years of age as a massage therapist or in any other capacity.
- (b) This section shall not prohibit a business, where massage is not the primary purpose of the business, from employing individuals under 18 years of age. However, massage therapists must still be at least 18 years of age.

Sec. 22-694. Massage therapy services rendered to minors prohibited.

No massage therapist shall perform, cause to be performed, or allow to be performed, any massage on any person under the age of 18, except at the special instance, request, and with the express written consent of a parent, guardian, or other person in lawful custody of the minor upon whose behalf the massage service is requested.

Secs. 22-695—22-699. Reserved.

DIVISION 7. ENFORCEMENT

Sec. 22-700. Separate offense for each day.

Any person who violates any provision of this article shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

Sec. 22-701. Public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this article shall be and is hereby declared a public nuisance and may be abated by the city pursuant to the city's neighborhood enhancement code, chapter 50 of this Code.

Sec. 22-702. Criminal penalties.

Violations of this article are hereby declared to be infractions except that notwithstanding any other provision of this article or state law, any such violation may, in the discretion of the prosecuting attorney, be charged and prosecuted as a misdemeanor. A conviction of an infraction shall be punishable by fine as follows: Upon a first conviction, a fine not exceeding \$100.00; upon the second conviction within one year of a prior conviction, by a fine not exceeding \$200.00; upon any subsequent conviction within one year of two prior convictions, by a fine of not exceeding \$500.00. Any person convicted of a misdemeanor shall be punishable by a fine of not more than \$1,000.00 or by imprisonment not to exceed six months, or both.

Sec. 22-703. Civil injunction.

The violation of any provision of this article shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of city, create a cause for injunctive relief.

Methodology Examples

Citrus Heights current population 86,367 persons

Current number of establishments: 29

Current ratio: 1 license per 2,978 persons (86,367/29)

| Ratio options | Allowanced Licenses |
|--|----------------------------|
| 1 license per 3,000 persons | 29 |
| 1 license per 3,400 persons | 25 |
| 1 license per 4,000 persons | 22 |
| 1 license per 5,000 persons | 17 |
| 1 license per 5,400 persons | 16* |
| 1 license per 6,000 persons | 14 |
| *16 establishments was the City's all time low in 2019 | |

Massage Establishment Licensing Ordinance Update
List of Changes
04/05/2023

| Section | Topic | Reason |
|----------------|---|---|
| 22-604 | Updated definition of “applicant” | Clarified the applicant must be the owner or entity |
| | Removed definition of “approved national massage organization” | Reference no longer needed |
| | Added definition of “lease” | Identifies what information the applicant must provide from the property owner |
| | Added definition of “massage school” | Needed to provide definition for Sec. 22-691 |
| | Removed definition of “recognized massage school” | No longer needed |
| | Added definition of “public necessity” | Needed to clarify what information would be required for the City Council to grant an exception to the licensing cap |
| | Updated definition of “responsible person” | Clarified that a person identified as a responsible person (required for applicants who do not hold a CAMTC certificate) must be hold a valid CAMTC certificate |
| | Added definition for “transfer of ownership” | Needed to provide clarity |
| 22-606 | (c)(3) Revised to state continuing education must be from a CAMTC approved school. | This section is for “grandfathered” therapists who are not required to be CAMTC certified. However, they must submit proof of continuing education each year and this clarifies the education must be from a CAMTC approved school. |
| | (d through h) Removed section and revised to remove references to general business license and employee permits | No longer needed |
| 22-609 | Revised language deleting references to general business license | No longer needed |
| 22-610 | Added section identifying licensing cap | This section identifies the licensing cap and how it is calculated and how an exception may be granted |
| 22-610.5 | Added section related to relocation | This section allows the licensing administrator, regardless of licensing cap, to approve a license for an establishment in good standing who needs to relocate for a situation out of the control of the owner (i.e. building destruction, loss of lease, etc.) Added at the request of establishment owners. |
| 22-612 | Revised requirement for non-CAMTC applicants | Clarified who may be considered a responsible person when the applicant is non-CAMTC certified |

| | | |
|--------|---|--|
| 22-613 | Revised section for application requirements | Revised language of this section for clarity. Added requirement to provide copy of lease/signed affidavit from property owner to demonstrate owner understands massage will be performed at location. Added labor code conformance at the request of CAMTC. |
| 22-614 | Revised Title | Updated to correct terminology |
| 22-617 | (a through c) Revised grounds for denial | Clarified language for clarity. Removed reference to 60 day issuance as the timeline for background checks is out of our control. |
| 22-619 | (3) added information for basis for denial | Added labor code section at the request of CAMTC. |
| 22-631 | Revised language | Updated terminology |
| 22-640 | (4) added information for grounds for revocation | Added labor code section at the request of CAMTC. |
| 22-641 | Updated language | Updated reference from finance department to business license administrator |
| 22-646 | Revised | Updated section for consistency and removed language no longer necessary. |
| 22-652 | (b) updated | Updated reference from finance department to business license administrator |
| 22-683 | (3) Added section related to visibility into facility | Added facility requirement for security measure that prohibits blocking of windows which face public view. |
| | (4) Added section to related to locked doors | Added statement that doors used for ingress/egress may not be locked during business hours unless the establishment is owned/operated by one individual with no more than 1 employee. |
| | (d) Revised to for massage room locks | Clarified temporary locks are not permissible |
| 22-687 | Revised security/video recordings | Removed restriction that video/surveillance tools are not permitted. Allow internal/external security measures for safety. However, no recording devices are allowed in the treatment rooms. This was revised at the request of the establishments and is acceptable by the police department. |
| 22-691 | Revised massage | Revised language for clarity. |



COMMUNITY OPEN HOUSE PROPOSED CHANGES FOR MASSAGE ESTABLISHMENTS

UPCOMING MEETING

Wednesday, March 1, 2023

3:00 pm – 4:00 pm

Citrus Heights City Hall

6360 Fountain Square Drive

All Interested Parties are Welcome!

The City is considering a modification to its regulations pertaining to massage therapy establishments.

Due to a significant increase in the number of new massage establishments opening within the City, staff is proposing a cap on the total number of massage establishments allowed to operate in Citrus Heights.

The community meeting is for anyone interested in learning more about the proposed changes, including current/future establishment owners, property owners, landlords, therapists, etc.

A copy of the draft ordinance is available on the City's website www.citrusheights.net/massage

HAVE QUESTIONS?

Questions or comments about the proposed regulations are welcomed by phone or email to:

EMAIL: planning@citrusheights.net

PHONE: Alison Bermudez (916) 727-4740

PROPOSAL TO CAP NUMBER OF ALLOWED MASSAGE ESTABLISHMENTS

The City has seen nearly a 100% increase in the number of massage establishments since 2019.

Due to the potential for unlawful activity that impacts surrounding neighborhoods and the potential for human trafficking to occur in massage establishments, the City is proposing a reasonable standard in capping the number of massage establishments allowed to operate in Citrus Heights. Limiting the number of massage establishments will enhance the ability for City and Police Department staff to ensure establishments comply with all requirements and ensure parity with nearby local agencies.

If adopted by the City Council, the new ordinance would limit the number of massage establishments to one licensed location per 3,400 persons. Based on current population estimate of 86,367 persons, 25 establishments would be allowed in Citrus Heights.

Once the number of licensed massage establishments allowed by the cap has been met, no new establishment licenses will be granted.

The proposed change will not impact any existing massage establishment in good standing at the time the new regulations are adopted.

PLEASE CALL (916) 727-4740 IF YOU NEED TRANSLATION SERVICES AT THE COMMUNITY MEETING.

To get help, learn more, or report a tip on human trafficking, contact:

National Human Trafficking Resource Center
888-373-7888

California Coalition to Abolish Slavery and Trafficking
888-539-2373

1. What changes is the City proposing related to massage establishments?

The City has seen nearly a 100% increase in the number of establishments since 2019. Due to the potential for unlawful activity that impacts surrounding neighborhoods and the potential for human trafficking to occur in massage establishments, the City is proposing a reasonable cap on the number of massage establishments allowed to operate in Citrus Heights. Limiting the number of massage establishments will enhance the ability for City and Police Department staff to ensure establishments comply with all requirements to ensure parity with nearby local agencies.

2. If approved, how many massage establishments will be allowed in Citrus Heights?

If approved, the proposal will cap the number of massage establishments allowed to operate in Citrus Heights to 1 establishment per 3,400 persons. Applying the current population of 86,367, the number of establishments would be capped at 25. The City currently has 29 licensed massage establishments. This means that new licensees will not be issued until the number of licensed massage establishments is under the cap of 25.

3. If I am currently operating a massage establishment, how does this impact the business?

If you are currently operating a massage establishment and are in good standing, there is no impact. However, there are some additional restrictions for the operation of the facility as discussed under question number 4.

4. Besides the licensing cap, what other changes are proposed?

A new requirement for massage establishments include: if the business has windows facing the public way (road, walkway, parking area, or similar) may not block visibility into the interior reception area through the use of curtains, blinds, window tint, etc.

The current prohibition of early warning devices, including video, light/music dimmers, electronic detection devices, has been removed.

While not a new requirement but often overlooked from prospective massage establishment owners, if more than 2 therapists will be working at the same time the establishment must provide a minimum of 2 restroom facilities.

5. If I currently own a massage establishment, may I sell the business?

If your massage establishment is currently licensed, operating and in good standing, a new owner may acquire the business regardless of the licensing cap. If the business is not operational or does not have a valid license, the business may only be reopened if the number of existing massage establishments is under the current cap.

6. Does the proposal include any changes to the licensing for the massage establishment owner?

No, there are no changes to the licensing requirements for a massage establishment owner. All owners of a massage establishment must either hold a valid certification from CA Massage Therapy Council (CMTC) or must obtain a Special Business License from the City Citrus Heights. Special Business Licenses require processing and background checks through the police department.

The proposal does include clarification on who may be considered a “responsible person.”

7. Does the proposal include any changes to the licensing for the massage therapist?

No, there are no changes to the licensing requirements for a massage therapist. All newly licensed therapists must hold a valid certification from CA Massage Therapy Council (CAMTC).

8. When will the new regulations take effect?

The City Council will be considering the changes at their meeting on April 13, 2023. If passed, the updated regulations would go into effect on May 27, 2023.

9. Who may attend the City Council meeting on April 13, 2023?

All interested parties are welcome to attend and participate in the meeting. The meeting will be held in the City Council Chambers on April 13, 2023 at 6 PM. View the meeting’s agenda for more information on participating in the hearing process.

10. If I am considering opening a new massage establishment, how does this impact me?

Once the new regulations take place (anticipated to be on May 27, 2023), a license for a new massage establishment will only be issued if the number of existing massage establishments is under the allowed cap. Your massage establishment license must be approved and issued by the deadline. Any pending applications will remain pending until the number of massage establishments is under the allowed cap.

11. How do I learn more about the proposal?

To learn more about the efforts and view a copy of all the proposed changes, visit www.citrusheights.net/massage.

1. Какие изменения предлагает Город в отношении массажных заведений?

С 2019 года в городе наблюдается почти 100%-ное увеличение числа заведений. Из-за возможности незаконной деятельности, которая влияет на окружающие районы, и возможности торговли людьми в массажных заведениях, город предлагает разумное ограничение на количество массажных заведений, разрешенных для работы в Цитрусовых высотах. Ограничение числа массажных заведений расширит возможности сотрудников Городского департамента и Департамента полиции по обеспечению того, чтобы учреждения соблюдали все требования для обеспечения паритета с близлежащими местными учреждениями.

2. В случае одобрения, сколько массажных заведений будет разрешено в Citrus Heights?

В случае одобрения предложение ограничит количество массажных заведений, разрешенных для работы в Citrus Heights, до 1 заведения на 3 400 человек. При нынешней численности населения в 86 367 человек число учреждений будет ограничено 25. В настоящее время в городе насчитывается 29 лицензированных массажных заведений. Это означает, что новые лицензиаты не будут выдаваться до тех пор, пока количество лицензированных массажных заведений не будет ограничено 25.

3. Если я в настоящее время управляю массажным заведением, как это влияет на бизнес?

Если вы в настоящее время управляете массажным заведением и находитесь на хорошем счету, это не повлияет. Однако существуют некоторые дополнительные ограничения на эксплуатацию объекта, о которых говорится в вопросе No 4.

4. Помимо лицензионного лимита, какие еще изменения предлагаются?

Новое требование к массажным заведениям включает: если на предприятии есть окна, выходящие на общественный путь (дорога, пешеходная дорожка, парковка или аналогичная), может не блокироваться видимость во внутреннюю зону приема с помощью штор, жалюзи, тонировки окон и т. Д.

Нынешний запрет на устройства раннего предупреждения, включая видео, световые/музыкальные диммеры, электронные устройства обнаружения, был снят.

Хотя это не новое требование, но часто упускается из виду со стороны потенциальных владельцев массажных заведений, если одновременно будет работать более 2 терапевтов, учреждение должно предоставить как минимум 2 туалета.

5. Если я в настоящее время владею массажным заведением, могу ли я продать бизнес?

Если ваше массажное заведение в настоящее время лицензировано, работает и находится на хорошем счету, новый владелец может приобрести бизнес независимо от лицензионного лимита. Если бизнес не функционирует или не имеет действительной лицензии, бизнес может быть вновь открыт только в том случае, если количество существующих массажных заведений находится под текущим ограничением.

6. Включает ли предложение какие-либо изменения в лицензировании владельца массажного заведения?

Нет, нет никаких изменений в лицензионных требованиях к владельцу массажного заведения. Все владельцы массажного заведения должны либо иметь действующую сертификацию от CA Massage Therapy Council (CMTC), либо должны получить специальную бизнес-лицензию от City Citrus Heights. Специальные бизнес-лицензии требуют обработки и проверки биографических данных через полицейский департамент.

Предложение включает в себя разъяснение того, кто может считаться «ответственным лицом».

7. Включает ли предложение какие-либо изменения в лицензировании массажиста?

Нет, нет никаких изменений в лицензионных требованиях к массажисту. Все новые лицензированные терапевты должны иметь действующую сертификацию от Ca Massage Therapy Council (CAMTC).

8. Когда вступят в силу новые правила?

Городской совет рассмотрит изменения на своем заседании 13 апреля 2023 года. В случае принятия обновленные правила вступят в силу 27 мая 2023 года.

9. Кто может присутствовать на заседании городского совета 13 апреля 2023 года?

Все заинтересованные стороны могут присутствовать и участвовать в совещании. Заседание состоится в палатах городского совета 13 апреля 2023 года в 18:00. Смотрите повестку дня заседания для получения дополнительной информации об участии в процессе слушаний.

10. Если я подумываю об открытии нового массажного заведения, как это повлияет на меня?

Как только новые правила вступят в силу (ожидается, что это произойдет 27 мая 2023 года), лицензия на новое массажное заведение будет выдана только в том случае, если количество существующих массажных заведений находится под разрешенным пределом. Ваша лицензия на массажное заведение должна быть одобрена и выдана к установленному сроку. Любые находящиеся на рассмотрении заявки будут оставаться на рассмотрении до тех пор, пока количество массажных заведений не будет подпадающим под разрешенный предел.

11. Как узнать больше о предложении?

Чтобы узнать больше об усилиях и просмотреть копию всех предлагаемых изменений, посетите www.citrusheights.net/massage.

1. Thành phố đề xuất những thay đổi gì liên quan đến cơ sở xoa bóp?

Thành phố đã chứng kiến sự gia tăng gần 100% về số lượng cơ sở kể từ năm 2019. Do khả năng hoạt động bất hợp pháp ảnh hưởng đến các khu vực lân cận và khả năng buôn người xảy ra trong các cơ sở massage, Thành phố đang đề xuất giới hạn hợp lý về số lượng cơ sở massage được phép hoạt động ở Citrus Heights. Việc hạn chế số lượng cơ sở massage sẽ nâng cao năng lực cho nhân viên Sở Cảnh sát và Thành phố để đảm bảo các cơ sở tuân thủ tất cả các yêu cầu để đảm bảo sự bình đẳng với các cơ quan địa phương lân cận.

2. Nếu được chấp thuận, có bao nhiêu cơ sở massage sẽ được phép ở Citrus Heights?

Nếu được chấp thuận, đề xuất sẽ giới hạn số lượng cơ sở massage được phép hoạt động ở Citrus Heights xuống còn 1 cơ sở trên 3.400 người. Áp dụng dân số hiện tại là 86.367, số lượng cơ sở sẽ được giới hạn ở mức 25. Thành phố hiện có 29 cơ sở massage được cấp phép. Điều này có nghĩa là những người được cấp phép mới sẽ không được cấp cho đến khi số lượng cơ sở massage được cấp phép dưới giới hạn 25.

3. Nếu tôi hiện đang điều hành một cơ sở massage, điều này ảnh hưởng đến doanh nghiệp như thế nào?

Nếu bạn hiện đang điều hành một cơ sở massage và đang ở trạng thái tốt, không có tác động. Tuy nhiên, có một số hạn chế bổ sung cho hoạt động của cơ sở như được thảo luận trong câu hỏi số 4.

4. Ngoài giới hạn cấp phép, những thay đổi nào khác được đề xuất?

Một yêu cầu mới đối với các cơ sở massage bao gồm: nếu doanh nghiệp có cửa sổ hướng ra đường công cộng (đường, lối đi, khu vực đỗ xe hoặc tương tự) không được che khuất tầm nhìn vào khu vực tiếp tân bên trong thông qua việc sử dụng rèm cửa, rèm, màu cửa sổ, v.v.

Việc cấm hiện tại đối với các thiết bị cảnh báo sớm, bao gồm video, bộ điều chỉnh độ sáng / nhạc, thiết bị phát hiện điện tử, đã được gỡ bỏ.

Mặc dù không phải là một yêu cầu mới nhưng thường bị bỏ qua từ các chủ cơ sở massage tiềm năng, nhưng nếu có nhiều hơn 2 nhà trị liệu sẽ làm việc cùng một lúc, cơ sở phải cung cấp tối thiểu 2 cơ sở vệ sinh.

5. Nếu tôi hiện đang sở hữu một cơ sở massage, tôi có thể bán doanh nghiệp không?

Nếu cơ sở massage của bạn hiện đang được cấp phép, hoạt động và ở trạng thái tốt, chủ sở hữu mới có thể mua lại doanh nghiệp bất kể giới hạn cấp phép. Nếu doanh nghiệp không hoạt động hoặc không có giấy phép hợp lệ, doanh nghiệp chỉ được mở cửa trở lại nếu số lượng cơ sở massage hiện có dưới mức trần hiện tại.

6. Đề xuất có thay đổi gì về việc cấp phép cho chủ cơ sở massage không?

Không, không có thay đổi nào đối với các yêu cầu cấp phép đối với chủ sở hữu cơ sở mát-xa. Tất cả chủ sở hữu của một cơ sở massage phải có chứng nhận hợp lệ từ Hội đồng trị liệu xoa bóp CA (CMTC) hoặc phải có Giấy phép kinh doanh đặc biệt từ City Citrus Heights. Giấy phép kinh doanh đặc biệt yêu cầu xử lý và kiểm tra lý lịch thông qua sở cảnh sát.

Đề xuất này bao gồm việc làm rõ ai có thể được coi là "người chịu trách nhiệm".

7. Đề xuất có bao gồm bất kỳ thay đổi nào đối với việc cấp phép cho nhà trị liệu xoa bóp không?

Không, không có thay đổi nào đối với các yêu cầu cấp phép cho một nhà trị liệu xoa bóp. Tất cả các nhà trị liệu mới được cấp phép phải có chứng nhận hợp lệ từ Hội đồng trị liệu xoa bóp CA (CAMTC).

8. Khi nào các quy định mới sẽ có hiệu lực?

Hội đồng thành phố sẽ xem xét những thay đổi tại cuộc họp của họ vào ngày 13 tháng 4 năm 2023. Nếu được thông qua, các quy định cập nhật sẽ có hiệu lực vào ngày 27/5/2023.

9. Ai có thể tham dự cuộc họp HĐND thành phố vào ngày 13 tháng 4 năm 2023?

Tất cả các bên quan tâm đều được hoan nghênh tham dự và tham gia cuộc họp. Cuộc họp sẽ được tổ chức tại Phòng Hội đồng Thành phố vào ngày 13 tháng 4 năm 2023 lúc 6 giờ chiều. Xem chương trình nghị sự của cuộc họp để biết thêm thông tin về việc tham gia vào quá trình điều trần.

10. Nếu tôi đang cân nhắc mở một cơ sở massage mới, điều này ảnh hưởng đến tôi như thế nào?

Sau khi các quy định mới có hiệu lực (dự kiến vào ngày 27/5/2023), giấy phép cho một cơ sở massage mới sẽ chỉ được cấp nếu số lượng cơ sở massage hiện có dưới mức cho phép. Giấy phép cơ sở massage của bạn phải được phê duyệt và cấp trước thời hạn. Mọi đơn đăng ký đang chờ xử lý sẽ vẫn đang chờ xử lý cho đến khi số lượng cơ sở massage dưới giới hạn cho phép.

11. Làm thế nào để tôi tìm hiểu thêm về đề xuất?

Để tìm hiểu thêm về những nỗ lực và xem bản sao của tất cả các thay đổi được đề xuất, hãy truy cập www.citrusheights.net/massage.



CITY OF CITRUS HEIGHTS

CITY COUNCIL STAFF REPORT MEMORANDUM

DATE: April 13, 2023

TO: Mayor and City Council Members
Ashley J. Feeney, City Manager

FROM: Casey Kempenaar, Community Development Director
Regina Cave, General Services Director
Eric Singer, Associate Planner

SUBJECT: **Greenback Open Space Naming Options**

Summary and Recommendation

At the August 25, 2022 City Council Meeting, a resident requested the City Council select a name for the existing city-owned open space located on Greenback Lane (east of Park Oaks Drive). The City Council directed staff to bring forward options to name this unnamed park as one of its Strategic Objectives for 2023.

Staff recommends the City Council review the options outlined in this staff report and provide direction on how to proceed.

City Council Strategic Goal/Objective

This staff report aligns with the following Citrus Heights City Council Strategic Plan Objectives:

Goal: Enhance Community Vibrancy and Engagement

Objective: Present Park naming approaches and options for the Greenback Lane Open Space for City Council consideration.

Fiscal Impact

There is no fiscal impact for determining a name for the existing park. Future costs may include sign or monument installation to identify the park, estimated to range between \$5,000 and \$25,000, depending on size and complexity.

Background and Analysis

As a function of the construction of the Greenback Lane Complete Streets project, completed in 2008, the City acquired and demolished 16 duplex dwellings to accommodate the road widening and associated improvements.

The acquisition exceeded the width necessary to allow for the full buildout of Greenback Lane. The surplus land was designed to be a passive linear park parallel to Greenback Lane with a meandering pathway and decorative landscaping. In 2008, the City installed the “Up, Up, and Away” art piece within the park; however, no official name for the park has been adopted.

On August 25, 2022, City Council directed staff to proceed with identifying a process to develop a park name as one of its Strategic Objectives for 2023. The City does not have a formal park naming process so staff has developed the following options for Council’s consideration and direction:

Community Based Submittals

In 2020, the City solicited community input to develop a name for the City’s multi-use trail, formerly called the Electric Greenway. Residents nominated names for consideration. A Naming Review Committee comprised of City staff and community partners reviewed submissions from the community, and presented the top names to the council. Ultimately, the City Council selected the Arcade Cripple Creek Trail.

The City Council may consider directing staff to pursue a similar approach.

Historical Submittals

Many parks are named after historic features or individuals that played an important role within the region.

The Council may consider requesting input from the Citrus Heights Historical Society to recognize a historical figure in the development of Citrus Heights.

Councilmember Nominations

The City Council may consider nominating park names as they see fit for discussion and consideration.

Ad-hoc committee

The City Council may consider an ad-hoc committee of two Councilmembers to recommend a park name for consideration by the full Council.

Naming Ordinance

The City Council may consider adopting an Ordinance to codify the process for naming streets, monuments, parks, etc. within the Municipal Code. The Ordinance could include some or all of the aforementioned methods to identify appropriate names for City landmarks.

Conclusion

Staff recommends the City Council review and deliberate on the options outlined within this staff report, or any others brought into consideration at the City Council meeting, and provide direction on how to proceed.



CITY OF CITRUS HEIGHTS

CITY COUNCIL STAFF REPORT MEMORANDUM

DATE: April 13, 2023

TO: Mayor and City Council Members
Ashley J. Feeney, City Manager

FROM: Alexander A. Turcotte, Chief of Police

SUBJECT: **Assembly Bill 742: Preventing the use of police canines for the purpose of arrest, apprehension, or any form of crowd control) Letter of Opposition**

Summary and Recommendation

On Monday, February 13, 2023, Assembly Member Corey Jackson (D-Riverside) announced legislation that would prohibit the use of police canines for arrest, apprehension, and crowd control. This bill would prohibit the use of an unleashed police canine by law enforcement to apprehend a person and any use of a police canine for crowd control.

The bill was presented to the Committee on Public Safety on Tuesday, March 21, 2023, and was passed and referred to the Committee on Appropriations.

At the February 23, 2023 City Council meeting, during Items Requested by Council Members portion of the meeting, Council discussed a future agenda item regarding proposed legislation AB 742.

On Thursday, March 23, 2023, at the Regular Council Meeting, Chief Turcotte provided an overview of Assembly Bill 742, including local statistics, policy, and procedures related to the Citrus Heights Police Department's use of police canines. At this meeting, Council requested that a letter of opposition be drafted and brought to a future City Council Meeting for further discussion and consideration.

Staff recommends the City Council consider the signing and delivery of a letter of opposition of AB 742.

Fiscal Impact

There is no fiscal impact associated with this action.

Attachments

1. Sample Opposition Letter for AB 742

[date]

Honorable Corey Jackson
California State Assembly
California State Capitol
Sacramento, CA 95814

RE: OPPOSE Assembly Bill 742 – Preventing the use of police canines for the purpose of arrest, apprehension, or any form of crowd control

Dear Assembly Member Jackson:

On behalf of [Enter ORGANIZATION here], I regretfully must inform you of our strong opposition to AB 742, which would prohibit the use of police canines in the apprehension or arrest of a suspect, or in any manner of crowd control. In doing so, AB 742 eliminates an irreplaceable law enforcement tool and team member who has been responsible for countless saved lives and de-escalated situations.

It is the canines' innate abilities for hearing and smell that law enforcement relies upon for safety and protection. Scientific research has estimated that a canine's sense of smell is, on average, anywhere between 10,000 and 100,000 times greater than a human. Similarly, a canine's ability to not only hear sounds humans cannot register, but their ability to alert to even the most minor sound within aggregate noise makes them even more critically perceptive. Whether searching for a violent suspect hiding inside a house, or identifying a potential threat down a dark alley, police canines play an exceptional role in protecting their partners and our communities.

Law enforcement has also recognized the power canines possess, and the need to control that force. As such, canine programs go through incredible amounts of ongoing training and review. All actions are overseen and governed by well-established department policies and held accountable by respective local governing bodies and state law. Furthermore, the use of force standards set in statute are applicable in the event of a canine deployment. Fortunately, in the overwhelming majority of situations, canines assist to de-escalate conflict and prevent force from being necessary.

The justification for banning police canines' centers on racial bias. [Enter ORGANIZATION here] condemns any and all racial bias, whether in policing or not. We will continue working to address bias but stand against proposed laws that eliminate or ban legitimate police operations and/or powers. Legislators and Law Enforcement stakeholders should continue to address inequity without jeopardizing public safety through these broad restrictions. For the reasons outlined above, we must strongly oppose AB 742.

Respectfully,

NAME
ORGANIZATION
EMAIL



CITY OF CITRUS HEIGHTS

CITY COUNCIL STAFF REPORT MEMORANDUM

DATE: April 13, 2023

TO: Mayor and City Council Members
Ashley J. Feeney, City Manager

FROM: Amy Van, City Clerk

SUBJECT: **Assembly Bill 734: Youth tackle football (McCarty)**

Summary and Recommendation

At the March 9, 2023 City Council meeting, during the Items Requested by Council Members portion of the meeting, two members of the Council requested Assembly Bill 734 relating to youth athletics, which was introduced by Assembly Member McCarty be brought back for Council consideration of taking a position on the proposed legislation.

Staff recommends the City Council discuss and provide direction as to whether the Council would like to:

1. Take a position on the proposed legislation;
2. Continue the matter to allow for additional time before consideration of taking a position on the proposed legislation; or
3. Take no action.

Fiscal Impact

There is no fiscal impact associated with this item.

Background and Analysis

On February 13, 2023, Assembly Member Kevin McCarty introduced AB 734 (Bill) that would add a section to the Health and Safety Code relating to youth athletics. As of the time this report was written the Bill has been referred to the Committee on Arts, Entertainment, Sports and Tourism and a hearing has been scheduled for April 25, 2023. Since the Bill has not been heard by the Committee a bill analysis is not available at this time.

AB 734 as introduced would, on or after January 1, 2026, prohibit a youth sports organization that conducts a tackle football program, or a youth tackle football league, from allowing a person

younger than 12 years of age to be a youth tackle football participant through the organization or league.

Existing law requires a youth sports organization that elects to offer an athletic program to comply with specified concussion and sudden cardiac arrest prevention protocols. Existing law, the California Youth Football Act, requires a youth sports organization that conducts a tackle football program to comply with specified protocols, including a coach receiving certain health-related certification and a parent or guardian of a youth tackle football participant receiving concussion and head injury information and an opioid-related factsheet. The act also requires a youth tackle football league, as defined, to retain information for the tracking of youth sports injuries, as specified.

Additional Background Related to Youth Tackle Football

In 2018, Assembly Member McCarty introduced AB 2108 that would have only allowed a person who is at least 12 years of age be allowed to play tackle football with a youth sports organization. However, AB 2108 was pulled prior to reaching a committee hearing. Then in 2021, Assembly Member McCarty introduced AB 1348, which was vetoed by Governor Newsom, that would have required the Surgeon General to convene a Commission on Chronic Traumatic Encephalopathy and Youth Football to investigate issues related to the risks of brain injury associated with participation in youth football. The bill would have also required the commission to recommend strategies to reduce the risk, including the minimum appropriate age for participation and publish a report by July 1, 2025. In Governor Newsom's veto message (Attachment 3) he noted that the California Youth Football Act that took effect in January 2021, established a comprehensive safety framework, including the tracking of youth sports injuries, for youth tackle football, and that the effectiveness of the recently implemented safety measures has not been sufficiently assessed and more research is needed to better understand current safety measures and the risks.

Attachments

1. Text of AB 734 as introduced on February 13, 2023
2. AB 734 Factsheet
3. Governor Newsom's Veto Message for AB 1348

ASSEMBLY BILL

No. 734

Introduced by Assembly Member McCarty

February 13, 2023

An act to add Section 124242.5 to the Health and Safety Code, relating to youth athletics.

LEGISLATIVE COUNSEL'S DIGEST

AB 734, as introduced, McCarty. Youth tackle football.

Existing law requires a youth sports organization that elects to offer an athletic program to comply with specified concussion and sudden cardiac arrest prevention protocols. Existing law, the California Youth Football Act, requires a youth sports organization that conducts a tackle football program to comply with specified protocols, including a coach receiving certain health-related certification and a parent or guardian of a youth tackle football participant receiving concussion and head injury information and an opioid-related factsheet. The act also requires a youth tackle football league, as defined, to retain information for the tracking of youth sports injuries, as specified.

This bill would, on and after January 1, 2026, prohibit a youth sports organization that conducts a tackle football program, or a youth tackle football league, from allowing a person younger than 12 years of age to be a youth tackle football participant through the organization or league.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 124242.5 is added to the Health and
2 Safety Code, to read:
3 124242.5. On and after January 1, 2026, a youth sports
4 organization that conducts a tackle football program, or a youth
5 tackle football league, shall not allow a person younger than 12
6 years of age to be a youth tackle football participant through the
7 organization or league.

O

AB 734 – California Youth Football Safety Act

SUMMARY

AB 734 reduces youth exposure to brain injury and trauma by establishing a minimum age of 12 (middle school) for children to play organized tackle football.

BACKGROUND

Extensive and growing research documents the dangers of youth tackle football and potential for lifelong impacts of tackle football-related brain trauma. Studies show that Chronic Traumatic Encephalopathy (CTE) — a degenerative brain disease — is caused by repetitive impacts to the head sustained over time and cite sub-concussive impacts as a factor leading to brain injury. CTE is not caused by a single concussion, but by multiple concussions or constant head impacts that often do not display concussion symptoms.

Children who play contact sports during critical years of brain development are at a greater risk for neurological impairment and CTE later in life. Children’s brains are especially vulnerable in the 6 to 12 age range, undergoing dramatic change and maturation.

A [CDC study](#) published in *Sports Health* reports youth tackle football athletes **ages 6 to 14 sustained 15 times more head impacts than flag football athletes during a practice or game and sustained 23 times more high-magnitude head impact (hard head impact)**. Additionally, a [Boston University CTE Center study](#) illustrated the risks associated with youth tackle football. They found that the earlier children started to tackle, the earlier symptoms of cognitive, behavior, and mood issues began.

Even with advancements in football safety equipment, safer playing standards, and training for youth football coaches, tackle football still subjects children to unnecessary harm and safety risks.

Research shows that 9 to 11-year-old youth tackle football players subject themselves to an average of 251 significant hits per season, potentially interrupting brain development.

As an alternative, flag football provides a much safer, yet still competitive opportunity for children to learn the skills necessary to be successful at tackle football later in life. We should listen to NFL Legends like **John Madden, Randy Cross, Troy Aikman, Steve Young, Drew Brees, Harry Carson, Brett Favre, and Tim Brown**, among others, who have publicly stated that children should not play tackle football because of the negative health impacts.



SOLUTION

AB 734 protects a child’s brain development from unnecessary injury and trauma by requiring a child to be at least 12 years old (middle school) to play organized tackle football. Medical research shows that children who wait until age 12 to play tackle football have a better chance of avoiding CTE and other life shortening complications later in life.

SUPPORT

California Neurology Society (CNS), Sponsor

FOR MORE INFORMATION

Garrett Jensen
(503) 806-1108, garrett.jensen@asm.ca.gov



OFFICE OF THE GOVERNOR

SEP 25 2022

To the Members of the California State Assembly:

I am returning Assembly Bill 1348 without my signature.

This bill would require the Surgeon General to convene a Commission on Chronic Traumatic Encephalopathy (CTE) and Youth Football to investigate issues related to the risks of brain injury associated with participation in youth tackle football. The bill would also require the commission to recommend strategies to reduce this risk, including the minimum appropriate age for participation and publish a report by July 1, 2025.

I am deeply committed to the health and safety of California's children. Youth sports, such as youth tackle football, are an important part of our children's physical and mental health. In 2019, I signed the California Youth Football Act to establish a comprehensive safety framework, including the tracking of youth sports injuries, for youth tackle football, which took effect in January 2021.

The effectiveness of these recently implemented safety measures has not been sufficiently assessed. More research is needed to better understand current safety measures and the risks. Furthermore, this bill would require more than \$2 million to implement, which was not accounted for in the budget.

With our state facing lower-than-expected revenues over the first few months of this fiscal year, it is important to remain disciplined when it comes to spending, particularly spending that is ongoing. We must prioritize existing obligations and

priorities, including education, health care, public safety and safety-net programs.

The Legislature sent measures with potential costs of well over \$20 billion in one-time spending commitments and more than \$10 billion in ongoing commitments not accounted for in the state budget. Bills with significant fiscal impact, such as this measure, should be considered and accounted for as part of the annual budget process.

For these reasons, I cannot sign this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gavin Newton', written over the printed name. The signature is stylized with a large initial 'G' and a long horizontal stroke extending to the right.

Gavin Newton