



CITY COUNCIL REGULAR MEETING

Clearlake City Hall Council Chambers
14050 Olympic Dr, Clearlake, CA

Thursday, August 05, 2021

Closed Session 5:00 PM

Regular Meeting 6:00 PM

On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which allows Council Members to attend City Council meetings telephonically. On June 11, 2021, Governor Newsom extended this Order through September 30, 2021. Please be advised that some, or all, of the Clearlake City Council Members may attend this meeting telephonically.

The City Council meetings are viewable in person in the Council Chambers, via livestreaming on the City's YouTube Channel (https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA) or "Lake County PEG TV Live Stream" at <https://www.youtube.com/user/LakeCountyPegTV/featured> and the public may participate through Zoom at the link listed below. The public can submit comments and questions in writing for City Council consideration by sending them to the Administrative Services Director/City Clerk at mswanson@clearlake.ca.us. To give the City Council adequate time to review your questions and comments, please submit your written comments prior to 4:00 p.m. on the day of the meeting.

AGENDA

MEETING PROCEDURES: *All items on agenda will be open for public comments before final action is taken. Citizens wishing to introduce written material into the record at the public meeting on any item are requested to provide a copy of the written material to the Administrative Services Director/City Clerk prior to the meeting date so that the material may be distributed to the City Council prior to the meeting. Speakers must restrict comments to the item as it appears on the agenda and stay within a three minutes time limit. The Mayor has the discretion of limiting the total discussion time for an item.*

AMERICANS WITH DISABILITY ACT (ADA) REQUESTS

If you need disability related modification, including auxiliary aids or services, to participate in this meeting, please contact Melissa Swanson, Administrative Services Director/City Clerk at the Clearlake City Hall, 14050 Olympic Drive, Clearlake, California 95422, phone (707) 994-8201, ext 106, or via email at mswanson@clearlake.ca.us at least 72 hours prior to the meeting, to allow time to provide for special accommodations.

AGENDA REPORTS

Staff reports for each agenda item are available for review at www.clearlake.ca.us. Any writings or documents pertaining to an open session item provided to a majority of the City Council less than 72 hours prior to the meeting, shall be made available for public inspection on the City's website at www.clearlake.ca.us.

Zoom Link: <https://clearlakeca.zoom.us/j/85087920433>

A. 5:00 PM CLOSED SESSION

1. Conference with Legal Counsel: Anticipated Litigation: Significant Exposure to litigation under Section 54956.9(d)(2): One Potential Case
2. Conference with Real Property Negotiators: Pursuant to Government Code Section 54956.8. Property Address: 6885 Old Highway 53, Clearlake; Agency Negotiation: City Manager Alan Flora; Negotiating Parties: Burbank Housing Corporation; Under Negotiation: Price and terms of payment.
3. Conference with Legal Counsel- Existing Litigation: Pursuant to Government Code Section 54956.9: Case No. CV-421149; Name of Case: City of Clearlake v. County of Lake, a political subdivision of the State of California; Board of Supervisors of the County of Lake, a public body of the County of Lake; Barbara C. Ringen, in her official capacity as the Treasurer-Tax Collector of the County of Lake; and Does 1 through 30, inclusive
4. Conference with Legal Counsel - Existing Litigation: Pursuant to Government Code Section 54956.9 - City of Clearlake vs. Amerisourcebergen Drug Corporation, et al. Case No. 1:20-cv-06212

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. INVOCATION/MOMENT OF SILENCE: *The City Council invites members of the clergy, as well as interested members of the public in the City of Clearlake, to voluntarily offer an invocation before the beginning of its meetings for the benefit and blessing of the City Council. This opportunity is voluntary and invocations are to be less than three minutes, offered in a solemn and respectful tone, and directed at the City Council. Invitational speakers who do not abide by these simple rules of respect and brevity shall be given a warning and/or not invited back to provide a subsequent invocation for a reasonable period of time, as determined appropriate by the City. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the City Council with, nor express the City Council's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the City Council's respect for the diversity of religious denominations and faith represented and practiced among the citizens of Clearlake. If a scheduled invitational speaker does not appear at the scheduled meeting, the Mayor will ask that the City Council observe a moment of silence in lieu of the invocation. More information about the City's invocation policy is available upon request by contacting the Administrative Services Director/City Clerk at (707) 994-8201x106 or via email at mswanson@clearlake.ca.us.*

E. ADOPTION OF THE AGENDA *(This is the time for agenda modifications.)*

F. ANNOUNCEMENT OF ACTION FROM CLOSED SESSION

G. PRESENTATIONS

- [5.](#) Proclamation Promoting Tolerance, Respect, Equity and Inclusion
6. Presentation on the Progress of the City's 2021 Chip Seal Project

- H. **PUBLIC COMMENT:** *This is the time for any member of the public to address the City Council on any matter not on the agenda that is within the subject matter jurisdiction of the City. **The Brown Act, with limited exceptions, does not allow the Council or staff to discuss issues brought forth under Public Comment.** The Council cannot take action on non-agenda items. Concerns may be referred to staff or placed on the next available agenda. Please note that comments from the public will also be taken on each agenda item. Comments shall be limited to three (3) minutes per person.*
- I. **CONSENT AGENDA:** *All items listed under the Consent Agenda are considered to be routine in nature and will be approved by one motion. There will be no separate discussion of these items unless a member of the Council requests otherwise, or if staff has requested a change under Adoption of the Agenda, in which case the item will be removed for separate consideration. Any item so removed will be taken up following the motion to approve the Consent Agenda.*

7. Warrants

Recommended Action: Receive and file

8. Minutes of the June 9, 2021 Lake County Vector Control District Board Meeting

Recommended Action: Receive and file

9. Continuation of Declaration of Local Emergency Issued on March 14, 2020 and Ratified by Council Action on March 19, 2020

Recommended Action: By motion keep declaration of emergency active and set next review in sixty days

10. Continuation of Declaration of Local Emergency Issued on October 9, 2017 and Ratified by Council Action October 12, 2017

Recommended Action: By motion keep declaration of emergency active and set next review in 30 days

J. **BUSINESS**

11. Consideration of Joining the Joint Powers Authority of the Lake County Community Risk Reduction Authority

Recommended Action: Authorize the City Manager to Sign the Third Amendment to the Risk Reduction Authority JPA and Appoint a City Representative to the Board of Directors.

12. Consideration of Approval of Sale of Clearlake Waste Solutions to Waste Connections

Recommended Action: Adopt Resolution 2021-39 Approving the Sale of Clearlake Waste Solutions to Waste Connections.

13. Presentation and discussion regarding status of on-going Code Enforcement cases at 14541 and 14525 Lakeshore Drive

Recommended Action: Discuss with possible direction to staff.

14. Consideration of rejection of bids for the Sulphur Fire Roadway Disaster Repair Project

Recommended Action: Direct staff to reject all bids and authorize staff to rebid.

- [15.](#) Authorizing the City Manager to Prepare and Submit Two Program Income Only Applications through the California Housing and Community Development CDBG Program
Recommended Action: Approve Resolution Nos. 2021-40 & 2021-41
- [16.](#) Consideration of a Resolution Certifying Appointment of David Deakins as Building Inspector II is Necessary to Fill a Critically Needed Position, Requesting an Exception from CalPERS to the 180-Day Wait Period and Authorizing the City Manager to Appoint; Resolution No. 2021-31
Recommended Action: Adopt Resolution 2021-31 and authorize the City Manager to appoint David Deakins upon approval from CalPERS
- [17.](#) Revisions to Chapter 17 of the Clearlake Municipal Code
Recommended Action: Hold first reading of Ordinance No. 256-2021, An Amendment to Chapter 17 of the Clearlake Municipal Code Repealing and Replacing Floodplain Management regulations, read it by title only, waive further reading and set adoption for the August 19, 2021 meeting.

K. CITY MANAGER AND COUNCILMEMBER REPORTS

L. FUTURE AGENDA ITEMS

M. ADJOURNMENT

POSTED: August 2, 2021

BY:



Melissa Swanson, Administrative Services Director/City Clerk



Proclamation Promoting Tolerance, Respect, Equity and Inclusion

WHEREAS, the Fourteenth Amendment of the United States Constitution provides that no State may deny to any person within its jurisdiction the equal protection of the laws and the California Constitution provides substantially the same protections; and

WHEREAS, the First Amendment of the United States Constitution provides, in pertinent part, that Congress shall make no law respecting an establishment of religion or prohibiting its free exercise and the California Constitution provides that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever allowed in this State; and

WHEREAS, both federal and California laws protect persons from discrimination on the basis of race, religion, ethnicity, national origin, gender, age, sexual orientation or preference, gender identity, disability, and other protected classifications; and

WHEREAS, despite these laws which are intended to promote inclusiveness, respect, and equity, there appears to be a growing intolerance in this country which often seems to express itself in prejudice, bigotry, and anger; and

WHEREAS, Lake County is home to the ancestral lands of seven indigenous Tribal Nations including the Middletown Rancheria of Pomo Indians of California, the Koi Nation of Northern California, the Big Valley Band of Pomo Indians, the Scotts Valley Band of Pomo Indians, the Habematolel Pomo of Upper Lake, the Robinson Rancheria of Pomo Indians of California and the Elem Colony; and

WHEREAS, Lake County has a rich history and Lake County residents are a diverse group of people, with Tribal ancestral lands now shared by many ethnic and racial groups, genders, ages, abilities, and sexual orientations; and

WHEREAS, as your City government, this City Council has an obligation to protect, respect and serve everyone, equally; and

WHEREAS, this City Council believes we cannot be silent in the face of intolerance, hatred, violence and inequities, which are a direct threat to our democracy; and

WHEREAS, at this moment of reckoning, we are called upon to listen and to speak out, to kneel and to stand, to reflect and to improve, to learn and to teach, we must answer these calls together as a community.

NOW THEREFORE, BE IT RESOLVED, the Clearlake City Council denounces all forms of hate and violence directed toward any group or individual, strongly condemns all race-based hate crimes, and extends our deepest condolences to the families and friends of all victims of race-based violence.

FURTHER, BE IT RESOLVED, the Clearlake City Council confirms its continuing mandate to require all City departments to practice tolerance, respect, equity and inclusion and commits to furthering City policy and administrative measures in support of this goal.

FURTHER BE IT RESOLVED, that the Clearlake City Council encourages all schools, local businesses, churches, community-based organizations and residents to work toward more tolerance, respect, equity and inclusion throughout our communities.

FURTHER, BE IT RESOLVED, in continuing efforts to demonstrate to our community that we share their concern and we are a City Council committed to tolerance, respect, equity and inclusion, the Clearlake City Council will join in the community visioning sessions with other local government agencies and community partners to develop recommendations for:

- Meaningful actions and activities that will build bridges where there may be walls
- Fostering tolerance, respect, understanding, equity and inclusion
- Promoting non-violence and non-violent conflict resolution
- Focusing resources on underlying causes and conditions that lead to inequitable resource and justice distribution
- Relevant solutions for any social injustices, as they may come to light.

Dated this 5th day of August, 2021

Dirk Slooten, Mayor

Russell Perdock, Vice Mayor

David Claffey, Councilmember

Russell Cremer, Councilmember

Joyce Overton, Councilmember



Clearlake, CA

Section I, Item 7.

Check Register

Packet: APPKT00700 - 7/15/21 AP Check Run AA

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP-Accounts Payable						
000101	AMERIGAS	07/15/2021	Regular	0.00	867.68	10993
000085	ARAMARK UNIFORM SERVICES	07/15/2021	Regular	0.00	49.31	10994
001397	AT&T CALNET 3	07/15/2021	Regular	0.00	23.75	10995
001397	AT&T CALNET 3	07/15/2021	Regular	0.00	23.67	10996
001397	AT&T CALNET 3	07/15/2021	Regular	0.00	23.67	10997
001293	CDW GOVERNMENT	07/15/2021	Regular	0.00	6,816.22	10998
000024	CLEARLAKE POLICE ASSOCIATION	07/15/2021	Regular	0.00	1,437.50	10999
001424	CLEARLAKE WASTE SOLUTIONS.	07/15/2021	Regular	0.00	5,597.37	11000
VEN01176	CRYSTAL M CORDOVA	07/15/2021	Regular	0.00	11,639.38	11001
000160	DEPT OF JUSTICE	07/15/2021	Regular	0.00	140.00	11002
002010	DIEPENBROCK & COTTER LLP	07/15/2021	Regular	0.00	1,028.00	11003
001199	EUREKA OXYGEN CO	07/15/2021	Regular	0.00	36.80	11004
VEN01182	FARROW READY MIX	07/15/2021	Regular	0.00	708.51	11005
000120	FED EX	07/15/2021	Regular	0.00	37.94	11006
000121	HIGHLANDS WATER COMPANY	07/15/2021	Regular	0.00	137.42	11007
001775	JONES & MAYER	07/15/2021	Regular	0.00	15,965.87	11008
VEN01179	LAKE COUNTY WINERY ASSOCIATION	07/15/2021	Regular	0.00	644.00	11009
001995	LANGUAGE TESTING INTERNATIONAL	07/15/2021	Regular	0.00	140.00	11010
VEN01123	LOOMIS	07/15/2021	Regular	0.00	487.15	11011
VEN01181	MARIA VERONICA ONATE SOLIS	07/15/2021	Regular	0.00	210.00	11012
VEN01175	MOHAN, HARRIS & RUIZ, LLP	07/15/2021	Regular	0.00	1,000.00	11013
000026	NATIONWIDE RETIREMENT SOLUTION	07/15/2021	Regular	0.00	1,281.86	11014
001392	OFFICE DEPOT	07/15/2021	Regular	0.00	194.02	11015
000009	OPERATING ENGINEERS LOCAL 3	07/15/2021	Regular	0.00	480.00	11016
001843	PG&E CFM	07/15/2021	Regular	0.00	1,080.03	11017
VEN01177	PLAZA PAINT INC	07/15/2021	Regular	0.00	602.80	11018
000211	THOMAS ASSOCIATES	07/15/2021	Regular	0.00	2,100.00	11019
VEN01161	TIM J. MANAS	07/15/2021	Regular	0.00	2,000.00	11020
000708	VALIC LOCKBOX	07/15/2021	Regular	0.00	695.00	11021
VEN01180	VIKKI MARIE THOMPSON	07/15/2021	Regular	0.00	165.00	11022
VEN01173	HAROLD SMITH & SON INC	07/13/2021	Bank Draft	0.00	3,667.11	DFT0000922

Bank Code AP Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	50	30	0.00	55,612.95
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	1	1	0.00	3,667.11
EFT's	0	0	0.00	0.00
	51	31	0.00	59,280.06

Fund Summary

Fund	Name	Period	Amount
999	Pooled Cash	7/2021	59,280.06
			59,280.06



Clearlake, CA

Section I, Item 7.

Check Register

Packet: APPKT00733 - 7/22/21 AP Check Run AA

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP-Accounts Payable						
002254	AMERICAN PACE SETTER SYSTEMS	07/22/2021	Regular	0.00	781.34	11023
000085	ARAMARK UNIFORM SERVICES	07/22/2021	Regular	0.00	49.31	11024
000068	BOB'S JANITORIAL	07/22/2021	Regular	0.00	48.61	11025
001413	CAL BUILDING STANDARDS COM	07/22/2021	Regular	0.00	263.70	11026
VEN01178	CALIFORNIA INTERGOVERNMENTAL R	07/22/2021	Regular	0.00	475,166.00	11027
000025	CALIFORNIA PUBLIC EMPLOYEES	07/22/2021	Regular	0.00	10.68	11028
002060	CALPELRA	07/22/2021	Regular	0.00	890.00	11029
002285	DELL FINANCIAL SERVICES LLC	07/22/2021	Regular	0.00	806.72	11030
000237	DEPT OF CONSERVATION	07/22/2021	Regular	0.00	788.08	11031
000160	DEPT OF JUSTICE	07/22/2021	Regular	0.00	243.00	11032
001296	DIRECT IMAGE PRINTING	07/22/2021	Regular	0.00	111.22	11033
000073	EASTLAKE SANITARY LANDFILL	07/22/2021	Regular	0.00	79.76	11034
VEN01126	ECORP CONSULTING, INC	07/22/2021	Regular	0.00	3,125.00	11035
000120	FED EX	07/22/2021	Regular	0.00	14.19	11036
000096	GOLDEN STATE WATER COMPANY	07/22/2021	Regular	0.00	341.76	11037
002274	JOHN R BENOIT	07/22/2021	Regular	0.00	11,162.67	11038
001995	LANGUAGE TESTING INTERNATIONAL	07/22/2021	Regular	0.00	73.00	11039
002280	LAW OFFICES OF P SCOTT BROWNE	07/22/2021	Regular	0.00	1,837.00	11040
VEN01048	Minnesota Life Insurance	07/22/2021	Regular	0.00	881.00	11041
VEN01113	MUNICIPAL RESOURCE GROUP,LLC	07/22/2021	Regular	0.00	1,125.00	11042
001489	NAPA AUTO PARTS	07/22/2021	Regular	0.00	5.64	11043
001392	OFFICE DEPOT	07/22/2021	Regular	0.00	360.15	11044
002324	PERFECT IMPRINTED PRODUCTS	07/22/2021	Regular	0.00	1,288.54	11045
000049	PETTY CASH	07/22/2021	Regular	0.00	43.55	11046
001843	PG&E CFM	07/22/2021	Regular	0.00	4,878.14	11047
	Void	07/22/2021	Regular	0.00	0.00	11048
002031	REDWOOD COAST FUELS	07/22/2021	Regular	0.00	574.13	11049
001581	SQUAD ROOM EMBLEMS	07/22/2021	Regular	0.00	665.00	11050
000099	U.S. CELLULAR	07/22/2021	Regular	0.00	474.83	11051
000138	ZUMAR INDUSTRIES	07/22/2021	Regular	0.00	3,837.72	11052

Bank Code AP Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	45	29	0.00	509,925.74
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	45	30	0.00	509,925.74

Fund Summary

Fund	Name	Period	Amount
999	Pooled Cash	7/2021	509,925.74
			<u>509,925.74</u>

MINUTES OF PREVIOUS MEETING

June 9, 2021

The regular monthly meeting of the Board of Trustees of the Lake County Vector Control District was called to order at 1:34 P.M. by President Giambruno.

Board Present: Curt Giambruno, Rob Bostock, Chuck Leonard, Ron Nagy, and George Spurr.

Absent: None.

District Personnel: Jamesina Scott, Ph.D., Manager and Research Director, and Ms. Jacinda Franusich, Office Manager.

Guests: None.

Citizen's Input: None.

Agenda Additions/Deletions: None.

Approve Minutes of May 12, 2021 Regular Meeting with a Correction to the Check Numbers to Include Checks 20100-20150 Making the Total Expenditures for May 2021 \$82,457.34

Mr. Leonard moved to approve the Board Minutes of May 12, 2021 Regular Meeting with corrections. Mr. Bostock seconded the motion. Motion carried unanimously.

Research Report

Dr. Scott reported on vectorborne virus activity. There has been no West Nile virus (WNV) activity in Lake County in 2021.

For the rest of California, WNV has been detected in four dead birds from two counties.

No other arbovirus activity has been reported in the rest of the United States during 2021.

Dr. Scott reported on adult biting fly activity. During May, carbon dioxide-baited traps were set in various locations around the county. The most abundant mosquito species collected was *Aedes sierrensis*. Large numbers

of *Culicoides sonorensis* (biting black gnat) were collected throughout the county as well.

During May, the New Jersey Light Traps near Borax Lake in Clearlake and in the Reclamation near Upper Lake collected a variety of mosquito species including *Aedes sierrensis* and *Culex tarsalis*. Additionally, large numbers of *Culicoides occidentalis* (biting black gnat) were collected from the Clearlake trap.

The resting boxes in Kelseyville, Lakeport, and Upper Lake were sampled in May. Six mosquito species were collected.

Dr. Scott reported on tick testing. Twenty-two *Ixodes pacificus* ticks that were removed from Lake County residents have been submitted to the Sonoma County Public Health Laboratory for testing for *Borrelia burgdorferi*. All the ticks were negative.

Dr. Scott reported on Clear Lake Gnat, Chironominae, and Tanypodinae Surveillance in Clear Lake. In the Upper Arm, Clear Lake gnat numbers decreased from 8.82 larvae per dredge in April to 5.00 larvae per dredge in May. Chironominae numbers increased from 6.25 larvae per dredge in April to 28.07 larvae per dredge in May. Tanypodinae numbers increased from 7.21 larvae per dredge in April to 21.54 larvae per dredge in May.

Operation Report

The rain gauge at the LCVCD office in Lakeport recorded 0.05 inches of rainfall in May. Total rainfall for the season is at 11.26 inches.

The level of Clear Lake on May 1 was at 0.85 feet on the Rumsey Gauge and dropped to 0.40 feet by May 31.

The District facilities remain closed to the public. Service requests can be made online and by telephone. In addition, services such as picking up mosquitofish and dropping off ticks or insects for identification are available by arrangement with modifications to ensure social distancing.

Vector Control Technicians responded to 310 service requests in May. No service requests were received online due to a problem with the District's website.

Dr. Scott was a guest of local Outdoors Columnist Terry Knight on the Lake County Outdoors radio hour on KPFX FM 88.1. Dr. Scott discussed

yellowjackets and other wasps in Lake County, as well as the District and its services for mosquitoes and yellowjackets.

Consideration of Resolution No. 21-02 Resolution of Intention to Levy Annual Assessment, Preliminarily Accepting Engineer's Report and Scheduling of Public Hearing

After some discussion, Mr. Bostock moved to approve Resolution No. 21-02 Resolution of Intention to Levy Annual Assessment, Preliminarily Accepting Engineer's Report and Scheduling of Public Hearing with a change in the wording to paragraph three on page two for clarification. Mr. Leonard seconded the motion. Motion carried with a roll call vote as follows: Five in favor (Mr. Giambruno, Mr. Spurr, Mr. Leonard, Mr. Bostock, and Mr. Nagy), and none against.

Approve Budget Transfers

After some discussion, Mr. Bostock moved to approve the budget transfer from 90.91 Contingencies in the amount of \$200 to 3.30 Insurance-Health. Mr. Spurr seconded the motion. Motion carried unanimously.

Approve Checks for the Month of June 2021

Mr. Nagy moved to approve Check Nos. 20151–20190 for the month of June 2021 in the amount of \$40,188.43. Mr. Leonard seconded the motion. Motion carried unanimously.

Other Business

No other business was discussed.

Announcement of the Next Regular Board Meeting

The next regular meeting of the Board of Trustees of the Lake County Vector Control District will be at 1:30 P.M. on July 14, 2021 in the LCVCD Board Room, 410 Esplanade, Lakeport, CA 95453.

Mr. Nagy moved to adjourn the meeting. Mr. Spurr seconded the motion. There being no other business the meeting was adjourned by President Giambruno at 2:10 P.M.

Respectfully submitted,

Ronald Nagy
Secretary



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Continuation of Declaration of Local Emergency Issued on March 14, 2020 and Ratified by Council Action March 19, 2020

MEETING DATE:
August 5, 2021

SUBMITTED BY: Melissa Swanson, Administrative Services Director/City Clerk

PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to keep declaration of emergency active and set next review in sixty days.

BACKGROUND/DISCUSSION:

On March 13, 2020 City Manager Flora, as the Director of Emergency Services for the City of Clearlake, declared in the attached Proclamation by the Director of Emergency Services Declaring a Local Emergency due to the state and federal declaration of the COVID-19/Coronavirus pandemic:

“That conditions of disaster or extreme peril to the safety of the persons and property have within the City that are likely to be beyond the control of the services, personnel, equipment, and facilities of the City”

According to California Government Code Section 8630:

- (a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.
- (b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.
- (c) The governing body shall review the need for continuing the local emergency at least once every 30 days until the governing body terminates the local emergency.
- (d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

On March 19th, 2020, the Council ratified the Proclamation of the Local Emergency by ad Resolution No. 2020-10. The Council must continue the Proclamation every 60 days or terminate the local emergency.

It is recommended that the City Council again continue the Proclamation of Emergency ratified in Resolution No. 2020-10 and review the status of the Proclamation again within 60 days.

OPTIONS:

1. Move to continue the Proclamation of Emergency ratified in Resolution No. 2020-10 and review the status of the Proclamation again within 60 days
2. Other direction

FISCAL IMPACT:

☒ None ☐ \$ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments: There is potential for recovery of costs by the City due to the declared state of emergency.

STRATEGIC PLAN IMPACT:

- ☐ Goal #1: Make Clearlake a Visibly Cleaner City
- ☐ Goal #2: Make Clearlake a Statistically Safer City
- ☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☐ Goal #4: Improve the Image of Clearlake
- ☒ Goal #5: Ensure Fiscal Sustainability of City
- ☐ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to continue the Proclamation of Emergency ratified in Resolution No. 2020-10 and review the status of the Proclamation again within 60 days.

- ☐ **Attachments:**
- 1)
 - 2)



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Continuation of Declaration of Local Emergency Issued on October 9, 2017 and Ratified by Council Action October 12, 2017

MEETING DATE:

SUBMITTED BY: Melissa Swanson, Administrative Services Director/City Clerk

PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to keep declaration of emergency active and set next review in 30 days

BACKGROUND/DISCUSSION:

On October 9th, 2017, former City Manager Folsom, as the Director of Emergency Services for the City of Clearlake, declared in a Proclamation by the Director of Emergency Services Declaring a Local Emergency:

“That conditions of extreme peril to the safety of the persons and property have arisen within the City of Clearlake caused by the wildfire on October 9th, 2017.”

According to California Government Code Section 8630:

- (a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.
- (b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.
- (c) The governing body shall review the need for continuing the local emergency at least once every 30 days until the governing body terminates the local emergency.
- (d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

On October 12th the Council ratified the Proclamation of the Local Emergency by adoption of Resolution No. 2017-78. The Council must continue the Proclamation every 30 days or terminate the local emergency.

It is recommended that the City Council again continue the Proclamation of Emergency ratified in Resolution No. 2017-78 and review the status of the Proclamation again within 30 days.

OPTIONS:

1. Move to continue the Proclamation of Emergency ratified in Resolution No. 2017-78 and review the status of the Proclamation again within 30 days.
2. Other direction

FISCAL IMPACT:

☒ None ☐ \$ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☐ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments: There is potential for recovery of costs by the City due to the declared state of emergency.

STRATEGIC PLAN IMPACT:

- ☐ Goal #1: Make Clearlake a Visibly Cleaner City
- ☐ Goal #2: Make Clearlake a Statistically Safer City
- ☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☐ Goal #4: Improve the Image of Clearlake
- ☒ Goal #5: Ensure Fiscal Sustainability of City
- ☐ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to continue the Proclamation of Emergency ratified in Resolution No. 2017-78 and review the status of the Proclamation again within 30 days.

- ☐ **Attachments:** 1)
 2)



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Consideration of Joining the Joint Powers Authority of the Lake County Community Risk Reduction Authority	MEETING DATE: Aug. 5, 2021
SUBMITTED BY: Alan D. Flora, City Manager	
PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL:

Consideration of joining an existing Joint Powers Authority (JPA), the Lake County Community Risk Reduction Authority (RRA).

BACKGROUND/DISCUSSION:

In 2018 the County of Lake, the Lake County Watershed Protection District, Lakeport Fire Protection District, Northshore Fire Protection District, and the South Lake Fire Protection District created the Lake County Community Risk Reduction Authority through a Joint Powers Authority. In 2019 the Lake County Fire Protection District also joined the JPA.

The RRA was formed to support the entire Lake County community through the effective use of the authority of local governments, implement programs offering low-or no-cost risk reduction resources to the public, the development of funding to implement and maintain such programs, and to provide informational and educational resources to the public so that they are better able to assess and manage these risks.

The RRA is committed to

1. Development of low or no cost resources to reduce the risks of fire from hazardous vegetation, earthquakes, and environmental causes.
2. Development of community infrastructure improvements.
3. Development of property inspection programs and scoring and assessment tools to prioritize the level of individual and community risk.
4. Development and management of funding sources necessary to support the RRA's risk reduction programs.
5. Development of educational and training tools to assist RRA members, the public, and non-member governmental agencies in discovering, assessing and reducing the risks associated with fire and other disasters and mitigating the potential impacts.
6. Development of community programs to improve the resilience of our local forested area.
7. Enforcement of County, State and Federal laws.

The RRA seeks to make Lake County the epicenter of Fire Science and Research, putting Lake County at the forefront for fire and water sciences and limnology, leading to the establishment of a world-class multi-disciplinary sciences facility here in Lake County.

To support its mission, the RRA intends pursuing grant funding and donations, along with prospective alliances with the California Earthquake Authority, the Blue Ribbon Commission and local tribes. The RRA will serve as a

funding clearinghouse which conducts outreach and invites other groups to become members. Additional information on the RRA can be found at: <http://www.lakecountycalifornia.gov/Government/Boards/RRA.htm>

Earlier in 2021 the RRA expressed an interest in expanding JPA membership through representatives of the two cities, a representative of the tribal governments. And a representative of the county's independent water districts.

Council member Russell Cremer has been attending RRA meetings over the past several months in order to stay informed of the workings of the group.

OPTIONS:

1. Move to Authorize the City Manager to Sign the Third Amendment to the JPA, Joining the Lake County Community Risk Management Authority.
2. Take no action.
3. Other direction.

FISCAL IMPACT:

☒ None ☐ \$ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments: At this time there is no budget impact. At some point in the future the partners may be asked to contribute financially.

STRATEGIC PLAN IMPACT:

- ☒ Goal #1: Make Clearlake a Visibly Cleaner City
- ☒ Goal #2: Make Clearlake a Statistically Safer City
- ☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☒ Goal #4: Improve the Image of Clearlake
- ☐ Goal #5: Ensure Fiscal Sustainability of City
- ☐ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to Move to Authorize the City Manager to Sign the Third Amendment to the JPA, Joining the Lake County Community Risk Management Authority and Designate the Mayor's Appointment of _____ as a City Representative on the RRA.

- ☒ **Attachments:** 1) Third Amendment to the JPA of the Lake County Community Risk Reduction Authority

THIRD AMENDMENT TO THE JOINT POWERS AGREEMENT CREATING THE LAKE
COUNTY COMMUNITY RISK REDUCTION AUTHORITY

This third amendment to the Joint Powers Agreement Creating the Lake County
Community Risk Reduction Authority is made this _____ day of _____, 2021.

RECITALS

WHEREAS, on October 16, 2018, both the Board of Supervisors of the County of
Lake and the Board of Directors of the Lake County Watershed Protection District
approved the County’s participation in the Joint Powers Agreement creating the Lake
County Community Risk Reduction Authority (hereinafter, the “Agreement”); and

WHEREAS, on or about that same time, the Lakeport Fire Protection District, the
Northshore Fire Protection District, and the South Lake Fire Protection District also
agreed to participate in the Agreement; and

WHEREAS, the Agreement was first amended on or about December 18, 2018,
to include the Kelseyville Fire Protection District as a participant in the Agreement; and

WHEREAS, the Agreement was amended a second time on or about February
26, 2019, to include the Lake County Fire Protection District as a participant in the
Agreement; and

WHEREAS, the Lake County Community Risk Reduction Authority has worked
diligently to reach out to community stakeholders, to communicate and advance the
Authority’s goals as described in the Agreement, and to create the building blocks to
achieve those goals on behalf of the residents of the County of Lake; and

WHEREAS, it is the desire of the Lake County Community Risk Reduction Authority (hereinafter, the “Authority”) to now expand the membership in the Authority to other public agencies and thereby continue its mission to develop programs and to secure funding to address, reduce, and manage risks due to fire from hazardous vegetation, earthquakes, and various environmental causes as a united community of public agencies in Lake County; and

WHEREAS, the Authority requests that the Agreement be amended to add four additional public agencies as voting members to the Agreement: A representative of the County’s tribal nations, a representative from the City of Lakeport, a representative from the City of Clearlake, and a representative of the County’s independent water districts.

NOW THEREFORE, the Parties hereto agree as follows:

The first paragraph of the Agreement is hereby amended to read as follows:

“This JOINT POWERS AGREEMENT CREATING THE LAKE COUNTY COMMUNITY RISK REDUCTION AUTHORITY (the “Agreement”), as amended, is made and entered into this _____ day of _____, 2021, by and between the County of Lake, the Lake County Watershed Protection District, the City of Lakeport, the City of Clearlake, each signatory representing a county fire protection district, each signatory representing a tribal nation, and each signatory representing an independent county water district. The County of Lake, the Lake County Watershed Protection District, the City of Lakeport, and the City of Clearlake shall each be entitled to one membership vote on the Board of Directors of the Authority. All tribal nations that are

signatories to this Agreement shall collectively be one party to this Agreement, (hereinafter referred to as the “Tribal Nations”) and entitled to one membership vote on the Board of Directors of the Authority. All fire protection districts that are signatories to this Agreement shall collectively be one party to this Agreement, (hereinafter referred to as the “Fire Districts”) and entitled to one membership vote on the Board of Directors of the Authority. All independent county water districts that are signatories to this Agreement, (hereinafter referred to as the “Water Districts”) shall collectively be one party to this Agreement and entitled to one membership vote on the Board of Directors of the Authority. Each signatory to this Agreement may hereinafter be referred to as the “Parties” (collectively) or “Party” (individually).”

Except as specifically modified herein, all other terms and conditions of this Agreement shall remain in full force and effect.

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Executed at _____, California on the day and year first written above.

Bruno Sabatier, Chair
Lake County Board of Supervisors

Bruno Sabatier, Chair
Board of Directors
Lake County Watershed Protection District

ATTEST: Carol J. Huchingson
Clerk of the Board

APPROVED AS TO FORM:
County Counsel

By: _____

By: _____

Jeffrey Thomas, Fire Chief
Lakeport Fire Protection District

Mike Ciano, Fire Chief
Northshore Fire Protection District

Mike Wink, Fire Chief
Southlake Fire Protection District

Joe Huggins, Fire Chief
Kelseyville Fire Protection District

Willie Sapeta, Fire Chief
Lake County Fire Protection District

Kevin Ingram, City Manager
City of Lakeport

Alan Flora, City Manager
City of Clearlake

Philip Gomez, Tribal Chair
Big Valley Band of Pomo Indians

Agustin Garcia, Tribal Chair
Elem Indian Colony of Pomo Indians

Sherry Treppa, Tribal Chair
Habematolel Pomo of Upper Lake

Joseph Franklin Velarde, Tribal Representative
Middletown Rancheria of Pomo Indians

Beni Cromwell, Tribal Chair
Robinson Rancheria of Pomo Indians

Shawn Davis, Tribal Chair
Scotts Valley Band of Pomo Indians

Ahimsah Wonderwheel, General Manager
Buckingham Park Water District

Benjamin Murphy, General Manager
Cobb Area County Water District

Frank Costner, General Manager
Konocti County Water District

Billy Inman, General Manager
Lower Lake County Water District

Rachelle Henry, General Manager
Upper Lake County Water District

Dianna Mann, General Manager
Clearlake Oaks County Water District

Todd Fiora, General Manager
Callayomi County Water District



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Consideration of Approval of Sale of Clearlake Waste Solutions to Waste Connections

MEETING DATE: Aug. 5, 2021

SUBMITTED BY: Alan D. Flora, City Manager

PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL:

The City Council is being asked to approve to the sale of Clearlake Waste Solutions, Inc. to Waste Connections.

BACKGROUND/DISCUSSION:

In 2011 the City entered into a franchise agreement with Clearlake Waste Solutions for waste service within the City of Clearlake. The franchise agreement requires that the City approve any sale of stock outside of the three primary stockholders. The owners have negotiated a sale to Waste Connections in July and are asking for the City's approval of the sale.

City representatives have met with both the owners of Clearlake Waste Solutions and representatives of Waste Connections. After the sale Waste Connections will be hiring Bruce McCracken to run the company locally. The name and other operations of Clearlake Waste Solutions will remain the same. Staff believe that with the retention of Mr. McCracken and the process of allowing continued local control of the operations, the positive partnership the City has enjoyed with Clearlake Waste solutions will remain in place.

OPTIONS:

1. Move to Adopt Resolution 2021-39 Approving of the Sale of Clearlake Waste Solutions to Waste Connections.
2. Take no action.
3. Other direction.

FISCAL IMPACT:

☒ None ☐ \$ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments: No budget impact anticipated.

STRATEGIC PLAN IMPACT:

- ☒ Goal #1: Make Clearlake a Visibly Cleaner City
- ☐ Goal #2: Make Clearlake a Statistically Safer City
- ☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☒ Goal #4: Improve the Image of Clearlake
- ☐ Goal #5: Ensure Fiscal Sustainability of City
- ☐ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to Adopt Resolution 2021-39 Approving the Sale of Clearlake Waste Solutions to Waste Connections.

- ☒ **Attachments:**
 - 1) Resolution 2021-39
 - 2) 2011 Franchise Agreement

RESOLUTION NO. 2021-39

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE
APPROVING TO THE SALE OF CLEARLAKE WASTE SOLUTIONS TO WASTE
CONNECTIONS**

WHEREAS, The City of Clearlake, California (“Franchising Authority”) granted a waste collection Franchise to Clearlake Waste Solutions Inc. (“Franchisee”); and

WHEREAS, in July 2021, the owners of Clearlake Waste Solutions agreed to a sale to Waste Connections; and

WHEREAS, under the terms of the Franchise Agreement, the Franchise Authority must approve of any sale; and

WHEREAS, as a result of the Transaction, Clearlake Waste Solutions will be owned by Waste Connections, but will still operate as Clearlake Waste Solutions; and

WHEREAS, the Franchising Authority fully supports the proposed Transaction and, whether or not legally required, wishes to grant its approval to the proposed Transaction;

NOW, THEREFORE, BE IT RESOLVED BY FRANCHISING AUTHORITY:

Section 1. The Franchising Authority hereby approves the Transaction.

Section 2. This Resolution shall have the force of a continuing agreement with the Franchisee and the Franchising Authority shall not amend, or otherwise alter this Resolution, directly or indirectly, without the consent of the Franchisee.

Section 3. This Resolution shall become effective immediately upon passage.

PASSED AND ADOPTED on August 5, 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Mayor, City of Clearlake

ATTEST:

City Clerk, City of Clearlake



Mr. Allan Flora
City Manager
City of Clearlake
14050 Olympic Drive
Clearlake, CA 95422

July 14, 2021

Dear Allan,

Over the past 14 years, it has been an honor to work with you, your team, and the City of Clearlake in building a solid waste program and infrastructure that is superior to any other in the tri-county area. That infrastructure will serve the City throughout its foreseeable future. The current construction of our state-of-the-art mixed organic processing facility will complete the plan we envisioned for the City of Clearlake 14 years ago. The progress we have made together is considerable, unmatched and it didn't come easy. The challenges we have overcome together make it so rewarding for our company and the people that have made it possible. But, the continued increase in capital requirements, labor costs, insurance costs and the ever-changing regulatory environment are of concern to us. For these reasons, we have contemplated for some time that a stronger partner might be suitable for us, our employees and the City. With that in mind, the owners of Clearlake Waste Solutions, Inc. (CWS) have been pondering the sale of our company.

After a significant amount of consideration, hand ringing and substantial diligence, CWS has now come to agreement with Waste Connections, Inc. (WCI). Although our name will not change, our depth and capabilities will. This shift will benefit the City of Clearlake today and well into the future.

CWS formally requests the City's consent to this change in control. As part of this notice, CWS would like to provide the City of Clearlake with the following information:

The name, address and telephone number of the legal entity that is purchasing the Company is as follows:

Waste Connections US, Inc.
3 Waterway Square Place, Suite 110
The Woodlands, Texas 77380
(832) 442-2200

Waste Connections US, Inc. is a Delaware corporation and a wholly-owned subsidiary of Waste Connections, Inc. Waste Connections, Inc. is a publicly-traded company whose shares are traded on the New York Stock Exchange (Ticker Symbol: WCN). The address and telephone number of Waste Connections, Inc.'s principal administrative office is as follows:

Waste Connections, Inc.
 3 Waterway Square Place, Suite 110
 The Woodlands, Texas 77380
 (832) 442-2200

Waste Connections, Inc. and its subsidiaries have been providing municipal solid waste and recycling collection, disposal and processing services in the United States since 1997 and in California since 1998. Waste Connections, through various operating subsidiaries, currently provides solid waste and recycling collection services in the following municipalities in California, all of which are required to comply with AB 939:

<u>California Municipality Served</u>	<u>Waste Connections Subsidiary</u>
Avila Beach Community Services District	South County Sanitary Service, Inc.
Bishop, City of	Preferred Septic & Disposal, Inc.
Cambria Community Services District	Mission Country Disposal
Cameron Park Community Service District	Waste Connections of California, Inc. d/b/a El Dorado Disposal Service
Campbell, City of	West Valley Collection & Recycling, LLC
El Dorado County	Waste Connections of California, Inc. d/b/a El Dorado Disposal Service
El Dorado Hills Community Service District	Waste Connections of California, Inc. d/b/a El Dorado Disposal Service
Grover Beach, City of	South County Sanitary Service, Inc.
Inyo County	Madera Disposal Systems, Inc. d/b/a Bishop Waste Disposal
Inyo County	Preferred Septic & Disposal, Inc.
Los Gatos, Town of	West Valley Collection & Recycling, LLC
Los Osos Community Services District	South County Sanitary Service, Inc.
Mammoth Lakes, Town of	Mammoth Disposal Company
Mono County	Mammoth Disposal Company
Monte Sereno, City of	West Valley Collection & Recycling, LLC
Morro Bay, City of	Morro Bay Garbage Service
Nipomo Community Services District	South County Sanitary Service, Inc.
Oceano Community Services District	South County Sanitary Service, Inc.
Placerville, City of	Waste Connections of California, Inc. d/b/a El Dorado Disposal Service
Red Bluff, City of	Waste Connections of California, Inc. d/b/a Green Waste of Tehama
San Jose, City of	Waste Connections of California, Inc. d/b/a GreenTeam of San Jose
San Luis Obispo, City of	San Luis Garbage Company
San Luis Obispo, County of	South County Sanitary Service, Inc.
Saratoga, City of	West Valley Collection & Recycling, LLC
Tehama County	Waste Connections of California, Inc. d/b/a Green Waste of Tehama

The Waste Connections subsidiaries listed above have served their respective communities for many years and have never been found in default of their respective franchise agreements or had their respective franchise agreements terminated for cause.

Why WCI? We chose WCI as our suitor because of their proven commitment to staying local. Not only does CWS now have abundant resources to draw from when needed, we will be able to operate in the same way: same local Company, same local offices, same local CSR's, same local operations personnel, and same local management. WCI ownership provides everything necessary to ensure the continued strength and success of both CWS and the City of Clearlake.

Allan, this will be a smooth and seamless transition. All aspects of our current franchise agreement obligations with the City will remain unchanged. Again, for the benefit of all parties, we request your assistance in obtaining the City's consent to this change of ownership.

Sincerely,

CLEARLAKE WASTE SOLUTIONS, INC.



David M. Carroll
President



Bruce McCracken
Vice-President

**CLEARLAKE WASTE SOLUTIONS, INC.
SOLID WASTE FRANCHISE AGREEMENT**

Section J, Item 12.

This Solid Waste Franchise Agreement (the "Agreement") is made and entered into at Clearlake, California on September 1, 2011, by and between the City of Clearlake, a municipal corporation, hereinafter referred to as "CITY", and Clearlake Waste Solutions, Inc., a California corporation, hereinafter referred to as "CONTRACTOR."

WHEREAS, the Legislature of the State of California, by enactment of Public Resources Code sections 49300 and 40059, declares that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, the City Council of CITY has determined that the public health, safety and well being of its residents requires that solid waste collection and disposal, including but not limited to the frequency of collection, the means of collection and the transportation, scope of service charges and fees, and the location and extent of such services be provided by an exclusive solid waste contract; and

WHEREAS, the reduction of the amount of solid waste and the conservation of recyclable materials is an important public concern by reason of the growing problem of solid waste disposal and by reason of the concern for a judicious use of existing natural resources; and

WHEREAS, CONTRACTOR represents that it has experience and expertise necessary to institute a program for the collection and proper handling of solid waste and recyclable materials; and

NOW, THEREFORE, in consideration of the respective and mutual covenants and promises hereinafter contained and made, and subject to all the terms and conditions hereof, the parties do hereby agree as follows:

1. Scope of this Agreement

1.1. Definitions

These definitions are for the purpose of clarifying statements made in this Agreement. They do not extend beyond the scope of this Agreement.

Bulky Items: Discarded appliances, furniture, car or light truck tires, carpets, mattresses and similar large items which require special collection due to their size, but can be collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles.

Change in Law: Any new law and any new governmental regulation (including any new written interpretive guideline by a public agency interpreting any existing law or regulation), as well as any change to an existing law or regulation, enacted or promulgated after the date of this Agreement.

Collection Costs: All of CONTRACTOR's costs to provide collection services under this Agreement, including, without limitation, Fuel Costs, labor costs, vehicle and vehicle-related costs, maintenance, insurance, and transportation costs, but excluding Pass Through Costs.

Commercial property: Property upon which business activity is conducted, including limited to retail sales, services, wholesale operations, manufacturing and industrial operations.

Curbside: At the front of the yard within three (3) feet of the public roadway.

Customer: The owner or occupant of a Residential or Commercial property who subscribes to garbage service.

Disposal: The permanent placing of Solid Waste in a facility legally permitted to receive it.

Disposal Costs: CONTRACTOR's costs to dispose of Solid Waste collected under this Agreement at the Contractor Designated Disposal Facility or other permitted landfill.

E-Waste: Any device or item that is categorized as E-Waste by CalRecycle, including, but not limited to, discarded electronic equipment, such as televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be or include Hazardous Waste and thus require special handling, processing, or disposal.

Food Waste: Waste that will decompose and/or putrefy including all kitchen and table food waste, animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs, discarded paper that is contaminated with Food Waste, fruit waste, grain waste, dairy waste, meat and fish waste, and non-Recyclable paper or contaminated paper.

Fuel Costs: CONTRACTOR's costs for diesel and other fuels used in performing services under this Agreement.

Generate: To create or render. A Customer is not considered to be the generator of Solid Waste if the material has merely been transported or moved to the Customer's site.

Greenwaste: Organic materials intended to be salvaged and/or reprocessed, including by way of composting. Greenwaste materials include yard trimmings, lawn clippings, and unpainted and untreated wood. With mutual consent of both parties, the list of Greenwaste to be picked up may be changed.

Hazardous Waste and Prohibited Waste: Materials that are not allowed to be disposed of at a Class III landfill.

Missed Service: Service is considered missed by the CONTRACTOR if the container and/or material was at its designated pick up location when CONTRACTOR serviced that portion of the route but failed to service the container in question. It is not considered Missed Service if the Customer failed to put the material out or put the material out later than the starting time on collection day.

Pass Through Costs: Disposal Costs, Processing Costs and Regulatory Costs.

Processing: The act of salvaging, reprocessing, marketing and selling or reusing Recyclables (including Greenwaste and Food Waste) whether directly or through one or more third parties.

Processing Costs: CONTRACTOR's costs to Process Recyclables collected under this Agreement at the Contractor Designated Recycling Facility or other permitted facility, CONTRACTOR's costs to Process Greenwaste collected under this Agreement at the Contractor Designated Greenwaste Facility or other permitted facility, CONTRACTOR's costs to Process Food Waste collected under this Agreement at the Contractor Designated Food Waste Facility or other permitted facility, including in each case all fees paid to either such Facility for such Processing.

Recyclables: Materials intended to be salvaged and/or reprocessed consistent with the requirements of AB 939, including, without limitation, paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, PET, HDPE, and other plastics, beverage containers, compostable materials (including Greenwaste and Food Waste), and wallboard, wood, brick and stone in reusable size and condition. Recyclables shall include those items of construction debris and demolition debris described herein. Recyclables include newspaper, cardboard, cereal boxes, junk mail, office paper, phone books, magazines, milk cartons, juice cartons, aluminum cans, foil, tin food cans, steel food cans, aluminum pie tins, empty aerosol cans, soda bottles (remove lids), water bottles (remove lids), juice containers, shampoo bottles, detergent bottles, milk jugs, juice jugs, butter containers, yogurt containers, glass food jars/bottles (remove lids), glass beverage jars/bottles (remove lids). All Recyclables must be clean, rinsed or wiped clean of food waste, and loose (not bagged) in the cart. With mutual consent of both parties, the list of items to be picked up for recycling may be changed.

Regulatory Costs: All regulatory and governmental fees and charges incurred by CONTRACTOR in connection with providing services under this Agreement, including, without limitation, franchise fees payable to CITY and regulatory costs resulting from any Change in Law.

Residential property: Property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied. Complexes of four or more units, whether in a single structure, or connected structure, or series of structures may be subject to procedures and rates which differ from other lower density Residential properties.

Solid Waste: Materials, including Garbage and Refuse, Generated by Customers that are useless, discarded, rejected or abandoned, and placed at Curbside or in a designated container for pick up and Disposal by the CONTRACTOR. Solid Waste does not include Recyclables, Food Waste, liquid, or any other material which cannot legally be disposed of in a Class III landfill.

Source separating: The act of separating (a) Recyclables (other than Greenwaste and Food Waste) from Solid Waste, Greenwaste and Food Waste by the Generator of such materials, in the case of Recyclables, (b) Greenwaste from Solid Waste, Food Waste and other Recyclables by the Generator of such materials, in the case of Greenwaste, and (c) Food Waste from Solid Waste, Greenwaste and other Recyclables by the Generator of such materials, in the case of Food Waste.

1.2. Portion Deemed Invalid

Should any clause, sentence, or provision of this Agreement, except those of Section 1.9, be ruled invalid, illegal, or unenforceable by any court of competent jurisdiction, either CITY or CONTRACTOR, within 30 days of such event, will have the right to reopen negotiation for replacement provisions for the portions of this Agreement that are voided or made inapplicable.

Should any clause, sentence, or provision of this Agreement, except those of Section ruled invalid, illegal, or unenforceable by any court of competent jurisdiction, the integrity of all remaining provisions shall remain valid and shall constitute the basis of the Agreement between CITY and CONTRACTOR.

If any clause, sentence or provision of Section 1.9 shall be ruled invalid, illegal, or unenforceable by any court of competent jurisdiction, such clause, sentence, or provision shall not be severed from this Agreement but CONTRACTOR shall have the right in its sole discretion to terminate this Agreement upon thirty days' written notice thereof to CITY.

1.3. Purpose of this Agreement

The purpose of this Agreement is to provide for a quality waste management service to the citizens and businesses of CITY, at a fair market cost. This Agreement sets down the terms and conditions under which CONTRACTOR shall provide the services of collection, transporting, processing, and disposal or marketing of Solid Waste and Recyclables that are Generated in or occur within the City of Clearlake, and the compensation to be received by CONTRACTOR therefor. This Agreement also provides for the orderly transition to a successor operation of Solid Waste and Recyclables management by CITY or by CITY sponsored successor, in the event of termination of CONTRACTOR's services. This Agreement provides remedies for faulty performance.

This Agreement establishes efforts by which CITY and CONTRACTOR will work for compliance with AB 939 waste reduction goals.

It is expressly understood and agreed that CONTRACTOR is, and at all times shall be, an independent contractor and nothing contained herein shall be construed as being inconsistent with that status or as making CONTRACTOR, or any individual whose compensation for services is paid by CONTRACTOR, an agent or employee of CITY, or as authorizing CONTRACTOR to create or assume any obligation or liability for or on behalf of CITY.

1.4. Replaces Previous Agreement

Effective as of September 1, 2011 (the "Effective Date"), this Agreement replaces and supercedes the previous agreement for the hauling and disposal of waste between CITY and CONTRACTOR, dated December 8, 1987, and all amendments thereto, which will be of no further force or effect and under which neither party shall have any further obligations.

1.5. Term of this Agreement

The term of this Agreement shall be for a period of fifteen (15) years and three (3) months commencing on the Effective Date and ending on October 31, 2026, provided that CITY shall have one (1) option to extend this Agreement and the franchise granted hereunder on the terms and conditions herein for a period of five (5) years commencing November 1, 2026 and ending October 31, 2031. Notice of CITY's exercise of such option must be given at least six (6) months prior to October 31, 2026. The option to extend hereunder may not be exercised unless CITY is in material compliance with the terms of this Agreement at the time of exercise and on October 31, 2026.

1.6. Enforceability

Failure by CITY to at any time require of CONTRACTOR the performance of any provisions of this Agreement shall in no way affect the right of CITY to thereafter enforce same, nor shall a waiver by CITY of any breach of any provision of this Agreement be held as a waiver of any succeeding breach of such provision, or as a waiver of any provision itself.

1.7. Accountability

The collection and Disposal of Refuse directly affects the public health and welfare. Therefore, CONTRACTOR shall be accountable to CITY for CONTRACTOR's performance. CONTRACTOR shall obey all Federal, State and Local laws, ordinances and regulations which now exist or may in the future be modified or adopted, and generally conduct its performance of this Agreement so as to faithfully and competently collect and dispose of or recycle Solid Waste, Recyclables, Greenwaste and Food Waste in a safe and efficacious manner. If at any time either party determines that it is appropriate to meet to discuss performance of this Agreement, both parties will do so in good faith. If at any time CITY determines that CONTRACTOR is guilty of substandard performance, and after written notice of such and CONTRACTOR'S failure to remedy the cited deficiencies, all in accordance with Section 1.11 below, CITY may take all actions permitted pursuant to Section 2.2.9 below.

1.8. City Authority

Whenever the context of this Agreement requires CITY to perform an act, and said act is to be performed by an individual, "CITY" shall be interpreted as meaning the City Administrator or his or her authorized appointee.

1.9. Exclusive Franchise

CONTRACTOR shall have the exclusive right within CITY to collect, transport, process and dispose of all Solid Waste and Recyclables (including Greenwaste and Food Waste) Generated in or occurring within the City of Clearlake limits, and in any territory hereafter annexed to CITY, except as otherwise provided by applicable law and as follows:

(a) Recyclables Generated at any Residential or Commercial property that are Source Separated may be transported personally by the generator or his, her or its employees for donation to a processing facility that has been duly approved and authorized as such by a governmental or other appropriate authority, including beverage containers recycled at authorized facilities under the California Beverage Container Recycling Litter Reduction Act, provided that the Generating person is not charged a fee, directly or indirectly, for such materials.

(b) Recyclables Generated at any Residential or Commercial property that are Source Separated may be put out for collection at the generating person's property for donation or sale to any charitable entity or other third party that, to the extent required by applicable law, has been duly approved and authorized by a governmental or other appropriate authority to accept or purchase such materials, provided that the Generating person is not charged a fee, directly or indirectly, for such materials.

(c) Solid Waste Generated at any Residential or Commercial property is personally transported by the person Generating same to any licensed landfill, transfer station or materials recovery facility.

(d) Greenwaste removed from a Residential or Commercial property by a gardening, landscaping or tree trimming contractor as an incidental part of a comprehensive service offered by such contractor, rather than as a hauling service, may be disposed of by such contractor at any licensed transfer station or materials recovery facility.

(e) E-Waste, Hazardous Waste, and Prohibited Waste may be disposed of in any lawful manner.

(f) Creative Outdoor Advertising of America ("COA") may continue to collect Recyclables and Solid Waste under that certain August 11, 2010 agreement with CITY (the "COA Agreement"), and may otherwise enjoy all rights and privileges granted under such agreement, provided that all Recyclables and Solid Waste collected by COA shall be delivered to separate bins (Recyclables vs. Solid Waste, and separate from the bins provided for CITY's Recyclables and Solid Waste) at CITY's corporation yard provided by CONTRACTOR, from which CONTRACTOR will dispose of such materials for its then current rates to be paid by COA, provided that COA shall not be charged for up to twenty-five (25) containers not larger than thirty-two (32) gallons each of such materials each calendar month.

CITY warrants that it has the authority to grant such an exclusive right as described in the Agreement and as delegated to it by State law. CITY covenants that during the term of this Agreement it will not, and will not engage other persons to, become involved in the collection and Disposal of Solid Waste or Recyclables (including Greenwaste and/or Food Waste) in violation of CONTRACTOR's exclusive rights hereunder, provided that CONTRACTOR acknowledges that CITY cannot prevent public schools from contracting for waste disposal services from a contractor selected by the school, and further acknowledges that CITY cannot regulate or prohibit the sale or donation of Recyclables by the generators of such materials. To the extent that CONTRACTOR does contract to serve any public school within the city limits, such service shall be performed in compliance with this Agreement, including the payment of franchise fees based upon the revenue generated thereby. In order to authorize and protect the exclusive franchise granted in this Agreement, CITY (A) shall amend the Municipal Code of Clearlake (the "Code") within sixty (60) days after the Effective Date to conform the Code to the terms in this Agreement, including, without limitation, provisions to authorize the term set forth in Section 1.5 above, and provisions substantially similar to those attached hereto as Exhibit D; and (B) shall take such action as it deems appropriate to enforce this Agreement and the Code, and CONTRACTOR shall cooperate with such action; provided, however, that CITY shall not be required to commence litigation to enforce this Agreement or the Code, but shall assist CONTRACTOR, at CONTRACTOR's expense, in any legal action by CONTRACTOR to do so.

1.10. Ownership of Waste

Ownership of all Solid Waste and Recyclables (Hazardous or Prohibited Waste excluded) shall vest with CONTRACTOR at the time and point of collection by CONTRACTOR. Solid Waste in collection containers shall remain the property of the Generator until the time of pickup by CONTRACTOR. Hazardous or Prohibited Waste shall remain the property of the Generator. CONTRACTOR is not required by this Agreement to pick up Hazardous Waste or Prohibited Waste. Recyclables placed in CONTRACTOR'S containers shall become the property of

CONTRACTOR at such time as they are placed at the curb or, for Commercial Customer, the material is placed in a designated container. In the event the Customer's container is consistently overloaded, CONTRACTOR may petition CITY to enforce the relevant health and safety regulations.

Ownership and the right to possession of Solid Waste and Recyclables (including Greenwaste and Food Waste) placed in containers or bins or bundles or bags for collection, or placed at Curbside, shall transfer directly from the Customer to CONTRACTOR, by operation of law, not as a result of this Agreement. Subject to the provisions of this Agreement, CONTRACTOR shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the Solid Waste or Recyclables (including Greenwaste and/or Food Waste) that it collects. Solid Waste which is disposed of at a Disposal site or sites (whether landfill, transformation facility, transfer station or materials recovery facility) shall become the property of the owner or operator of the Disposal site or sites once deposited there by CONTRACTOR. At no time does the CITY obtain any right of ownership or possession of Solid Waste or Recyclables placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that CITY has any such rights.

1.11. Disposal Facility, Recycling Facility, Greenwaste Facility, Food Waste Facility

1.11.1. Contractor Designated Disposal Facility, Recycling Facility, Greenwaste Facility and Food Waste Facility

CONTRACTOR shall dispose of all Solid Waste collected in CITY at the "Contractor Designated Disposal Facility." The Contractor Designated Disposal Facility is the Eastlake Landfill or the Lake County Transfer Station.

CONTRACTOR shall dispose of all Recyclables (other than Greenwaste) collected in CITY at the "Contractor Designated Recycling Facility." The Contractor Designated Recycling Facility is the Pacific Recycling Solutions, Inc. facility at 4200 North State Street, Ukiah, California.

CONTRACTOR shall dispose of all Greenwaste collected in CITY at the "Contractor Designated Greenwaste Facility." The Contractor Designated Greenwaste Facility is the Pacific Recycling Solutions, Inc. facility at 4200 North State Street, Ukiah, California, or the Lake County Transfer Station.

CONTRACTOR shall dispose of all Food Waste collected in CITY at the "Contractor Designated Food Waste Facility." The Contractor Designated Food Waste Facility shall be selected by CONTRACTOR subject to the City Administrator's consent, which may not be unreasonably withheld.

CONTRACTOR may propose an alternate Contractor Designated Disposal Facility, Recycling Facility, Greenwaste Facility or Food Waste Facility by notice to CITY subject to the City Administrator's consent, which may not be unreasonably withheld.

Subject to Section 1.13 below, CONTRACTOR's failure to dispose of Solid Waste collected in CITY at the Contractor Designated Disposal Facility, Recyclables collected in CITY at the Contractor Designated Recycling Facility, Greenwaste collected in CITY at the Contractor Designated Greenwaste Facility or Food Waste collected in CITY at the Contractor Designated Food Waste Facility shall constitute an event of default hereunder, whereupon CITY may terminate this Agreement upon thirty days' prior written notice thereof to CONTRACTOR. This

provision shall be independent of and in addition to any other CITY termination rights elsewhere in this Agreement, including Section 1.12.

1.11.2. Alternative Facility Designations

If the Contractor Designated Disposal Facility, Recycling Facility, Greenwaste Facility or Food Waste Facility is closed for any reason (other than daily closure in the ordinary course of business), CONTRACTOR may designate a new Contractor Designated Disposal Facility, Recycling Facility, Greenwaste Facility or Food Waste Facility, respectively, for use on a short-term basis without the City Administrator's consent, provided that an alternative Contractor Designated Disposal Facility Recycling Facility, Greenwaste Facility or Food Waste Facility, respectively, may be designated by the City Administrator for use during such short-term closure should CONTRACTOR fail to do so.

1.12. Breach by CONTRACTOR (see also 2.2.9, Remedies)

In the event CONTRACTOR should default in the performance of any material provisions of this Agreement, and the default is not cured within 30 days after the receipt of written notice of default from CITY, then CITY may, at its option, hold a hearing at a City Council meeting to determine whether this Agreement should be terminated. If the CITY determines that public health or safety is at risk, remedies may be required within seven (7) days of written notice to CONTRACTOR. In the event CITY exercises its option to terminate this Agreement, CITY may, at its option, either directly undertake performance of the services or arrange with other persons to perform the services with or without any expense CITY incurs in performing the services.

In the event CITY exercises its option under this paragraph to terminate this Agreement, CITY shall pay to CONTRACTOR the amount due CONTRACTOR under the terms of this Agreement for the services performed as of the date of termination. CITY may, in that event take possession of CONTRACTOR's equipment necessary to perform the services required under this Agreement, and retain it until CITY can purchase or otherwise acquire equipment suitable for that purpose, but in no event longer than 120 days. CITY shall compensate CONTRACTOR for the reasonable rental value of its equipment and facilities during the period CITY retains possession or use of such equipment and facilities, less any monies CONTRACTOR owes CITY at the time of breach of this Agreement.

In the event that CONTRACTOR becomes insolvent, files for bankruptcy, or makes an assignment for the benefit of creditors, this Agreement may be immediately terminated by CITY.

1.13. Force Majeure

Neither CONTRACTOR nor CITY shall be liable for, or in breach of this Agreement as the result of, the failure to perform their duties nor any resultant damage, loss, etc., if such failure is caused by a catastrophe, riot, war, earthquake, governmental order, accident, act of God, default by the other party, default by a carrier, labor strike or unrest (other than by the employees of CONTRACTOR) or other similar or different contingency beyond the reasonable control of CONTRACTOR or CITY. If circumstances persist for more than 30 days, or if after their cessation the affected party is unable to render full or substantial performance, the other party may terminate this Agreement upon written notice given to the affected party.

When hazardous or unsafe road conditions are present due to snow, ice, slides, erosion, maintenance or flooding, CONTRACTOR may, with approval from CITY (which will not be unreasonably withheld), suspend collection in affected areas.

1.14. Labor Strikes

CONTRACTOR shall continue service during a labor strike by its own employees.

1.15. Litigation

Should any litigation be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees in such litigation or in a separate action brought for that purpose.

1.16 Commercial Waste Stream Audits

CONTRACTOR shall, at least once during each twelve (12) month period, contact each of the Commercial Customers in Clearlake to notify the customers of recycling and other supportive services available. Such contact shall include, at Contractor's sole expense, the preparation of a professional, well-formatted and designed publication that describes, at a minimum, the services available, benefits and cost savings that may result from participation or improving an on-going program and the right of the customer to procure technical assistance, including waste audits, from CONTRACTOR. CONTRACTOR shall distribute the brochure by a first class postage mailing. CONTRACTOR shall provide waste stream audits for any Commercial Customer, as requested, and report to the customer on opportunities available to start up or increase diversion and reduce the cost of Solid Waste collection. CONTRACTOR shall report to CITY the results of such contacts on a periodic basis as required in this Agreement or otherwise specified by CITY.

2. SERVICE OPERATIONS AND PERFORMANCE

2.1. Services to be Performed by CONTRACTOR

2.1.1. Collection and Hauling Service

CONTRACTOR shall collect from Commercial and Residential Customers all Solid Waste and Recyclables (including Greenwaste and Food Waste) as are Generated in or occur within the City of Clearlake.

2.1.2. Meet and Confer on Service Changes

All service shall be in accordance with the Municipal Code of Clearlake, as such Code is from time to time amended; provided, however, that no amendment that causes a material change shall be adopted without the written consent of CONTRACTOR, except to the extent that such amendment is necessary to comply with a Change in Law. Either CITY or CONTRACTOR may at any time request that the service or other provisions in this Agreement be modified by delivering written notice of its requested modifications to the other party. Within thirty (30) days after receipt of any such request, CITY and CONTRACTOR shall meet and negotiate in good faith on adopting such requested modifications, including, without limitation, any change to Customer rates and CONTRACTOR's compensation necessitated by such modifications, provided that nothing

herein shall obligate CITY and CONTRACTOR to agree on any such requested modification. CITY and CONTRACTOR agree on any such modifications to this Agreement, they shall execute a written amendment memorializing each such modification.

2.1.3. Local, State, and Federal Requirements

All service performed by CONTRACTOR shall be in accordance with all applicable CITY, State, and Federal ordinances, laws, requirements, restriction, and licensing provisions as the same now exist or as they may be modified or adopted in the future.

2.1.4. Service Components

The basic service components to be performed by CONTRACTOR are as follows:

2.1.4.1 Can Collection

CONTRACTOR shall provide Solid Waste container collection service to all Commercial and Residential Customers. The minimum size of carts used shall be 20 gallons. This consists of containerized, Curbside-placed, Solid Waste collection on a once per week basis, provided that all Solid Waste collected must fit into the container with the lid closed or be contained in specific bags sold by CONTRACTOR. If the container is overfilled, CONTRACTOR shall be entitled to levy an extra charge in accordance with Exhibit A attached hereto and hereby incorporated herein. CONTRACTOR shall provide uniform containers approved by CITY to all Residential Customers, and to all Commercial Customers that use carts that are 96 gallons or less.

2.1.4.2. Disabled Service

CONTRACTOR shall provide backyard pick up service at the normal service rate for those Residential properties where no occupant is physically able to place Solid Waste or Recyclables at the curb. CONTRACTOR may request that the Customer provide evidence of a "disabled" or "handicapped" designation from the State or from a physician. In the event of an unresolved dispute between a Customer and CONTRACTOR, the matter shall be submitted to the City Administrator (or designee) whose decision shall be final.

2.1.4.3. Bin Service

CONTRACTOR shall offer large bin Solid Waste collection service to Commercial Customers, at least once a week. CONTRACTOR shall provide uniform bins approved by CITY to participating Customers.

2.1.4.4. Drop Box/Compactor Service

CONTRACTOR shall provide drop box Solid Waste and Recyclables collection service to Commercial and Residential Customers, including the use of compactor boxes where applicable, on a schedule or on call, with CONTRACTOR furnishing said drop boxes and compactor boxes, or offering to haul compactor boxes owned by Customer. Compactor boxes supplied by Customer must be compatible with CONTRACTOR's equipment. Compactor boxes supplied by CONTRACTOR shall be rented or leased to Customers on terms that are mutually acceptable to CONTRACTOR and each such Customer.

2.1.4.5. Recyclables Collection

CONTRACTOR shall provide containerized, Curbside-placed, Recyclables collection service to all Commercial and Residential Customers on a once per week basis, provided that all Recyclables collected must fit into the container provided by CONTRACTOR with the lid closed. If the container is overfilled, CONTRACTOR shall be entitled to levy an extra charge in accordance with Exhibit A. CONTRACTOR shall Process the Recyclables it collects. Recyclables shall be collected from Commercial Customers in carts, bins or drop boxes as CONTRACTOR shall determine.

CONTRACTOR shall provide uniform containers approved by CITY to all Customers. Materials collected as Recyclables shall not be landfilled without prior notice to and approval by CITY. Such approval shall not unreasonably be withheld if there is no readily available economic market for a particular material.

Recyclables that are set out by a Customer, but are sufficiently contaminated so as to render them unmarketable, unacceptable for Processing or create a risk of significantly contaminating the existing load of materials, may be rejected by CONTRACTOR, without breach of this Agreement, if notification is given to the Customer. If the Customer again sets out such contaminated Recyclables, CONTRACTOR shall have the option to collect such Recyclables and charge the Customer a special fee as set forth in Exhibit A. In the event of three or more such occurrences, CONTRACTOR shall be entitled to remove the Recyclables container from such Customer’s property.

2.1.4.6. Greenwaste Collection

CONTRACTOR shall provide containerized, Curbside-placed, Greenwaste collection to all Residential Customers on a once per week basis, provided that all Greenwaste materials collected must fit into the container provided by CONTRACTOR with the lid closed. If the container is overfilled, CONTRACTOR shall be entitled to levy an extra charge in accordance with Exhibit A. CONTRACTOR shall Process the Greenwaste materials it collects.

CONTRACTOR shall provide uniform containers approved by CITY to all Customers.

Materials collected as Greenwaste shall not be landfilled without prior notice to and approval by CITY. Such approval shall not unreasonably be withheld if there is no readily available economic market for a particular material.

Greenwaste that is set out by a Customer, but is sufficiently contaminated so as to render it unmarketable, unacceptable for Processing or create a risk of significantly contaminating the existing load of materials, may be rejected by CONTRACTOR, without breach of this Agreement if notification is given to the Customer. If the Customer again sets out such contaminated Greenwaste, CONTRACTOR shall have the option to collect such Greenwaste and charge the Customer a special fee as set forth in Exhibit A. In the event of three or more such occurrences, CONTRACTOR shall be entitled to remove the Greenwaste container from such Customer’s property.

CONTRACTOR shall provide containerized, Curbside-placed, Food Waste collection TO ALL Residential Customers pursuant to program details once developed by CONTRACTOR and CITY.

2.1.4.8.

E-Waste

CONTRACTOR shall provide one (1) annual drop-off event without charge for E-Waste at a location in CITY each calendar year to be announced in writing at least sixty (60) days in advance. The service will be available only for Residential Customers whose accounts with CONTRACTOR are not delinquent. Commercial Customers may not use this service. Proof of residence and subscription may be required. Each event will be open from 8:00 a.m. to 3:00 p.m.

In addition to collecting E-Waste at the annual drop-off event, CONTRACTOR shall collect items of E-Waste from Residential and Commercial Customers upon request, and may charge a fee for this collection which does not exceed CONTRACTOR's cost of collection and disposal plus a reasonable profit. All E-Waste collected, whether or not at the annual drop-off event, shall be disposed of in compliance with all applicable laws, orders, and regulations.

2.1.4.9.

Bulky Items Collection

Residential Customers whose accounts with CONTRACTOR are not delinquent may have two (2) Bulky Items collected each calendar year (January through December) without charge except as noted below. In addition, non-delinquent Residential Customers may have additional Bulky Items collected each calendar year for a charge determined by CONTRACTOR, but which shall not exceed CONTRACTOR's cost of collection and disposal of such Bulky Items plus a reasonable profit. Commercial Customers may not use this service. Residential Customers must call to arrange a scheduled collection day at least one (1) week in advance. Collection will be made at the normal service address. Items must be outside and staged in an area accessible by truck. Residential Customers can have two items collected at one time or have one item collected on each of two scheduled days. Any appliance containing freon (air conditioners, refrigerators, freezers, etc.) will be assessed a charge of \$10.00 per item to cover the cost of freon removal (subject to increase for increased costs). Freon removal charges will be assessed on the Customer's Solid Waste bill.

2.1.4.10.

Reporting to CITY

CONTRACTOR shall submit to CITY the following reports in a format approved by CITY, with data specific to Clearlake, during the term of the Agreement:

Quarterly Reports: Within thirty (30) days after the last day of each calendar quarter, CONTRACTOR shall submit a quarterly Recycling Report to include all of the following materials collected within the City Limits:

1. Quarterly summary of the tonnage of Solid Waste Disposed at the Contractor Designated Disposal Facility.
2. The tonnage of all Recyclables collected, generator type (can Customer or bin Customer), and the Recyclables Processed.

3. The tonnage of all Greenwaste collected and Processed.

Annual Reports: On or before March 1 CONTRACTOR shall submit a year-end report for the previous year, to include the following:

A general discussion of public awareness activities including, estimated impact of CONTRACTOR's and CITY's public awareness activities; suggestions for improving public awareness, percentage of participation, and amount of material diverted from the waste stream; significant highlights, noteworthy experiences and problems from the previous year; and a list of Customers and their addresses. This list shall be confidential to third parties.

All reports are to be submitted to:

City Administrator
City of Clearlake
14050 Olympic Drive
Clearlake, CA 95422

In addition to the preceding reports, CONTRACTOR shall submit such additional reports as may be required by CalRecycle or any other government agency with jurisdiction over solid waste and recycling, and such additional reports as may be required in order for CITY to comply with all applicable reporting requirements; provided, however, that CONTRACTOR shall be entitled to compensation to cover any material costs incurred in connection with providing any such reports which are not both: (i) directly related to CONTRACTOR's obligations, and (ii) either required by law or a regulatory agency or necessary for CITY to comply with its legal or regulatory obligations. For example, if CITY were to require CONTRACTOR to provide storm water reports in connection with its street sweeping services under Section 3.5 below and the preparation of such reports entailed material costs to CONTRACTOR, CONTRACTOR would be entitled to compensation for such costs.

2.1.4.11. Services Provided to CITY

(a) Collection of Solid Waste, Greenwaste and Recyclables

CONTRACTOR shall collect from CITY facilities all Solid Waste, Greenwaste and Recyclables Generated by CITY. The above collection shall be made at least once per week and be made without charge to CITY, except that Greenwaste shall be collected on an as-needed basis when the Greenwaste containers are full and Greenwaste in excess of ten (10) tons per calendar month shall be subject to CONTRACTOR's usual rate or the then-prevailing rate charged at the Contractor Designated Greenwaste Facility. Bins or carts shall be furnished by CONTRACTOR in the type and quantity, and at the locations, set forth on Exhibit C attached hereto and hereby incorporated herein. CITY shall give CONTRACTOR a minimum of twenty-four (24) hours notice for specially scheduled service.

(b) Collection of Tires and Scrap Metal

CONTRACTOR shall, upon request from CITY, collect and dispose of used tires from CITY roads by CITY's Public Works Department, at no additional charge to CITY for the first 200 tires per calendar year and at the then-prevailing rate charged by the Contractor Designated Recycling Facility for tires in excess of 200. CONTRACTOR and CITY may apply for funds

from the State of California to offset the cost of recycling such tires. In addition, CONTRACTOR shall purchase from CITY such items of scrap metal, including appliances, as CITY may have. CONTRACTOR shall pay CITY the then-prevailing rates charged by the Contractor Designated Recycling Facility (less the costs of transportation and for the removal and disposal of all contaminants) for scrap metal, and shall ensure that all items containing scrap metal are recycled to the greatest extent feasible.

(c) Street Sweeping

1. Scope of Work

CONTRACTOR shall sweep the streets listed in Exhibit B attached hereto and incorporated herein by reference at no charge to CITY. CITY may add streets at any time by providing written notice to CONTRACTOR of the additional streets to be swept. CONTRACTOR shall also perform special event sweeps (i.e., all paved areas of a park or other venue where the special event is held) for up to two (2) special events held during each calendar year at the request of CITY, at no additional charge. These sweeps are not re-sweeps of an area not done properly but rather an additional sweep that is not part of the regular schedule. These may be used to clean before and after a parade or other special events, or for any reason CITY chooses. Notwithstanding any other provision in this Agreement, any curb miles (or portions thereof) of streets swept by CONTRACTOR in excess of eighteen (18) curb miles per calendar month (and/or more than two (2) special events per calendar year) shall be subject to the applicable fee set forth in Exhibit A. CONTRACTOR shall provide assistance at no cost to CITY, in the development of public service announcements on the benefits of street sweeping.

2. Sweeping Schedules.

- A. Sweeping in residential areas shall not commence prior to 4:00 a.m. and must be completed by 6:00 pm. Sweeping in business areas shall be completed prior to 10:00 a.m.
- B. CONTRACTOR shall provide CITY with a schedule and shall also submit notice if any modification to the current schedule is requested. Notice shall be submitted 30 days prior to commencement of the modified schedule. All modifications must be approved by the City Administrator.

3. Disposal of Refuse

- A. CONTRACTOR shall Dispose of all Solid Waste accumulated from its street sweeping at the Contractor Designated Disposal Facility and shall Process all Recyclables accumulated from its street sweeping at the Contractor Designated Recycling Facility, unless directed otherwise by CITY; provided, however, that CITY shall be responsible for all environmental risks and costs associated with such Disposal or Processing. Except as set forth in the preceding sentence, all costs for such Disposal and Processing shall be paid by CONTRACTOR, but shall constitute Pass Through Costs for purposes of adjusting all the rates hereunder pursuant to Section 2.3.4 above.

- B. Storage areas on streets or private property within the City of Clearlake will be permitted for the Solid Waste or Recyclables accumulated from CONTRACTOR's street sweeping unless prior approval is obtained from CITY. If approval is obtained for storage of waste within Clearlake, the approved facility shall be fully contained and not emit or allow runoff. CONTRACTOR will be responsible for the cost of permit and any other fees that may arise from this activity. Discharging or disposal of liquid or solid waste, including leakage from sweepers, onto public or private property, streets, or storm drain systems is prohibited.

4. Equipment Maintenance

- A. CITY shall have the right to perform periodic inspections of CONTRACTOR's street sweeping equipment.
- B. CONTRACTOR shall replace worn parts on such equipment as required and install brooms of the appropriate weight. All adjustments and repairs shall be done in a timely manner.
- C. CONTRACTOR shall maintain proper brush adjustment, rotation rate, and sweeping pattern to maximize sweeping efficiency per manufacturer's recommendations.
- D. CONTRACTOR shall periodically review maintenance and operation procedures to determine if procedures are being properly implemented.
- E. CONTRACTOR is responsible for all the cost associated with the maintenance of such equipment. No maintenance functions of CONTRACTOR's equipment shall be permitted on CITY property.

5. Holidays and Inclement Weather

- A. During inclement weather which prevents adherence to the regular sweeping schedule for two or less days in a given week, the sweeping areas so affected by the weather shall be swept within five (5) days of the scheduled sweeping without interruption of the regular sweeping schedule. CONTRACTOR shall determine what constitutes inclement weather. CONTRACTOR shall perform all extra work required by such inclement weather without additional charge, and shall provide CITY with a schedule of when the makeup sweeping will be done.
- B. When any holiday occurs on a regular scheduled sweeping day, the sweeping area shall be swept within two (2) days from the regularly scheduled sweeping day without interruption in the regular sweeping schedule.
- C. In the event CONTRACTOR is prevented from completing the sweeping as provided in the schedule due to reasons other than inclement weather, CONTRACTOR shall complete the sweeping services within 2 days from the regularly scheduled sweeping day without interruption in the sweeping schedule.

6. Reports

In addition to other data filed with CITY, CONTRACTOR shall, on a monthly basis, file reports with CITY detailing the following information for the previous month, provided that CITY reserves the right to change the format or requirements of the reports at any time:

- A. Street Sweeping Log: each sweeping area detailed by name and description, date swept, frequency, curb-miles swept, impediments to effective cleaning, and the amount of waste collected.
- B. Scheduled areas not done or not completed as scheduled, reasons for incompleteness, and the date and time missed areas were swept.
- C. Complaints: quantity, detail of each complaint, actions taken, resolution.
- D. Monthly totals of Solid Waste collected, total weight, location of Disposal.
- E. Monthly total of Recyclables collected, weight, cost and location of Processing.

7. NPDES Compliance

In addition to the requirements set forth elsewhere in this Agreement, CONTRACTOR street sweeping services shall comply with those aspects of CITY's NPDES permit over which CONTRACTOR has control.

2.1.4.12. Public Education

CONTRACTOR shall execute a public awareness campaign in regard to recycling for Residential and Commercial Customers. This campaign shall include a business waste reduction program, a school recycling program and a flyer in CONTRACTOR's billing statements every six months. Additional activities shall be available at additional cost by mutual agreement of the parties.

CONTRACTOR shall provide for each new Customer a packet of information regarding the curbside recycling and Greenwaste programs, approved by CITY.

CONTRACTOR shall provide information cards to be used in the event that a Customer places material out for Recyclables collection but that material is not acceptable material as set forth in the Agreement. Such card shall be left with the Customer's container or bin and shall inform the Customer why the material was not picked up.

2.1.5. Hazardous Waste

CONTRACTOR shall carry out its duties to notify all agencies with jurisdiction, including the California Department of Toxic Substance Control and Local Emergency Response Providers, and if appropriate, the National Response Center, of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within the City, including on, in, under or about CITY property, including streets, easements, right of way and CITY waste containers. In addition to other required notifications, if CONTRACTOR observes any substances that it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or

released on CITY property, including streets, storm drains, or public rights of way. CONTRACTOR also shall immediately notify the CITY. In the event CONTRACTOR discovers Hazardous Waste in any Customer's Solid Waste, Recyclables, Greenwaste or Food Waste, CONTRACTOR shall be entitled to charge that Customer the applicable contamination fee set forth on Exhibit A.

2.1.6. Spills by CONTRACTOR

Any Solid Waste or Recyclables spilled during the collection process, shall be the responsibility of CONTRACTOR and shall be cleaned up promptly. CONTRACTOR's equipment shall be watertight on lower portion so as to assure against liquid spillage. Materials scattered from containers by animals is not the responsibility of CONTRACTOR.

2.1.7. Can Location By Customer

CONTRACTOR shall not be required to travel upon private residential driveways or other passageways not suitable for heavy equipment. It shall be expected of each Residential Customer to place their containers in a convenient location at Curbside.

2.1.8. Altering Service Components

The basic service components can be altered by the City Council, with corresponding adjustments in compensation, subject to CONTRACTOR's written consent.

2.2. Performance Requirements

2.2.1. Contractor Equipment

CONTRACTOR shall provide the equipment and workforce reasonably necessary to properly and safely accomplish the Solid Waste collection and Recyclables collection and Processing called for in this Agreement. Equipment shall be kept in a clean, sanitary condition and shall be maintained in accordance with the manufacturers' recommendations and industry standards. Collection vehicles shall be freshly painted in a uniform manner, and have CONTRACTOR's identity painted or decaled on side so as to be clearly visible. CONTRACTOR shall exercise competent supervision over the operation of its equipment. Collection vehicles shall comply with all requirements established by the California Air Resources Board and/or the Lake County Air Quality Management District, provided that any change in such requirements adopted after the Effective Date shall constitute a Change in Law.

2.2.2. Quality of Service

CONTRACTOR shall perform service in a courteous, professional, and quality manner. CONTRACTOR shall be exceptionally careful to minimize litter in collecting and transporting waste materials.

2.2.3. Contractor Staffing

CONTRACTOR shall maintain a proper office and yard for the management and control of the Solid Waste and Recyclables collection service at the location it selects. Said office shall be staffed by a person or persons who will respond to telephone or email inquiries during the hours of 7:30 a.m. through 4 p.m., Monday through Friday (except holidays).

2.2.4. Collection Schedule and Routes

CONTRACTOR shall adhere to a collection frequency schedule and shall have specific routes and collection days for adhering to that schedule.

2.2.5. Missed Service

CONTRACTOR shall attempt to promptly correct any complaint relative to service or Missed Service. In the event that complaints are registered with CITY rather than with CONTRACTOR, CITY shall promptly inform CONTRACTOR of the complaint. CONTRACTOR shall promptly and properly respond to the complaints and notify CITY when response is completed.

2.2.6. Special Services

CONTRACTOR shall provide special services, in accordance with CONTRACTOR’s license, to Residential and Commercial Customers, in addition to those described above, and receive fees as agreed upon between CONTRACTOR and such Customers for those services.

2.2.7. Time Limits of Collection

CONTRACTOR’s hours of operation shall be 4:00 a.m. through 6:00 p.m.

2.2.8. CONTRACTOR’s Records and Confidentiality

CONTRACTOR’s operational records for Clearlake Waste Solutions, Inc. shall be open and accessible for inspection by CITY at all times upon forty-eight (48) hours’ prior written notice, but CITY shall keep such records confidential and not disclose them to third parties to the maximum extent permitted by applicable law, provided that nothing in this section shall be deemed to preclude or prevent CITY from using an outside auditor or agent to review records and conduct audits subject to such person’s agreement to such confidentiality restrictions. CONTRACTOR shall maintain all documents, ledgers, invoices, canceled checks, and records to demonstrate performance under this Agreement for a minimum period of five (5) years or any longer period required by law.

CITY, at its option, may terminate this Agreement or seek other remedies as described in the Agreement if CONTRACTOR, directly or acting through agents, presents materially false information to CITY, knowing of its falsity, with an intent to deceive CITY.

2.2.9. Remedies for Faulty Performance

In the event CONTRACTOR defaults in the performance of any of the material covenants or agreements to be kept, done or performed by CONTRACTOR under the terms of this Agreement, CITY shall notify CONTRACTOR in writing of the nature of such default. Following receipt by CONTRACTOR of such notice, CONTRACTOR shall:

Correct the default within thirty (30) days; or

In the case of a default that is not capable of being corrected within thirty (30) days, CONTRACTOR shall commence correcting the default within thirty (30) days of CITY’s notification thereof, and thereafter correct the default with reasonable diligence;

provided, however, that if CITY determines that public health or safety is at remedy of the default may be required within seven (7) days of written notice to CONTRACTOR.

If CONTRACTOR fails to correct a default within the applicable period of time, CITY, upon ten (10) days prior written notice, shall have any of the following rights and remedies:

2.2.9.1. Notice of Termination

The right to give notice of termination of the Agreement in accordance with the terms and procedures set forth herein.

2.2.9.2. City's Right to Rent or Lease Contractor's Equipment

The right to use equipment from CONTRACTOR, for the purpose of collecting, transporting, and/or disposing of Solid Waste or Recyclables which CONTRACTOR is obligated to collect, transport or dispose of pursuant to this Agreement, until such time as a new franchise is awarded, or the expiration of one hundred and twenty (120) days from the day CITY begins operation under this subsection, whichever occurs first. During such period of use of CONTRACTOR's equipment, CITY shall pay CONTRACTOR a reasonable rental value of the facilities, vehicles, equipment and records used by CITY, but CONTRACTOR shall be entitled to no other compensation. Said rental value shall be off-set by any damages claimed by CITY for any default by CONTRACTOR. During such period of operation by CITY, the liability of CITY to CONTRACTOR for loss or damage to such equipment shall be limited to willful and/or negligent acts or omissions by CITY, ordinary operational wear and tear being specifically exempt from such liability. During such period of operation by CITY, CITY shall have access to CONTRACTOR's records for the purpose of billing and operation, and shall retain all payments and funds received for said period.

2.2.9.3. CITY's Right to Operate Franchise

The right to license others to perform the services otherwise to be performed by CONTRACTOR hereunder or to perform such services itself. CONTRACTOR shall pay any difference in cost between the cost of CONTRACTOR's services and the cost to Customers of having a substitute contractor perform services due to CONTRACTOR's breach.

2.2.9.4. Damages

The right to obtain damages and/or injunctive relief as both parties recognize that in the event of default under the terms of this Agreement by CONTRACTOR, CITY may suffer irreparable injury and incalculable damages sufficient to support injunctive relief to enforce the provisions of this Agreement and enjoin the breach thereof.

2.2.9.5. Liquidated Damages

Assess damages not to exceed one hundred dollars (\$100) per incident, for CONTRACTOR's breach of any requirement of this Agreement. The amount of such assessment shall be deemed, without proof, to represent liquidation of damages, actually sustained by CITY by reason of CONTRACTOR's failure to perform. This provision is separate and apart from CITY's right to enforce the provisions of the performance bond provided for in this Agreement and is intended to provide compensation to CITY for actual damages.

2.2.10. Other Rights of City

CITY's election of any remedy shall not constitute a waiver by CITY of any other right or remedy it may have under this Agreement.

2.2.11. Appropriate Remedies

In determining which remedy or remedies for CONTRACTOR's default are appropriate, CITY shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further such violations and such other matters as CITY may deem appropriate.

2.2.12. Cost of Performing Remedies

CITY's costs in perfecting or making use of the remedies set forth herein may be drawn from CONTRACTOR's Performance Bond (see Section 2.5).

2.3. Compensation to CONTRACTOR

2.3.1 Establishment of Rates

The service rates and fees specified in Exhibit A to this Agreement have been agreed upon by CITY and CONTRACTOR and shall take effect on the Effective Date; provided, however, that such service rates and fees shall not apply to Residential Customers who are Customers on the Effective Date until October 1, 2011; and, provided, further, that such Residential Customers shall be billed at the rates in effect immediately prior to the Effective Date from the Effective Date through September 30, 2011 subject to the Fuel Surcharge in Section 2.3.3 below. Such service rates consist of the sum of Collection Costs and Pass Through Costs, as well as a reasonable profit for CONTRACTOR, and shall be subject to review and revision as set forth in Sections 2.3.2, 2.3.3 and 2.3.4 below. Subject to Section 2.2.6 above, CONTRACTOR shall not charge or be paid any amount in excess of the approved rates for services required by or permitted under this Agreement.

2.3.2 Modification Based on Consumer Price Index

Each of the rates specified under this Agreement shall be increased July 1st every year (beginning July 1, 2012) by an amount equal to the percentage increase, if any, in the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (1982-1984=100), published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"), for the prior year, using the Index most recently published for March 31st of such year and for the prior March 31st.

The procedure for rate adjustments under this Section 2.3.2 shall be as follows.

2.3.2.1 Not later than May 1st of each year, CONTRACTOR shall file with the City Administrator a written Notice of Intention to adjust each of the then current rates effective as of July 1st of such year by the percentage increase in the Index for the applicable period for the twelve-month period ending on the immediately preceding March 31st.

2.3.2.2 Within thirty (30) days of the filing of the Notice of Intention, the City Administrator shall review the Notice of Intention, and either confirm that the proposed

rates are within the limit of Section 2.3.2 above or establish by mutual agreement CONTRACTOR any necessary changes to the proposed maximum rates to make such confirmation.

2.3.2.3 The City Administrator shall immediately inform the City Council in writing of the new maximum rates determined in accordance with this Section 2.3.2, with any new maximum rates to become effective on the following July 1st.

2.3.2.4 In the event that the Index described in Section 2.3.2 above shall be discontinued or materially modified during the term of this Agreement, the parties shall use their best efforts to substitute a replacement index and/or otherwise change Section 2.3.2 above so as to replicate, as nearly as possible, the mutual intention of the parties to rely on the results of the Index described in Section 2.3.2 as in effect on the date hereof.

2.3.3 Automatic Fuel Surcharge

In addition to adjustments under Section 2.3.2 above and Section 2.3.4 below, the rates specified under this Agreement shall be subject to an automatic quarterly surcharge to reflect changes in CONTRACTOR's fuel costs, as follows:

2.3.3.1 Surcharge Amount. An automatic fuel surcharge, if any (the "Surcharge"), shall be established as of the Effective Date and January 1st, April 1st, July 1st and October 1st of every year during the term of this Agreement (each a "Surcharge Establishment Date") for each rate then in effect under this Agreement in an amount equal to a percentage of such rate determined, as follows: (a) determine the three-month average index fuel cost per gallon for the most recent three-month period preceding such Surcharge Establishment Date, (b) subtract from the result in (a) \$3.20 per gallon (the 2009 base rate), (c) divide the result in (b) by \$3.20, (d) multiply the result in (c) by CONTRACTOR's actual fuel expense for 2009, (e) multiply the result in (d) by 1.1 to reflect CITY's franchise fee (or the appropriate amount if such fee is adjusted), (f) divide the result in (e) by CONTRACTOR's revenue from the rates under this Agreement for the most recent twelve-month period preceding such Surcharge Establishment Date, and (g) multiply the result in (f) by one hundred (100); provided, however, that no Surcharge shall cause the rates to be less than the rates then in effect (excluding the Surcharge). Each Surcharge shall remain in effect until the next Surcharge Establishment Date, and will be invoiced as a separate line item on all monthly and quarterly billings for the relevant quarter.

2.3.3.2 Definitions. For purposes of this Section 2.3.3:

(A) The "three-month average index fuel cost for the most recent three-month period preceding such Surcharge Establishment Date" shall mean the average of the per gallon fuel cost set forth in the California No.2 Diesel Retail Sales by all Sellers (Dollars Per Gallon) published by the U. S. Energy Information Administration (the "Fuel Index") for each of the three consecutive calendar months ending with the second calendar month prior to the relevant Surcharge Establishment Date (e.g., September, October and November for a January 1st Surcharge).

(B) "CONTRACTOR's revenue from the rates under this Agreement for the most recent twelve-month period preceding such Surcharge Establishment Date" shall mean CONTRACTOR's revenue from Customers used for purposes of calculating CITY's franchise fees under this Agreement for the twelve consecutive calendar months ending

with the second calendar month prior to the relevant Adjustment Date (e.g., December to November for a January 1st Surcharge).

2.3.3.4 Other Fuels; Change in Index. To the extent that CONTRACTOR uses fuel other than diesel, such as compressed natural gas, the Surcharge established under this Section 2.3.3 will be made based on the relative expense to CONTRACTOR of each fuel used, and the parties shall select an appropriate index comparable to the Fuel Index for the non-diesel fuel used. In the event that the Fuel Index or the index selected by the parties for non-diesel fuel shall be discontinued or materially modified during the term of this Agreement, the parties shall use their best efforts to substitute a replacement index and/or otherwise change this Section 2.3.3 so as to replicate, as nearly as possible, the mutual intention of the parties to rely on the results of such index as in effect on the date hereof.

2.3.3.5 Procedures. The procedure for Surcharges pursuant to this Section 2.3.3 shall be as follows: CONTRACTOR shall inform CITY of each Surcharge by giving the City Administrator written notice of the Surcharge not later than fifteen (15) days prior to the relevant Surcharge Establishment Date.

2.3.4 Changes in Pass Through Costs and Extraordinary Items

In addition to adjustments under Section 2.3.2 above and Surcharges under Section 2.3.3 above, the rates hereunder shall be subject to increase or decrease to reflect changes in Pass Through Costs and extraordinary increases or decreases in CONTRACTOR's Collection Costs and/or revenue from the rates hereunder through circumstances outside of the CONTRACTOR's control, including, without limitation, Changes in Law (such as replacement of vehicles and equipment as the result of Changes in Law), and similar items, provided that unionization of all or part of CONTRACTOR's employees, and contract terms agreed to by CONTRACTOR with its employees, shall not be deemed to constitute circumstances outside CONTRACTOR's control if such changes are not required by CITY. Increases or decreases in rates pursuant to this Section 2.3.4 shall take effect so as to eliminate, to the maximum extent possible, CONTRACTOR's loss or gain of revenue and/or profit resulting from the change in Pass Through Costs and/or extraordinary increase or decrease in Collection Costs and/or revenue from the date(s) such increase or decrease first occurred.

2.3.5 Billing

CONTRACTOR shall bill Customers directly for all Solid Waste, Recyclables and Greenwaste collection services hereunder. Each new Residential Customer will be billed for the first three (3) months of service in advance upon commencement of service. Each new Commercial Customer will be billed for the first one (1) month of service in advance upon commencement of service. Interest of one percent (1%) per month or the highest rate permitted under applicable law, whichever is less, shall be applied to any past due amounts until paid in full. CONTRACTOR shall have the right to refuse service to any Customer that is more than ninety (90) days delinquent on his, her or its account. CONTRACTOR shall be solely responsible for all efforts to collect delinquent bills, and shall not be entitled to recover from CITY any delinquent payments.

2.3.6 Financial Statements to CITY

CONTRACTOR shall provide CITY with CONTRACTOR's portion only of the consolidated CPA-reviewed financial statements of CONTRACTOR upon request from CITY. All review

costs and financial reporting are to be considered normal operating costs of CONTRACTOR. All such financial statements shall be subject to the confidentiality restrictions in Section 2.2.8 above. CONTRACTOR shall maintain all books and records according to generally accepted accounting principles, uniformly applied.

2.3.7 No Extra Fees

Subject to Section 2.2.6 above, CONTRACTOR shall not, nor shall it permit any agent, employee or subcontractor employed by it to, request, solicit, or demand, either directly or indirectly, any compensation or gratuity other than CONTRACTOR's rates hereunder for the collection of Solid Waste or Recyclables required to be collected under this Agreement.

2.3.8 Franchise Fee and Audits

CONTRACTOR shall pay to CITY ten percent (10%) of the gross amount received by CONTRACTOR from Customers and from the sale of Recyclables hereunder. Payment shall be on a quarterly basis with payment due on the 15th day of the month following the end of the calendar quarter. CONTRACTOR shall pay simple interest, at an annual percentage rate of 10%, for each day that the franchise fee payment is past due. CONTRACTOR shall submit an annual report of gross amounts received from Customers reported. CONTRACTOR shall keep a record of such gross receipts. CONTRACTOR's records shall be subject to audit and inspection by CITY and its auditors or agents, at any time upon reasonable advance written notice to CONTRACTOR. Such audit or inspection shall take place at CITY's City Hall, if practicable, or at a CONTRACTOR facility in Lake County. CITY shall initially bear the cost of such audit. If such audit discloses an underpayment of the franchise fees due under this Agreement in excess of five percent (5%) of the amount which should have been paid, CONTRACTOR shall promptly tender to CITY the amount of such underpayment, together with simple interest at the rate of ten percent (10%) per year computed from the date of underpayment, and shall further reimburse CITY for the entirety of its audit costs, including, without limitation, auditor's costs and expenses, internal costs and expenses, and legal and other third party expenses. If such audit discloses an underpayment of less than five percent (5%), CONTRACTOR shall promptly repay such underpayment, together with simple interest at the rate of ten percent (10%) per year computed from the date of underpayment, and CITY shall bear the costs of the audit. If an audit discloses an overpayment by CONTRACTOR, CITY shall promptly refund the overpayment without interest, or credit the overpayment, without interest, against sums owed by CONTRACTOR.

2.4. Insurance and Indemnification

2.4.1. Insurance

Insurance coverage is a material element of this Agreement. CONTRACTOR shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, his agents, representatives, employees or subcontractors.

2.4.2. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 001).
- 2) Insurance Service Office form number CA 001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto)
- 3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.

2.4.3. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

- 1) General Liability: Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the operations under this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: Two million dollars (\$2,000,000) per accident for bodily injury and property damage.
- 3) Employer's Liability: Two million dollars (\$2,000,000) per accident for bodily injury or disease.

2.4.4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to CITY, its officers, officials, employees and volunteers, or CONTRACTOR shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

2.4.5. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) CITY, its officers, officials, employees, and volunteers are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; and with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to CONTRACTOR's insurance, or as a separate owner's policy.
- 2) For any claims related to the operations under the Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.

- 3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled or modified by either party (CONTRACTOR or insurer), except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CITY.

2.4.6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

2.4.7. Verification of Coverage

CONTRACTOR shall furnish CITY with original certificates and amendatory endorsements effecting coverage required by this clause. All certificated and endorsements are to be received and approved by CITY before work commences in relation to this Agreement. CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

2.4.8. Subcontractors

CONTRACTOR 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.

2.4.9. Indemnification

(a) CONTRACTOR or the insurer provided for above shall appear and defend all actions against CITY, its officers, officials, employees, and volunteers arising out of the operations of CONTRACTOR pursuant to this Agreement, or the failure by CONTRACTOR of performance of any of the terms or obligations imposed hereunder, and shall indemnify and save CITY, its officers, officials, employees, and volunteers, free and harmless of and from all claims, actions, or causes of action, including reasonable attorney's fees, arising from such operations or such failure, excluding any claims described in Section 2.4.9(c) below.

(b) CONTRACTOR shall indemnify, defend with counsel selected by CITY, protect and hold harmless CITY, its officers, officials, employees, and volunteers and any successor or successors to CITY's interest, from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damage, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including, but not limited to reasonable attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by or asserted against, CITY, its officers, officials, employees, and volunteers arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to government action) concerning any hazardous substance or Hazardous Waste caused by CONTRACTOR. The foregoing indemnity is intended to operate as a agreement pursuant to Section 107 (e) of the Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA), 42 U.S.C. Section 9607 (e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify CITY from liability.

(c) AB 939 Indemnification

(1) General. CONTRACTOR shall protect, defend with counsel reasonably acceptable to the CITY, indemnify and hold the CITY harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the CITY for the CITY's failure to meet the requirements of AB 939 if said failure results from CONTRACTOR's failure to comply with this Agreement and/or CONTRACTOR's failure to comply with provisions of AB 939 that are binding on CONTRACTOR, including, but not limited to, failing to timely supply CITY with information required to be provided to CITY under this Agreement in order for CITY to comply with the reporting requirements of AB 939; provided, however, that CONTRACTOR shall not be obligated to indemnify CITY for (A) CITY's failure to comply with the diversion requirements of AB 939 for the first year after the Effective Date, (B) CITY's failure to adopt programs necessary to meet the diversion requirements of AB 939, (C) fines or penalties caused by CITY's modification of CONTRACTOR-provided information, or (D) CITY's own acts or omissions which result in CITY's failure to provide timely reports to CalRecycle. In addition, and notwithstanding any other provision in this Agreement, the indemnity obligation in this Section 2.4.9(c) shall be subject to the conditions and limitations set forth in Public Resources Code Section 40059.1 as in effect on the Effective Date.

(2) Program Changes. CONTRACTOR shall give CITY prompt written notice of any changes to current services, including the addition of new services, that are necessary in CONTRACTOR's judgment for CITY to meet the diversion requirements of AB 939. CITY and CONTRACTOR shall then meet promptly to decide whether to make such service changes or additions, and to increase Customer rates and/or processing fees to fund such efforts. CONTRACTOR shall not refuse to implement any changes to current services that are requested by CITY, provided that CITY and CONTRACTOR agree on changes to rates and/or fees to fund such changes.

2.5. Performance Bond

CONTRACTOR shall post a fifty thousand dollar (\$50,000) bond or financial instrument acceptable to City Administrator as guarantee for the performance of all the terms and conditions of the Agreement and for the full sum herein specified. When a withdrawal is made from the bond, CONTRACTOR shall restore the bond to the full amount within thirty (30) calendar days after receiving written notice from CITY of a withdrawal. If the performance bond takes the form of an interest bearing account, the interest shall accrue to CONTRACTOR.

2.6. Corporate Ownership

CONTRACTOR states that at the time of signing this Agreement, the stock of Clearlake Waste Solutions, Inc. is owned by John Shea, David M. Carroll, as Trustee of the David M. Carroll Revocable Trust UDT March 22, 1996, as amended, and Bruce McCracken and Denyse McCracken, as Trustees of the McCracken Family Revocable Trust Under Declaration of Trust dated August 4, 2006. CONTRACTOR shall inform CITY, in writing, at least thirty (30) days prior to any stock transfer proposals, and shall not consummate any stock transfer (other than any transfer by an owner to a revocable trust for the benefit of such owner and/or members of his family, or to any other owner as of the date of this Agreement) without approval of CITY. If CITY does not respond within ninety (90) days, CITY approval shall be considered to be granted. CITY shall not unreasonably withhold its approval.

2.7. Assignment and Subcontractors

CONTRACTOR shall not assign this Agreement, or any interest therein, without the written consent of the City Council, which shall not be unreasonably withheld so long as the assignee has sufficient experience and financial strength to perform the assigned services. CITY may review the competency and financial integrity of the proposed assignee. Consent to one assignment shall not be deemed to be a consent to any subsequent assignment. Any assignment without such consent and approval shall be void and shall, at the option of CITY, terminate this Agreement. Notwithstanding the foregoing, CITY hereby acknowledges that this Agreement is pledged to Union Bank of California as collateral for certain indebtedness of CONTRACTOR to such Bank. CONTRACTOR may subcontract out portions of its service work, but only if approval from CITY is first obtained. If CONTRACTOR’s written request for subcontract approval is not acted upon within thirty (30) days, it shall be considered to be denied.

2.8. Notices

All notices to be given hereunder shall be deemed delivered upon personal service upon any of the officers of CONTRACTOR, upon deposit, postage prepaid, in United States Mail, to:

Clearlake Waste Solutions, Inc.
Attn: David M. Carroll, President
P.O. Box 60
Ukiah, CA 95482

All notices to be given hereunder shall be deemed delivered upon personal service to the City Administrator of the City of Clearlake, upon deposit, postage prepaid, in United States Mail, to:

City of Clearlake
Attn: City Administrator
14050 Olympic Drive
Clearlake, CA 95422

This Agreement shall inure to and be binding upon the authorized successors or assigns of both parties.

2.9 Interpretation of Agreement; Amendment of Agreement

The paragraph headings in this Agreement are not a part of the Agreement, but are intended to facilitate reading. The paragraph headings shall have no effect upon the construction or interpretation of any part of this Agreement. Subject to Section 2.1.2 above, this Agreement may only be amended with the written consent of both CITY and CONTRACTOR.

2.10 Customer Privacy

CONTRACTOR shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents or a customer's refuse or recyclables shall not be revealed to any person, governmental unit, private agency or company unless upon the authority of a court of law, by statute or upon valid authorization of the customer. This provision shall not be construed to preclude CONTRACTOR from preparing, participating in or assisting in the preparation of waste characterization studies or waste stream analyses, which may be required by AB 939. CONTRACTOR shall not market or distribute

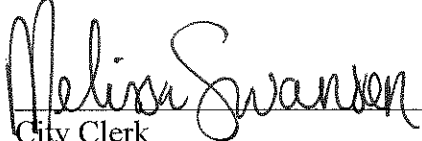
mailing lists with the names and addresses of Clearlake customers. The rights accorded to Clearlake customers pursuant to this section shall be in addition to any other privacy right accorded to Clearlake customers pursuant to federal or state law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed on the day and year written above, upon which date this Agreement becomes effective.

CITY OF CLEARLAKE, a Municipal Corporation

By: 
City Administrator, City of Clearlake

ATTEST:


City Clerk

CLEARLAKE WASTE SOLUTIONS, INC.

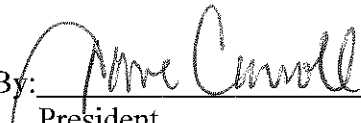
By: 
President

Exhibit A

Clearlake Waste Solutions, Inc. September 1, 2011 Rates

RESIDENTIAL / COMMERCIAL					
9/1/2011 Monthly Rates					
Carts	20 Gal 1x/WK	32 gal 1x/WK	64 gal 1x/WK	96 gal 1x/WK	Recycle Only
Roadside	11.93	14.15	24.77	35.40	7.48
in under 50'	14.94	16.69	27.30	37.91	0.00
in over 50'	18.11	20.24	30.84	41.44	0.00

COMMERCIAL BINS						
9/1/2011 Monthly Rates						
Number of pick-ups per week/mo.	1x/WK	2x/WK	3x/WK	4x/WK	5x/WK	Extra Pick-up
1.0 Yd	94.47	173.37	252.26	327.90	382.83	37.36
1.5 Yd	130.92	245.70	358.35	463.06	562.41	49.39
2.0 Yd	169.86	331.72	468.03	608.08	731.02	63.55
3.0 Yd	234.52	448.54	669.26	848.87	1,029.27	83.52
4.0 Yd	311.58	592.19	870.45	1,140.04	1,374.10	103.68
6.0 Yd	469.03	897.32	1,338.41	1,698.48	2,058.50	167.04

Clean-Up Bins and Boxes	Rates 9/1/2011
3.0 Yd	113.60
15.0 Yd	353.78
20.0 Yd	478.06
30.0 Yd	707.54
15.0, 20.0, 30.0 yd green/wood/metal/R/C	306.47
15.0 Yd only - concrete box (1/2 full Only)	337.52

Note: Roll-Off Box tonnage limits: 3 tons(15 yd); 4 tons(20Yd); 5 tons(30 Yd)
Additional Tonnage will be charged at the current tipping fee

Misc Charges	Rates 9/1/2011
Extra Can/Bag - MSW	4.70
Charge for Each 50' Over First 100'	6.90
Prepaid Bag Service *	4.70
Additional Green Waste or R/C Cart	7.09
Additional Bulky Item	28.37
Appliance - Additional Charge	29.63
Per Yard Extra Charge	22.20
To Change Cart Size	25.37
Damage Cart Replacement	70.94
Extra Day Charge - Roll-off	28.37
Extra Day Charge - Bin	14.20
Compactor Cleaning	212.68
Container Cleaning	106.33
Locking Bar Installation with Lock/Key	61.15
Pal Out Charge - Cart	12.78
Pal Out Charge - Container	55.27
Per Occurrence Contamination Fee	31.75
Returned Check Fee	35.00
Re-Delivery Fee (Plus Full Pmt for Delinquent's)	25.37
Container Turn-Away Fee Per Occurrence	42.80
Roll-Off Turn-Away Fee Per Occurrence	61.15

*Prepaid Bags are available at the Clearlake City Hall or the Lakeport Transfer Station.

Commercial - First Months Service has to be Paid in Advance.

Residential - Need to Pay One Quarter in Advance to Start.

Exhibit B

Street Sweeping

Streets	Limits	Length (feet)	Frequency
Olympic Drive	SR 53 to Lakeshore Drive	8,976	Monthly
Lakeshore Drive	SR 53 to Olympic Drive	10,032	Monthly
Old Hwy 53	SR 53 to Olympic Drive	13,728	Monthly
Burns Valley Road	Olympic Drive to Rumsey Road	2,112	Monthly
Rumsey Road	Burns Valley Road to Garner Street	1,056	Monthly
Burns Valley Road	Rumsey Road to Library Bldg	1,056	Monthly
Burns Valley Road	90 Degree Turn to Moose Trail	1,056	Monthly
Dam Road	SR 53 to WalMart Driveway	528	Monthly
Dam Road Extension	Dam Road to South Center Drive	1,584	Monthly
Dam Road	WalMart Driveway to Lake Street Bridge	3,168	Monthly
18th Avenue	SR 53 to Saint Helena Hospital	528	Monthly
Ball Park Avenue	Old Hwy 53 to Redbud Park	1,056	Monthly
Pomo School	Acacia Street Access	528	Monthly
Burns Valley School	Pine Street & Austin Road Access	1,056	Monthly
		46,464	TOTAL
		8.8 miles	TOTAL

Other City Property	Limits	Length (feet)	Frequency
Redbud Park	Parking Lot	1,056	Quarterly
Senior Center	Parking Lot and Bowers Road	528	Quarterly
		1,584	TOTAL
		0.3 miles	TOTAL
		9.1 miles	COMBINED

Exhibit C

Collection Services Provided to City by Clearlake Waste Solutions, Inc.

FACILITY	Garbage		Recycling		Green Waste	
	#	SIZE	#	SIZE	#	SIZE
City Hall	1	3 YD	1	3 YD		
Austin Park	10	96 GAL	10	96 GAL		
Highland Park	3	96 GAL	3	96 GAL		
Redbud Park	5	96 GAL	5	96 GAL		
Senior Center	1	3 YD	1	3 YD		
Corporation Yard	1	4 YD	1	4 YD	1	20 YD

Collection schedule for Garbage and Recycling is once per week.

Collection schedule for Green Waste is by appointment when container is full per the Franchise Agreement.

Exhibit D**Municipal Code Provisions****[Section no.] Unauthorized Activities; Penalties**

(a) Except as expressly authorized by this Chapter, no person other than the City's franchisee or contractor may place a container within the City for the collection of solid waste, recyclables, or green waste, unless the person is the owner, operator, or manager of a residential property or commercial or industrial establishment and self-hauls such material, as provided for in Sections _____ and _____.

(b) The City shall notify, in writing, any person that violates this section that the prompt and permanent removal of an unauthorized container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the container, provided that if the container is not on a public street, in the driveway of a residential property or in an area open to the public of a commercial or industrial property, the written consent of the owner or occupant of any private property where a container is placed shall be obtained prior to going on the property to give notice. If the container is identified with the name and telephone number of the enterprise servicing it, the City shall also endeavor to contact the enterprise by telephone. Failure to notify the owner telephonically shall not invalidate the notice. If notice is provided by the city's solid waste franchisee under a delegation of authority pursuant to subsection (d), the franchisee shall promptly provide the city with a copy of the notice, and shall not enter onto private property to provide such notice. Where the notice cannot be physically delivered or placed on the container due to the inability to enter onto private property or the refusal of consent by the owner, the notice may be given to the owner or occupant by nationally-recognized overnight courier (e.g., Federal Express) or by certified mail, return receipt requested.

(c) The City may impound or cause to be impounded any container located on a public street, or located on private property with the written consent of the owner or occupant of the property where the receptacle is located, if the enterprise servicing it does not permanently remove it from the place or premises within the time set forth in the notice, which time shall be not less than twenty-four (24) hours after posting or delivery of the notice, nor less than six (6) business hours after telephonic notification, if any. For purposes of this section, "business hours" shall mean the hours of 7:00 a.m. to 6:00 p.m., Monday through Saturday. If the container is impounded by the City's solid waste franchisee under a delegation of authority pursuant to subsection (d), the franchisee may not enter upon private property, and the franchisee shall immediately inform the City in writing of the impoundment, promptly dispose of the contents of the container at a permitted disposal facility, and shall store the container in a legally permitted storage area that complies with all applicable local land use regulations. Any person that violates subparagraph (a) or (e) of this section shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such container by the City. A container impounded pursuant to this paragraph shall be retrieved by the owner or his or her representative immediately after all applicable fines and charges have been paid.

(d) The City Administrator may delegate to the City's franchisee or contractor the authority to serve notice of a violation of this section, to impound unauthorized containers, and to collect the fines and charges levied by the City, provided that any such delegation of authority

shall require strict compliance by the franchisee with this section. Where the franchisee is unable to deliver the notice due to the inability to enter onto private property, it is authorized to provide the notice to the owner or occupant by nationally-recognized overnight courier (e.g., Federal Express) or by certified mail, return receipt requested. Prior to the franchisee's exercise of any such delegated authority, the franchisee shall provide the City with a written agreement in a form reasonably satisfactory to the city indemnifying and holding harmless the City against all claims and causes of action arising out of the franchisee's actions to impound and/or store bins, containers, and waste receptacles, and amending the solid waste franchise agreement to reflect that impoundments performed without full compliance with this section, and failures to provide notice as required by this section, shall be deemed violations of the franchise agreement. The City Administrator may revoke this delegation of authority at any time in his or her sole discretion, and the agreement provided by the franchisee shall acknowledge that any such revocation shall not be deemed a breach of the franchise agreement.

(e) Upon posting of a written notice of violation upon an unauthorized container, the customer using the unauthorized container shall immediately cease placing solid waste and recyclable materials therein.

(f) Any person who violates or neglects to comply with subparagraph (a) or (e) of this section or any resolution or regulation promulgated pursuant thereto, shall be guilty of an infraction, with each and every day or portion thereof during which any such violation is committed, continued or permitted by such person, firm, partnership or corporation, and shall be deemed punishable therefor as provided in this section. Each such violation shall be punishable by a fine not exceeding one hundred dollars (\$100.00) for the first violation; two hundred dollars (\$200.00) for the second violation within one year of the first violation; and two hundred fifty dollars (\$250.00) for each additional violation within one year of the first violation.

(g) As an alternative to criminal enforcement, each of the City and its authorized franchisee or contractor shall have the independent authority to civilly enforce any provisions of this Chapter, including the authority to seek injunctive or declaratory relief. The City Administrator may invoke these remedies, or any of them, whenever he or she deems it appropriate. The City or its authorized franchisee or contractor shall be entitled to recover from the defendant its attorney's fees if it prevails in any legal action to enforce this Chapter. The violation of any of the provisions of this section shall constitute a nuisance and may be abated by the City through civil process by means of restraining order, preliminary or permanent injunction or in any other manner provided by law for the abatement of such nuisances.

Area Monthly Rate Comparison
July 2011

Hauler Rates	<u>CWS</u> City of Clearlake	<u>UWS</u> City of Ukiah	<u>WM</u> Inland Mendocino County	<u>Lakeport Disposal</u> City of Lakeport	<u>South Lake</u> Lower Lake	<u>South Lake</u> Middletown	<u>SWOW</u> City of Willits	<u>SWOW</u> North Mendocino County	<u>Fort Bragg</u> Fort Bragg
32 gal / 1x	\$14.15	\$16.64	\$20.37	\$19.68	\$13.56	\$16.13	\$20.78	\$38.17	\$28.22
2 yd / 1x	\$169.86	\$173.44	\$246.81	\$253.24	\$184.60	\$222.40	\$242.23	\$342.02	\$297.90



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Consideration of rejection of bids for the Sulphur Fire Roadway Disaster Repair Project

MEETING DATE: August 5, 2021

SUBMITTED BY:
Adeline Brown

PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to reject all bids for the Sulphur Fire Roadway Disaster Repair Project and authorize City Manager to re-bid.

BACKGROUND/DISCUSSION:

The City advertised a Notice Inviting Bids for the Sulphur Fire Roadway Disaster Repair Project. The City opened bids on the Sulfur Fire Roadway Repair Project on July 15th. The City received four (4) bid responses.

Pursuant to the bid documents: The City reserves the right to reject any and all bids at its discretion.

The City opened bids on July 15, 2021 from the following contractors:

- | | |
|-------------------------|----------------|
| • Granite Construction | \$6,473,344.30 |
| • Argonaut Constructors | \$6,783,459.00 |
| • Team Ghilotti | \$6,817,141.00 |
| • OC Jones | \$8,088,808.00 |

OPTIONS:

1. Direct staff to reject all bids and authorize City Manager to re-bid.
2. Other direction

FISCAL IMPACT:

☒ None ☐ \$ Budgeted Item? ☒ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

- ☐ Goal #1: Make Clearlake a Visibly Cleaner City
- ☐ Goal #2: Make Clearlake a Statistically Safer City
- ☒ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☐ Goal #4: Improve the Image of Clearlake
- ☐ Goal #5: Ensure Fiscal Sustainability of City
- ☐ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to reject all bids and authorize the City Manager to rebid the project.

- ☐ **Attachments:** 1)
- 2)



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Authorizing the City Manager to Prepare and Submit Two Program Income Only Applications through the California Housing and Community Development CDBG Program; Resolution Nos. 2021-40 & 2021-41

MEETING DATE: 8/5/2021

SUBMITTED BY: Andrew White, Chief of Police

PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to consider adoption of two resolutions authorizing two Program Income Only applications through the California Housing and Community Development (HCD) CDBG Program. The applications are for (1) Senior Community Center Rehabilitation Project and (2) Red Bud Park Facilities Improvement and Safety Enhancement Project.

BACKGROUND/DISCUSSION:

The city has identified approximately \$420,000 in CDBG Program Income. HCD has directed the City to develop and submit a spending plan for this money as soon as possible. On July 21, 2021, the City held a public hearing to accept community input regarding the use of the available funds as required by HCD. City staff also met and reviewed various needs that were consistent with the allowable use of the funding. Based on this process and consultation with our CDBG consultant, staff recommends applying for two projects: Senior Community Center Rehabilitation Project and Red Bud Park Facility and Safety Improvement Project.

Senior Community Center Rehabilitation Project: The project will consist of parking lot resurfacing and landscaping improvement. The parking lot will be resurfaced with a slurry seal as well as restriping of parking spaces and disabled parking stalls/signage. The slurry seal is much more durable than a seal coat and is expected to last for 10 years. The landscaping improvement component will consist of irrigating and landscaping the area on the north side of the building that currently is unimproved. This component will also include additional outdoor seating and may include additional outdoor activity areas such as for bocce ball. This project will complement existing planned improvements to the facility funded through other sources, including the installation of outdoor exercise equipment by Rotary.

Red Bud Park Facility and Safety Improvement Project: The project will consist of a rehabilitation of the bathroom facilities, including replacement of sinks, fixtures, partitions, paint, flooring, and plumbing, as well as outdoor improvements, including seating/benches, and other refurbishments at the site. This may include some rehabilitation of the wooden pier at Thompson Harbor, depending on cost estimates, and landscaping. The project will also include significant safety and security enhancements including auto-locking doors to prevent vandalism at nighttime, the installation of additional lighting, where warranted, and the installation of public

safety cameras in and around the park and harbor. These will benefit the park as well as the surrounding neighborhood and business area.

FISCAL IMPACT:

☐ None ☒ \$420,000 Budgeted Item? ☐ Yes ☒ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☒ Other: 351/351

Comments: If approved, approximately \$420,000 in CDBG Program Income will be made available to the City to use for public facility improvements at the Clearlake Senior Community Center and Red Bud Park/Thompson Harbor subject to HCD approval.

STRATEGIC PLAN IMPACT:

- ☐ Goal #1: Make Clearlake a Visibly Cleaner City
- ☒ Goal #2: Make Clearlake a Statistically Safer City
- ☒ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☒ Goal #4: Improve the Image of Clearlake
- ☐ Goal #5: Ensure Fiscal Sustainability of City
- ☐ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to approve the resolutions.

- ☒ **Attachments:**
- 1) Resolution No. 2021-40: A RESOLUTION APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2020-2021 FUNDING YEAR OF THE STATE CDBG PROGRAM FOR THE SENIOR COMMUNITY CENTER REHABILITATION
 - 2) Resolution No. 2021-41: A RESOLUTION APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2020-2021 FUNDING YEAR OF THE STATE CDBG PROGRAM FOR THE RED BUD PARK FACILITIES IMPROVEMENT AND SAFETY ENHANCEMENT PROJECT

RESOLUTION NO. 2021-40

A RESOLUTION APPROVING AN APPLICATION FOR FUNDING AND THE
EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO
FROM THE 2020-2021 FUNDING YEAR OF THE STATE CDBG PROGRAM FOR THE
SENIOR COMMUNITY CENTER REHABILITATION

BE IT RESOLVED by the City Council of the City of Clearlake as follows:

SECTION 1:

The City Council has reviewed and hereby approves the submission to the State of California of one or more application(s) in the aggregate amount, not to exceed, of \$155,000 for the following CDBG activities, pursuant to the January 2021 CDBG NOFA:

Public Facilities – 03A - Senior/Community Center Rehabilitation \$ 155,000

SECTION 2:

The City hereby approves the use of Program Income in an amount not to exceed \$155,000 for the CDBG activities described in Section 1.

SECTION 3:

The City acknowledges compliance with all state and federal public participation requirements in the development of its application(s).

SECTION 4:

The City hereby authorizes and directs the City Manager or designee, to execute and deliver all applications and act on the City's behalf in all matters pertaining to all such applications.

SECTION 5:

If an application is approved, the City Manager, or designee, is authorized to enter into, execute and deliver the grant agreement (*i.e.*, Standard Agreement) and any and all subsequent amendments thereto with the State of California for the purposes of the grant.

SECTION 6:

If an application is approved, the City Manager, or designee, is authorized to sign and submit Funds Requests and all required reporting forms and other documentation as may be required by the State of California from time to time in connection with the grant.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Clearlake held on August 5, 2021 by the following vote:

Instruction: Fill in all four vote-count fields below. If none, indicate "0" for that field.

AYES: _____
ABSENT: _____

NOES: _____
ABSTAIN: _____

Dirk Slooten, Mayor
City of Clearlake City Council

STATE OF CALIFORNIA
City of Clearlake

I, _____, City Clerk of the City of Clearlake, State of California, hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted by said City Council on this ____ day of _____, 20____.

Melissa Swanson, City Clerk of the City of
Clearlake, State of California

A RESOLUTION APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2020-2021 FUNDING YEAR OF THE STATE CDBG PROGRAM FOR THE RED BUD PARK FACILITIES IMPROVEMENT AND SAFETY ENHANCEMENT PROJECT

BE IT RESOLVED by the City Council of the City of Clearlake as follows:

SECTION 1:

The City Council has reviewed and hereby approves the submission to the State of California of one or more application(s) in the aggregate amount, not to exceed, of \$265,000 for the following CDBG activities, pursuant to the January 2021 CDBG NOFA:

Public Facilities – 03F – Red Bud Park Facilities Improvement	\$ 140,000
Crime Awareness/Prevention – 03F – Red Bud Park and Neighborhood Security Cameras & Safety Improvements	\$ 125,000

SECTION 2:

The City hereby approves the use of Program Income in an amount not to exceed \$265,000 for the CDBG activities described in Section 1.

SECTION 3:

The City acknowledges compliance with all state and federal public participation requirements in the development of its application(s).

SECTION 4:

The City hereby authorizes and directs the City Manager or designee, to execute and deliver all applications and act on the City's behalf in all matters pertaining to all such applications.

SECTION 5:

If an application is approved, the City Manager, or designee, is authorized to enter into, execute and deliver the grant agreement (*i.e.*, Standard Agreement) and any and all subsequent amendments thereto with the State of California for the purposes of the grant.

SECTION 6:

If an application is approved, the City Manager, or designee, is authorized to sign and submit Funds Requests and all required reporting forms and other documentation as may be required by the State of California from time to time in connection with the grant.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Clearlake held on August 5, 2021 by the following vote:

Instruction: Fill in all four vote-count fields below. If none, indicate "0" for that field.

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

Dirk Slooten, Mayor
City of Clearlake City Council

STATE OF CALIFORNIA

City of Clearlake

I, _____, City Clerk of the City of Clearlake, State of California, hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted by said City Council on this ____ day of _____, 20____.

Melissa Swanson, City Clerk of the City of
Clearlake, State of California



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Consideration of a Resolution Certifying Appointment of David Deakins as Building Inspector II is Necessary to Fill a Critically Needed Position, Requesting an Exception from CalPERS to the 180-Day Wait Period and Authorizing the City Manager to Appoint; Resolution No. 2021-31	MEETING DATE: August 5, 2021
SUBMITTED BY: Melissa Swanson, Administrative Services Director/City Clerk	
PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to approve a resolution authorizing Retired Annuitant David Deakins' appointment as a Building Inspector II, requesting an exception from CalPERS to the 180-day waiting period and authorizing the City Manager to appoint Mr. Deakins.

BACKGROUND/DISCUSSION:

Lake County Fire Protection District Captain David Deakins retired from the Fire Protection District effective June 30, 2021. As your Council is aware, Mr. Deakins was a contract part-time Building Inspector for the City in addition to his full-time position with the Fire District until his retirement. The City does not currently employ a full-time Building Inspector. Code Enforcement Supervisor Lambert is able and qualified to perform the duties in addition to his current position, but this is not a viable solution in the short- or long-term. It is anticipated that Mr. Deakins will work approximately 18-20 hours per week for the City.

CalPERS regulations prohibit a retired CalPERS annuitant to return to employment for a CalPERS agency within 180 days of retirement. In 2020, CalPERS provided some exemptions for retired annuitants that are utilized to ensure adequate staffing due to the COVID-19 emergency. This included a waiver of the 960-hour limit per fiscal year and a waiver of the 180-day wait period. However, Governor Newsom very recently rescinded the exemption for the waiver of the wait period. Therefore, it is recommended that your Council adopt the attached Resolution appointing Mr. Deakins in addition to executing a Retired Annuitant contract for services. If your Council approves the Resolution, Administrative Services Director/City Clerk Swanson will forward the information to CalPERS and CalHR. Once the City receives approval from CalPERS and acknowledgement from CalHR, City Manager Flora will sign the employment agreement with Mr. Deakins.

OPTIONS:

1. Move to approve Resolution No. 2021-31 and authorize City Manager Flora to appoint Mr. Deakins.
2. Other direction

FISCAL IMPACT:

☐ None ☒ Approximately \$40,350.72 Budgeted Item? ☒ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: \$

Affected fund(s): ☒ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

- ☒ Goal #1: Make Clearlake a Visibly Cleaner City
- ☐ Goal #2: Make Clearlake a Statistically Safer City
- ☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☐ Goal #4: Improve the Image of Clearlake
- ☐ Goal #5: Ensure Fiscal Sustainability of City
- ☐ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to adopt Resolution 2021-31 and authorize the City Manager to appoint David Deakins upon approval from CalPERS.

- ☒ **Attachments:**
 - 1) Resolution 2021-31 – 180-day Wait Period Exception
 - 2) Draft Retired Annuitant Contract with David Deakins

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE FOR EXCEPTION TO THE
180-DAY WAIT PERIOD IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTIONS
7522.56 AND 21224**

WHEREAS, in compliance with Government Code section 7522.56 the Clearlake City Council must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, David Deakins, CalPERS ID # 7661939082 retired from the Lake County Fire Protection District in the position of Captain, effective July 1, 2021; and

WHEREAS, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is September 30, 2021 without this certification resolution; and

WHEREAS, section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the Clearlake City Council, the City of Clearlake and David Deakins certify that David Deakins has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the Clearlake City Council hereby authorizes the City Manager to appoint David Deakins as an extra help retired annuitant to perform the duties of Building Inspector II for the City of Clearlake under Government Code section 21224, effective July 1, 2021; and

WHEREAS, the entire employment agreement between David Deakins and the City of Clearlake has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, if Executive Order N-025-20 suspending the 960-work hour limit per fiscal year is rescinded, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum base salary for this position is \$4782.81 per month and the hourly equivalent is \$27.5931, and the minimum base salary for this position is \$3934.83 and the hourly equivalent is \$22.7009; and

WHEREAS, the hourly rate paid to David Deakins will be \$27.5931; and

WHEREAS, David Deakins has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

NOW, THEREFORE BE IT RESOLVED that the City Council hereby certifies the nature of the employment of David Deakins as described herein and detailed in the attached employment agreement and this this appointment is necessary to fill the critically needed position of Building Inspector II for the City of Clearlake by August 6, 2021 because of a vacancy of Building Inspector II beginning July 1, 2021.

PASSED AND ADOPTED by the City Council of the City of Clearlake, County of Lake, State of California, on this 5th day of August 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk

Mayor



City of Clearlake
14050 Olympic Drive, Clearlake, California 95422
(707) 994-8201 Fax (707) 995-2653

A G R E E M E N T

FOR
RETIRED ANNUITANT APPOINTMENT

(BUILDING INSPECTOR II)

THIS AGREEMENT, made and entered into this ____ day of August, 2021, by and between the CITY OF CLEARLAKE, a municipal corporation of the State of California, “City”, and DAVID DEAKINS, “Retired Annuitant.”

W I T N E S S E T H

WHEREAS, City requires extra help to perform work of a limited duration; and WHEREAS, Retired Annuitant represents that he/she is qualified to furnish such services in accordance with the terms and conditions hereinafter set forth; NOW THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, the parties hereto agree as follows:

1. Contract Appointment

Retired Annuitant is hereby appointed to the position of Building Inspector II for the City and as such shall perform the duties and services more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference.

2. Status

Retired Annuitant shall serve at the pleasure of the City Manager, subject to the terms and conditions hereof, and shall not acquire a property interest in employment or a right to continuing employment with the City of Clearlake. The terms, covenants, and conditions of Retired Annuitant’s employment

with the City are expressly limited by and to the terms, covenants and conditions of this

Further, California law prohibits the appointment of a retired annuitant by a CalPERS employer if, during the twelve (12) month period before an appointment, the retired annuitant received unemployment insurance compensation for a prior retired annuitant employment for any CalPERS employer. By executing this agreement, Retired Annuitant certifies that they comply with this requirement.

3. Compensation

- (a) Rate - Retired Annuitant shall be compensated for the performance of the above-described services at the rate of \$27.5931 dollars per hour. Payment of such compensation shall be made bi-weekly through Direct Deposit via electronic funds transfer (EFT) to Retired Annuitant's account at his/her financial institution.
- (b) Schedule – Retired Annuitant's regular work schedule will be no more than 40 hours per week while Executive Order N-25-20, which suspended work hour limitations for retired annuitants, is in place. If Executive Order N-25-20 is rescinded, Retired Annuitant's regular work schedule will then be no more than 40 hours per week, not to exceed 960 hours in a fiscal year.
- (c) Benefits - Retired Annuitant shall not be entitled to any benefits other than the hourly wage listed above.

4. Term

The term of this Agreement shall commence on _____, 2021, and shall expire on _____, 2022, unless this Agreement is sooner terminated.

5. Termination

Either party may terminate this Agreement without cause upon giving the other party not less than two (2) weeks prior written notice. The City may upon receipt of the termination notice from Retired Annuitant, at its option and sole discretion, request that Retired Annuitant either (1) continue to render the services described in Exhibit "A" until the date of termination or (2) immediately cease the

performance of any or all of the services described in Exhibit "A" or any or all other

Notwithstanding anything to the contrary, Retired Annuitant shall, upon City's Notice of Termination deliver to City a written status report of all projects or matters in which Retired Annuitant is involved. In the event of termination, all rights and obligations of the parties hereto shall thereupon cease. The provisions of this paragraph shall not be deemed a limitation upon the respective rights or remedies of the parties hereto which may accrue to them.

6. Standard of Performance

All services to be performed by Retired Annuitant pursuant to paragraph 1 hereof shall be performed in accordance with all applicable ordinances, policies, and rules and regulations of the City.

7. Non-assignability

Retired Annuitant shall not sub-contract, assign, sell, mortgage, hypothecate, or otherwise transfer Retired Annuitant's interests, rights, duties or obligations hereunder in any manner, without the express prior written consent of the City.

IN WITNESS WHEREOF, The parties hereto have executed this agreement the day and year first hereinabove written.

**CITY OF CLEARLAKE,
a municipal corporation of
the State of California**

BY: _____
DAVID DEAKINS
Retired Annuitant

BY: _____
ALAN FLORA
City Manager

E X H I B I T “ A ”

**BUILDING INSPECTOR II
JOB DESCRIPTION**

CITY OF CLEARLAKE

BUILDING INSPECTOR I
BUILDING INSPECTOR II

DEFINITION

Under general direction, to supervise, assign, review and participate in the work of staff responsible for providing plan checking, building inspection and permit issuance services; to perform advanced level building inspection and plans examining duties; and to provide responsible staff assistance to the Director of Community Development.

DISTINGUISHING CHARACTERISTICS

Building Inspector I. This is the entry level in the Building Inspector class series. Positions at this level usually perform most of the duties required of the positions at the Building Inspector II level, but are not expected to function at the same skill level and usually exercise less independent discretion and judgment in matters related to work procedures and methods. Work is usually supervised while in progress and fits an established structure or pattern. Exceptions or changes in procedures are explained in detail as they arise. Since this class is often used as a training class, employees may have only limited or no directly related work experience.

Building Inspector II. This is the full journey level in the Building Inspector II class series. Positions at this level are distinguished from the Building Inspector I level by the performance of the full range of duties as assigned, working independently and exercising judgment and initiative in inspecting all types, sizes and complexities of commercial, industrial and residential construction. Positions at this level receive only occasional instruction or assistance as new or unusual situations arise, and are fully aware of the operating procedures and policies of the work unit. Positions in this class series are flexible staffed and positions at the Building Inspector II level are normally filled by advancement from the Building Inspector I level when I.C.B.O. Certification is obtained. When filled from the outside, the employee is required to have prior related experience and certification which allows the employee to meet the qualification standards for the Building Inspector II level.

SUPERVISION EXERCISED

Building Inspector I

Exercises no supervision.

Building Inspector II

May exercises technical and functional supervision over less experienced staff.

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

Inspect industrial, commercial and residential buildings during various stages of construction and remodeling: ensure building progress conforms with applicable codes, ordinances and regulations.

Inspect foundation, concrete, steel, masonry, wood construction, framing, plastering, plumbing, heating and electrical installations and a large variety of other complex and routine building system elements; ensure proper and safe installation of building systems..

Issue notices to comply on violations; maintain records of history of facts for possible legal actions; assist City legal counsel in legal actions.

Approve the issuance of building and occupancy permits.

Inspect existing buildings for change of use, occupancy, or compliance with applicable codes and ordinances.

Coordinate inspection activities with other City departments and divisions as required.

Confer with architects, contractors, builders and the general public in the field and office; explain and interpret requirements and restrictions.

Assist in checking building plans; conduct field review of plans and specifications.

Perform other duties to ensure the smooth operation of the office including answering the phones, scheduling inspections, and compiling and filing building plans and other related construction documents.

Retrieve building, assessors parcels, files and other computerized records from computer database as required.

Maintain files and reports regarding inspection activities and findings.

OTHER JOB RELATED DUTIES

Perform related duties and responsibilities as required.

JOB RELATED AND ESSENTIAL QUALIFICATIONS

Building Inspector I

Knowledge of:

- Basic principles of structural design and engineering mathematics.
- Major types of building construction materials and methods.
- Safe driving principles and practices.

Skill to:

- Operate modern office equipment including computer equipment.
- Operate a motor vehicle safely.

Ability to:

- Learn building related codes and ordinances enforced by the City including the Uniform Building, Electrical, Plumbing and Mechanical Codes and zoning codes.
- Learn accepted safety standards and methods of building construction for commercial, industrial and residential buildings.
- Learn to apply technical knowledge and follow proper inspection techniques to examine workmanship and materials and detect deviations from plans, regulations and standard construction practices.
- Read and interpret building plans, specifications and building codes.
- Advise on standard construction methods and requirements for residential, commercial and industrial buildings.

City of Clearlake
Building Inspector I and II

- Make mathematical computations rapidly and accurately.
- Enforce necessary regulations with firmness and tact.
- Understand and carry out oral and written directions.
- Communicate clearly and concisely, both orally and in writing.
- Establish, maintain, and foster positive and harmonious working relationships with those contacted in the course of work.

Experience and Training Guidelines:
Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:
Two years of increasingly responsible construction and/or building trades experience.
Building inspection experience is highly desirable.

Training:
Equivalent to the completion of the twelfth grade supplemented by training in the building trades.

License or certificate:
Possession of, or ability to obtain, an appropriate, valid driver’s license.
Ability to obtain I.C.B.O. certification.

Special Requirements:
Essential duties require the following physical abilities and work environment:
Ability to sit, stand, walk, kneel, crouch, squat, stoop, reach, twist, climb, and lift 25 lbs;
exposure to noise, outdoors, confining work space, electrical hazards, mechanical hazards and dust.

Building Inspector II

In addition to the qualifications for Building Inspector I:

Knowledge of:
Building related codes and ordinances enforced by the City including the Uniform Building, Electrical, Plumbing and Mechanical Codes and zoning codes.

Accepted safety standards and methods of building construction for commercial, industrial and residential buildings.

Complex principles and techniques of building inspection work.

Ability to:

Interpret and apply pertinent Federal, State and local laws, codes and regulations.

Apply technical knowledge and follow proper inspection techniques to examine workmanship and materials and detect deviations from plans, regulations and standard construction practices.

Experience and Training Guidelines:
Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Two years of increasingly responsible construction and/or building trades experience.

Training:

Equivalent to the completion of the twelfth grade supplemented by training in the building trades.

License or certificate:

Possession of, or ability to obtain, an appropriate, valid driver’s license.

City of Clearlake
Building Inspector I and II

Possession of at least one I.C.B.O. certification.

Special Requirements:

Essential duties require the following physical abilities and work environment:

Ability to sit, stand, walk, kneel, crouch, squat, stoop, reach, twist, climb, and lift 25 lbs;
exposure to noise, outdoors, confining work space, electrical hazards, mechanical hazards and
dust.

Effective date: July 1, 1998



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Repeal and Replace Chapter 17 of the CMC

MEETING DATE:
August 5, 2021

SUBMITTED BY: Dave Swartz, City Engineer and Flood Plain Manager; Susanna Gutierrez, Assistant Planner; Mark Roberts, Senior Planner

PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to consider revisions to Chapter 17 of the Clearlake Municipal Code "Floodplain Management" as reviewed by the Federal Emergency Management Agency (FEMA) and the California Department of Water Resources (DWR) in order to ensure compliance with the National Flood Insurance Program (NFIP).

BACKGROUND/DISCUSSION:

- The City has been an active member of the NFIP, a program that makes federally backed flood insurance available in those states and communities that agree to adopt and enforce flood-plain management ordinances to reduce future flood damage, since before incorporation starting October 17, 1978.
- The National Flood Insurance Act of 1968 was enacted by title XIII of the Housing and Urban Development Act of 1968 to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide protection was added to the Program by the Housing and Urban Development Act of 1969. Flood-related erosion protection was added to the Program by the Flood Disaster Protection Act of 1973. The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program.
- The National Flood Insurance Act of 1968 prohibits FEMA from providing flood insurance in a community unless the community adopts and enforces floodplain management regulations that meets or exceeds the minimum NFIP criteria. **A community can be suspended from the NFIP for failure to adopt compliant floodplain management measures as well as failure to enforce its floodplain management regulations.**
- Suspension from the Program Implies:
 - **No new flood insurance shall be provided** for any property which the Federal Insurance Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances

which are intended to discourage or otherwise restrict land development or occupation in flood-prone areas.

- Staff has been working closely with both FEMA’s NFIP branch and DWR implementing Clearlake’s Corrective Action plan since early 2020 in order to avoid suspension, part of which involves updating the City’s Floodplain Management Ordinance (Chapter 17 of the Clearlake Municipal Code). The state model ordinance was updated in August of 2020 and is attached for reference with minimal substantive edits for review by Council.

SUGGESTED MOTIONS:

Move to hold first reading of Ordinance No. 256-2021, An Amendment to Chapter 17 of the Clearlake Municipal Code Repealing and Replacing Floodplain Management Regulations, read it by title only, waive further reading and set adoption for the August 19, 2021, meeting.

I Offer the Ordinance

ALTERNATIVE MOTIONS:

Move to deny first reading of Ordinance No. 256-2021, Amending Chapter 17 of the Clearlake Municipal Code Repealing and Replacing Floodplain Management Regulations, and direct staff to make the amendments as directed.

FISCAL IMPACT:

☒ None ☐ \$ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

- ☐ Goal #1: Make Clearlake a Visibly Cleaner City
- ☒ Goal #2: Make Clearlake a Statistically Safer City
- ☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☐ Goal #4: Improve the Image of Clearlake
- ☒ Goal #5: Ensure Fiscal Sustainability of City
- ☒ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

☒ **Attachments:** 1) Ordinance 256-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE AMENDING THE CLEARLAKE CODE OF ORDINANCES TO REPEAL CHAPTER 17, FLOODPLAIN MANAGEMENT OF THE CLEARLAKE MUNICIPAL CODE; TO ADOPT A NEW CHAPTER 17, FLOODPLAIN MANAGEMENT OF THE CLEARLAKE MUNICIPAL CODE; TO ADOPT FLOOD HAZARD MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Clearlake and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the City of Clearlake was accepted for participation in the National Flood Insurance Program on October 17, 1978 and the City Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, pursuant to the California Health and Safety Code, Division 13, Part 1.5 and Part 2.5, the City of Clearlake is required to administer and enforce the *California Building Standards Code*, and such building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas; and

WHEREAS, the City Council has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the *California Building Standards Code*.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Clearlake that the following floodplain management regulations are hereby adopted.

SECTION 1. RECITALS.

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

SECTION 2. These regulations specifically repeal and replace the following ordinance(s) and regulation(s):

Chapter 17, Floodplain Management of the Clearlake Municipal Code

CHAPTER 17 – FLOODPLAIN MANAGEMENT

PART I. – SCOPE AND ADMINISTRATION

ARTICLE 101 GENERAL PROVISIONS

Sec. 101-1. - Title. These regulations, in combination with the flood provisions of California Code of Regulations Title 24, the *California Building Standards Code* (hereinafter “building codes,” consisting of the Part 2 (building), Part 2.5 (residential), Part 10 (existing building), and related codes), shall be known as the *Floodplain Management Regulations* of the City of Clearlake (hereinafter “these regulations”).

Sec. 101-2. - Statutory authority. Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Sec. 101-3. - Scope. The provisions of these regulations, in combination with the flood provisions of the building codes, shall apply to all proposed development entirely or partially in flood hazard areas established in Section 102-2 of these regulations.

Sec. 101-4. – Purposes and objectives. The purposes and objectives of these regulations and the flood load and flood resistant construction requirements of the building codes are to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding.
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage.
- (3) Manage the alteration of natural floodplains, stream channels and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain.
- (4) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential.
- (5) Prevent or regulate the construction of flood barriers which will divert floodwater or increase flood hazards.
- (6) Contribute to improved construction techniques in the floodplain.
- (7) Minimize damage to public and private facilities and utilities.
- (8) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas.
- (9) Minimize the need for rescue and relief efforts associated with flooding.
- (10) Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.
- (11) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.
- (12) Meet the requirements of the National Flood Insurance Program for community participation as set forth in Title 44 Code of Federal Regulations, Section 59.22.

Sec. 101-5. - Coordination with *California Building Standards Code*. Pursuant to the requirement established in State statute that the City of Clearlake administer and enforce the *California Building Standards Code*, the City Council of the City of Clearlake hereby acknowledges that the building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the building codes.

Sec. 101-6. - Warning. The degree of flood protection required by these regulations and the building codes is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations and the building codes does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations,

Sections 59 and 60 may be revised by the Federal Emergency Management Agency, re community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with these regulations.

Sec. 101-7. - Disclaimer of liability. These regulations shall not create liability on the part of the City Council, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder. The Floodplain Administrator and any employee charged with the enforcement of these regulations, while acting for the community in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by a legal representative of the community until the final termination of the proceedings. The Floodplain Administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

Sec. 101-8. - Other laws. The provisions of these regulations shall not be deemed to nullify any provisions of local, State or federal law.

Sec. 101-9. - Abrogation and greater restrictions. These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal, abrogate or impair any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes, nor any existing easements, covenants, or deed restrictions. In the event of an overlap or conflict between these regulations and any other ordinance, code, regulation, easement, covenant, or deed restriction, the more restrictive shall govern.

ARTICLE 102 APPLICABILITY

Sec. 102-1. - General applicability. These regulations, in conjunction with the building codes, provide minimum requirements for development located in flood hazard areas, including the subdivision of land; filling, grading and other site improvements; installation of utilities; installation, placement and replacement of manufactured homes; placement of recreational vehicles; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; certain building work exempt from permit under the building codes; and flood control projects.

Sec. 102-2. - Establishment of flood hazard areas. The Flood Insurance Study for Lake County, California and Incorporated Areas dated October 17, 1978, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are hereby adopted by reference as a part of these regulations and serve as the basis for establishing flood hazard areas. Where the building code establishes flood hazard areas, such areas are established by this section. Additional maps and studies, when specifically adopted, supplement the FIS and FIRMs to establish additional flood hazard areas. Maps and studies that establish flood hazard areas are on file at Clearlake City Hall at 14050 Olympic Drive.

Sec. 102-3. - Interpretation. In the interpretation and application of these regulations, all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Deemed neither to limit nor repeal any other powers granted under state statutes.

ARTICLE 103 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

Sec. 103-1. - Designation. The City Engineer is designated the Floodplain Administrator. The Floodplain Administrator shall have the authority to delegate performance of certain duties to other employees.

Sec. 103-2. - General authority. The Floodplain Administrator is authorized and directed to administer and enforce these regulations. The Floodplain Administrator shall have the authority to render interpretations of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to Article 107 of these regulations. The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a qualified professional engineer or licensed land surveyor when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with these regulations.

Sec. 103-3. - Coordination. The Floodplain Administrator shall coordinate with and provide comments to the Building Official to administer and enforce the flood provisions of the building code and to ensure compliance with the applicable provisions of these regulations. The Floodplain Administrator and the Building Official have the authority to establish written procedures for reviewing applications and conducting inspections for buildings and for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 103-5 of these regulations.

Sec. 103-4. - Duties. The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

- (1) Review all permit applications and plans to determine whether proposed development is located in flood hazard areas.
- (2) Review all applications and plans for development in flood hazard areas for compliance with these regulations.
- (3) Review, in coordination with the Building Official, required design certifications and documentation of elevations specified by the building code to determine that such certifications and documentations are complete.
- (4) Review applications and plans for modification of any existing development in flood hazard areas for compliance with these regulations.
- (5) Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.
- (6) Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.
- (7) Determine whether additional flood hazard data shall be obtained from other sources or developed by the applicant.
- (8) Complete the appropriate section of the Department of Housing and Community Development Floodplain Ordinance Compliance Certification for Manufactured Home/Mobilehome Installations when submitted by applicants.
- (9) Review requests submitted to the Building Official seeking approval to modify the strict application of the flood load and flood resistant construction requirements of the building code, to determine whether such requests require consideration as a variance pursuant to Article 107 of these regulations.
- (10) Coordinate with the Building Official and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the requirement to obtain permits for repairs.
- (11) 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.

- (12) 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).
- (13) Inspect development in accordance with Article 106 of these regulations and inspect flood hazard areas to determine when development is undertaken without issuance of permits.
- (14) Prepare comments and recommendations for consideration when applicants seek variances for development other than buildings in accordance with Article 107 of these regulations.
- (15) Cite violations in accordance with Article 108 of these regulations.
- (16) Notify FEMA when the corporate boundaries of the City of Clearlake have been modified and provide a map and legal description of the changes in the corporate boundaries.

Sec. 103-5. - Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- (2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, when applicable, to the market value of the building or structure.
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
- (4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

Sec. 103-6. - Department records. In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the building codes, including Flood Insurance Studies and Flood Insurance Rate Maps; documents from FEMA that amend or revise FIRMs; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the building codes and these regulations; notifications to adjacent communities, FEMA, and the State related to alterations of watercourses; assurance that the flood carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the building codes.

ARTICLE 104 PERMITS FOR FLOODPLAIN DEVELOPMENT

Sec. 104-1. - Permits required. Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall make application to the Floodplain Administrator and shall obtain the required city permits. No permit shall be issued until compliance with the requirements of these regulations and all other applicable codes and regulations has been satisfied. No building permit shall be

issued based on Conditional Letters of Map Revision issued by FEMA. Depending on the extent of proposed development that includes a building or structure, the Floodplain Administrator may determine a permit for floodplain development is required in addition to a building permit.

Sec. 104-2. - Application for permit. The applicant shall file an application in writing on city standard forms. The information shall include:

- (1) Identify and describe the development to be covered by the permit.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitely locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan and construction documents as specified in Article 105 of these regulations, including grading, excavation and filling plans and other information deemed appropriate by the Floodplain Administrator.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Include such other data and information required by the Floodplain Administrator to demonstrate compliance with these regulations.

Sec. 104-3. - Validity of permit. The issuance of a permit for floodplain development under these regulations or the building codes shall not be construed to be a permit for, or approval of, any violation of these regulations, the building code, or any other ordinance of the community. The issuance of a permit for floodplain development based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations.

Sec. 104-4. - Other permits required. The applicant shall obtain all other required state and federal permits prior to initiating work authorized by these regulations and shall provide documentation of such permits to the Floodplain Administrator. Such permits include but are not limited to the California State Water Resources Control Board for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.

Sec. 104-5. - Expiration. A permit for floodplain development shall run concurrently with the life of the associated city permits.

- (1) **"Start of Construction"** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97348)), includes substantial improvement, 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 of the permit date.
- (2) **Expiration:**
 - (a) Every Grading, Building, Fire, Plumbing, Mechanical, and Electrical permit issued by the city under this code shall expire by limitation and become null and void two (2) years after the date of issuance (The maximum allowable length for all permits is two (2) years, unless otherwise noted. Extensions will not normally be considered. Applicants with extenuating circumstances may submit written request and a filing fee to the Building Official. Such requests are required to outline extenuating circumstances that did not allow for the completion of the work as permitted) or if the building or work authorized by such permit is not commenced within 180 days from the date of issuance, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced. Suspension and/or abandonment shall be determined by a lack of progress inspections for a period of more than 180 days since a previous documented inspection. If a permit has expired, no work can recommence until a new permit is obtained.

- (b) The cost of a new permit, the purpose of which is to facilitate completion of work if a permit has expired, will be based on a quantitative estimation of inspections deemed necessary for completion. If costs for providing services to the project exceed the estimated fees collected at permit issuance, additional fees will apply. Said fees will be in accordance with the City's Building Division Fee Schedule established by resolution of the City Council. It is the responsibility of the permittee to schedule all inspections necessary for a permit to remain current and valid. All inspections for this purpose must verify progress.
- (c) Permits may be issued for a limited period of time when deemed necessary by the Building Official to abate dangerous, substandard, and/or illegal conditions. In such cases, the Building Official will establish the expiration at 30, 60, 90, or 180 days depending on the health and/or safety hazards. Such permit term limitations may be shorter if deemed appropriate and/or necessary by the Building Official.

Sec. 104-6. - Suspension or revocation. The Floodplain Administrator is authorized to suspend or revoke a permit for floodplain development issued under these regulations wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of these regulations or any ordinance or code of this community.

Sec. 104-7. - Appeals of decisions. When it is alleged there is an error in any decision or determination made by the Floodplain Administrator in the interpretation or enforcement of these regulations, such decision or determination may be appealed to the **City Council** by filing a written appeal setting forth the reasons of the appeal.

ARTICLE 105 SITE PLANS AND CONSTRUCTION DOCUMENTS

Sec. 105-1. - Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas; floodway boundaries and flood zone(s); base flood elevation(s); ground elevations; proposed filling, grading, and excavation; and drainage patterns and facilities when necessary for review of the proposed development.
- (2) Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 105-2 or Section 105-3 of these regulations.
- (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with Section 105-2(2) of these regulations.
- (4) Location of the proposed activity and proposed structures; locations of water supply, sanitary sewer, and other utilities; and locations of existing buildings and structures.
- (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- (7) Existing and proposed alignment of any proposed alteration of a watercourse.

Sec. 105-2. - Information in flood hazard areas without base flood elevations (approximate Zone A). Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator is authorized to:

- (1) Require the applicant to include base flood elevation data prepared by a qualified professional engineer or licensed land surveyor in accordance with currently accepted engineering practices.

Such analyses shall be performed and sealed by a qualified professional engineer or geologist. Studies, analyses and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

- (2) Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- (3) Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
 - (a) Require the applicant to include base flood elevation data in accordance with Section 105-2(1) of these regulations; or
 - (b) Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
- (4) Where the base flood elevation data are to be used to support a request for a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a qualified professional engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

Sec. 105-3. - Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of these regulations, the applicant shall have the following analyses signed and sealed by a qualified professional engineer for submission with the site plan and construction documents:

- (1) For development activities proposed to be located in a floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in Section 105-4 of these regulations and shall submit the Conditional Letter of Map Revision, when issued by FEMA, with the site plan and construction documents.
- (2) For development activities proposed to be located in a riverine flood hazard area where base flood elevations are included in the Flood Insurance Study or on the FIRM but floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices that demonstrates the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in Section 105-4 of these regulations. The applicant shall notify the chief executive officer of adjacent communities and the California Department of Water Resources. The Floodplain Administrator shall maintain a copy of the notification in the permit records and shall submit a copy to FEMA.

Sec. 105-4. - Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a qualified registered professional engineer

in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant. Provided FEMA issues a Conditional Letter of Map Revision, construction of proposed flood control projects and land preparation for development are permitted, including clearing, excavation, grading, and filling. Permits for construction of buildings shall not be issued until the applicant satisfies the FEMA requirements for issuance of a Letter of Map Revision.

ARTICLE 106 INSPECTIONS

Sec. 106-1. - Inspections, in general. Development for which a permit for floodplain development is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

Sec. 106-2. - Inspections of development other than buildings and structures. The Floodplain Administrator shall make or cause to be made, inspections of all development other than buildings and structures that is authorized by issuance of a permit for floodplain development under these regulations. The Floodplain Administrator shall inspect flood hazard areas from time to time to determine when development is undertaken without issuance of a permit.

Sec. 106-3. - Inspections of manufactured homes installations. The Floodplain Administrator shall make or cause to be made, inspections of installation and replacement of manufactured homes in flood hazard areas authorized by issuance of a permit for floodplain development under these regulations. Upon installation of a manufactured home and receipt of the elevation certification required in Section 304-1 of these regulations the Floodplain Administrator shall inspect the installation or have the installation inspected.

Sec. 106-4. - Buildings and structures. The Building Official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit, in accordance with the building code:

- (1) **Lowest floor elevation.** Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in the building code shall be prepared by a licensed land surveyor or registered civil engineer and submitted to the building official.
- (2) **Final inspection.** Prior to the final inspection, certification of the elevation required in the building code shall be prepared by a licensed land surveyor or registered civil engineer and submitted to the building official.

ARTICLE 107 VARIANCES

Sec. 107-1. - Nature of variances. The considerations and conditions for variances set forth in this article are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be issued for a parcel of property with physical characteristics so unusual that complying with the requirements of these regulations would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners. The issuance of a variance is for floodplain management purposes only. Federal flood insurance premium rates are determined by the National Flood Insurance Program according to actuarial risk and will not be modified by the granting of a variance.

It is the duty of the **City Council** to promote public health, safety and welfare and minimize losses from flooding. This duty is so compelling and the implications of property damage and the cost of insuring a structure built below flood level are so serious that variances from the elevation or other requirements in

the building codes should be quite rare. The long term goal of preventing and reducing flood damage, and minimizing recovery costs, inconvenience, danger, and suffering, can only be met when variances are strictly limited. Therefore, the variance requirements in these regulations are detailed and contain multiple provisions that must be met before a variance can be properly issued. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

Sec. 107-2. – Variances; general. The **City Council** shall hear and decide requests for variances from the strict application of these regulations.

Sec. 107-3. - Limitations on authority. The **City Council** shall base its determination on technical justifications submitted by applicants, the considerations and conditions set forth in this article, the comments and recommendations of the Floodplain Administrator and Building Official, as applicable, and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations and the building code.

Sec. 107-4. - Records. The Floodplain Administrator shall maintain a permanent record of all variance actions, including justification for issuance.

Sec. 107-5. - Historic structures. A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic structure upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure. When the proposed work precludes the structure's continued designation as a historic building, a variance shall not be granted and the structure and any repair, improvement, and rehabilitation shall be subject to the requirements of the building code.

Sec. 107-6. - Restrictions in floodways. A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analyses required in Section 105-3(1) of these regulations.

Sec. 107-7. - Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use provided the criteria in Section 1612 of the building code (CCR Title 24 Part 2) or Section R322 of the residential code (CCR Title 24 Part 2.5) are met, as applicable, and the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damages during the base flood and create no additional threats to public safety.

Sec. 107-8. - Agricultural structures. A variance is authorized to be issued for the construction or substantial improvement of agricultural structures that are not elevated or dry flood proofed, provided the requirements of this section are satisfied and:

- (1) A determination has been made that the proposed agricultural structure:
 - (a) Is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.
 - (b) Has low damage potential.
 - (c) Does not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.
 - (d) Complies with the wet floodproofing construction requirements of Section 107-8(2), below.
- (2) Wet floodproofing construction requirements.
 - (a) Anchored to resist flotation, collapse, and lateral movement.

- (b) When enclosed by walls, walls have flood openings that comply with the flood requirements of ASCE 24, Chapter 2.
- (c) Flood damage-resistant materials are used below the base flood elevation.
- (d) Mechanical, electrical, and utility equipment are elevated above the base flood elevation.

Sec. 107-9. - Considerations for issuance of variances. In reviewing applications for variances, all technical evaluations, all relevant factors, all other requirements of these regulations and the building code, as applicable, and the following shall be considered:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- (4) The importance of the services provided by the proposed development to the community.
- (5) The availability of alternate locations for the proposed development that are not subject to flooding or erosion and the necessity of a waterfront location, where applicable.
- (6) The compatibility of the proposed development with existing and anticipated development.
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, if applicable, expected at the site.
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

Sec. 107-10. - Conditions for issuance of variances. Variances shall only be issued upon:

- (1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site limit compliance with any provision of these regulations or renders the elevation standards of the building code inappropriate.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or future property owners, or conflict with existing local laws or ordinances.
- (4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) When the request is to allow construction of the lowest floor of a new building or substantial improvement of a building below the base flood elevation, notification to the applicant in writing over the signature of the Floodplain Administrator specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that issuance of a variance to construct below the elevation required in the building code will result in increased premium rates for federal flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and that such construction below the required elevation increases risks to life and property.

ARTICLE 108 VIOLATIONS

Sec. 108-1. - Violations. Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of the elevation of the lowest floor, other required design certifications, or other evidence of compliance required by these regulations or the building code, is presumed to be a violation until such time as required documentation is submitted. Violation of the requirements shall constitute a misdemeanor.

Sec. 108-2. - Authority. The Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of property involved, to the owner's agent, or to the person or persons doing the work for development that is not within the scope of the building codes, but is regulated by these regulations and that is determined to be a violation.

Sec. 108-3. - Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

PART II. – DEFINITIONS

ARTICLE 201 DEFINITIONS

Sec. 201-1. - General. The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Where terms are not defined in these regulations and are defined in the building code (CCR Title 24 Part 2) and used in the residential code (CCR Title 24 Part 2.5), such terms shall have the meanings ascribed to them in those codes. Where terms are not defined in these regulations or the building code, such terms shall have ordinarily accepted meanings such as the context implies.

Sec. 201-2. - Definitions

“Accessory Structure” means a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used for parking and storage.

“Agricultural Structure” means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

“Alteration of a watercourse” means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“ASCE 24” means the standard *Flood Resistant Design and Construction*, referenced by the building code, developed and published by the American Society of Civil Engineers, Reston, VA. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the building code.

“Base flood” means the flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in CCR Title 24 Part 2.]

“Base flood elevation” means the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in CCR Title 24 Part 2.]

“Basement” means, for the purpose of floodplain management, the portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in CCR Title 24 Part 2.]

“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).
- (4) Other specified codes.

“Design flood” means the flood associated with the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

- (1) Area with a flood plain subject to a 1-percent or greater chance of flooding in any year.
- (2) Area designated as a flood hazard area on a community’s flood hazard map, or otherwise legally designated.

“Design flood elevation” means the elevation of the “design flood,” including wave height, relative to the datum specified on the community’s legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building’s perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where a depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet (610 mm). [Also defined in CCR Title 24 Part 2.]

“Development” means any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations, flood control projects, and other land-disturbing activities.

“Encroachment” means the placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

“Exceptional hardship” means, for the purpose of variances from these regulations or the building code, the exceptional difficulty that would result from a failure to grant a requested variance. Mere economic or financial hardship is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one’s neighbors do not, as a rule, qualify as exceptional hardships. All of these circumstances can be resolved through other means without granting variances, even when the alternatives are more expensive or require the property owner to build elsewhere or put the parcel to a different use than originally intended.

“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) was completed before October 17, 1978.

“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).

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land from:

- (1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding.

“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 damage-resistant materials” means any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in CCR Title 24 Part 2.]

“Flood hazard area” means the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

(1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.

(2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

“Flood Insurance Rate Map (FIRM)” means an official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas and the risk premium zones applicable to the community. [Also defined in CCR Title 24 Part 2.]

“Flood Insurance Study” means the official report provided by the Federal Emergency Management Agency containing the Flood Insurance Rate Map (FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevation of the base flood and supporting technical data. [Also defined in CCR Title 24 Part 2.]

“Floodplain Administrator” means the community official designated by title to administer and enforce the floodplain management regulations.

“Floodway” means the channel of the river, creek 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. [Also defined in CCR Title 24 Part 2.]

“Fraud or victimization” means, for the purpose of variances from these regulations or the building code, the intentional use of deceit to deprive another of rights or property, making a victim of the deprived person or the public. As it pertains to buildings granted variances to be constructed below the elevation required by the building code, future owners or tenants of such buildings and the community as a whole may bear the burden of increased risk of damage from floods, increased cost of flood insurance, and increased recovery costs, inconvenience, danger, and suffering.

“Functionally dependent use” means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding or ship repair facilities. The term does not include long-term storage, manufacture, sales or service facilities.

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation 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 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 preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on the inventory of historic places maintained by the California Office of Historic

Preservation; or

- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the California Office of Historic Preservation.

“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) Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (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.
- (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.

“Light-duty truck” means, as defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (2) Designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

“Lowest floor” means the lowest floor of the lowest enclosed area, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the building codes. [Also defined in CCR Title 24 Part 2.]

“Manufactured home” means a structure that is transportable in one or more sections, built on a permanent chassis, designed for use as a single-family dwelling with or without a permanent foundation when connected to the required utilities, and constructed to the Manufactured Home Construction and Safety Standards promulgated by the U.S. Department of Housing and Urban Development. Also see definitions in Health and Safety Code sections 18000.(a)(2) and 18001.(a). For the purposes of floodplain management, the term also includes mobile homes and recreational vehicles, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

“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.

“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.

"New manufactured home park or subdivision" means a manufactured home park or subdivision in 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) was completed on or after October 17, 1978.

"Nuisance" means that which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Permit for floodplain development" means an official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specified development activities that are located in flood hazard areas and that are determined to be compliant with these regulations.

"Recreational vehicle" means a vehicle that is built on a single chassis, 400 square feet (37.16 m²) or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use when it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions. Also see definitions in Health and Safety Code section 18010.

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

"Special flood hazard area (SFHA)" means the land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE, or V1-30. [Also defined in CCR Title 24 Part 2.]

"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. [Also defined in CCR Title 24 Part 2.]

"Substantial improvement" means any repair, reconstruction, rehabilitation, alteration, addition or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. When the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in CCR Title 24 Part 2.]

- (1) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

"Utility and Miscellaneous Group U" means buildings and structures of an accessory character and miscellaneous structure not classified in any special occupancy, as described in the building code.

"Variance" means a grant of relief from the requirements of these regulations which permits construction in a manner otherwise prohibited and where specific enforcement would result in exceptional hardship.

"Violation" means a development that is not fully compliant with these regulations or the flood provisions of the building code, as applicable.

"Watercourse" means a river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

PART III. – FLOOD RESISTANT DEVELOPMENT

Sec. 301-1. - Requirements for buildings and structures in flood hazard areas. Applications for building and structures within the scope of the building code that are proposed in flood hazard areas shall comply with the applicable requirements of the building code

Sec. 301-2. – Detached garages and accessory storage structures. Detached garages and accessory storage structures used only for parking or storage are permitted below the base flood elevation provided the garages and accessory storage structures:

- (1) Are one story and not larger than 600 square feet in area when located in special flood hazard areas.
- (2) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
- (3) Have flood openings in accordance with the building code.
- (4) Have flood damage-resistant materials used below the base flood elevation.
- (5) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation.

Sec. 301-3. - Utility and Miscellaneous Group U. Utility and miscellaneous Group U includes buildings that are accessory in character and miscellaneous structures not classified in any specific occupancy in the building code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, fences more than 6 feet (1829 mm) high, grain silos (accessory to a residential occupancy), greenhouses, livestock shelters, private garages, retaining walls, sheds, stables, and towers. In addition to the building code requirements for fire and life safety, the following shall apply to utility and miscellaneous Group U buildings and structures in flood hazard areas:

- (1) New construction and substantial improvement of such buildings and structures shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions of the design flood.
- (2) New construction and substantial improvement of such buildings and structures, when fully enclosed by walls, shall be elevated such that the lowest floor, including basement, is elevated to or above the design flood elevation in accordance with ASCE 24 or shall be dry floodproofed in accordance with ASCE 24.
- (3) Unless dry floodproofed, fully enclosed areas below the design flood elevation shall be constructed in accordance with ASCE 24 and limited to parking, storage, and building access.
- (4) When fully enclosed by walls, flood openings shall be installed in accordance with ASCE 24.
- (5) Flood damage-resistant materials shall be used below the design flood elevation.
- (6) Mechanical, plumbing and electrical systems, including plumbing fixtures, shall be located or installed in accordance with ASCE 24.

ARTICLE 302 SUBDIVISIONS

Sec. 302-1. - Minimum requirements. Subdivision proposals in flood hazard areas, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.
- (2) All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage in accordance with Section 303-2 and Section 303-3 of these regulations, as applicable, and appropriate codes.
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed structures.

Sec. 302-2. - Subdivision requirements. In addition to the requirements of Section 302-1 of these regulations, where any portion of proposed subdivisions, including proposals for manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- (1) The flood hazard area, including floodways, as appropriate, shall be delineated on preliminary subdivision plats.
- (2) Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 105-2(1) of these regulations.
- (3) When, as part of a proposed subdivision, fill will be placed to support buildings, the fill shall be placed in accordance with the building code and approval of the subdivision shall require submission of as-built elevations for each filled pad certified by a licensed land surveyor or registered civil engineer.

ARTICLE 303 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

Sec. 303-1. - Minimum requirements. All proposed development in flood hazard areas shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.
- (2) Where the proposed development has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 105-2(1) of these regulations.
- (3) All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage.
- (4) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed structures.

Sec. 303-2. - Sanitary sewer facilities. All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

Sec. 303-3. - Water supply facilities. All new and replaced water supply facilities shall be designed in accordance with the provisions of Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the systems.

Sec. 303-4. - Development in floodways. Development, site improvements and land disturbing activity involving fill or regrading shall not be authorized in the floodway unless the floodway encroachment analysis required in Section 105-3(1) of these regulations demonstrates the proposed work will not result in any increase in the base flood level during occurrence of the base flood discharge.

Sec. 303-5. - Limitations on placement of fill. Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures, fill shall comply with the requirements of the building code. The placement of fill intended to change base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs shall be subject to the requirements of Section 105-4 of these regulations.

ARTICLE 304 INSTALLATION OF MANUFACTURED HOMES

Sec. 304-1. - Installation. All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to the Business and Professions Code and shall comply with the requirements of the Department of Housing and Community Development (HCD) and the requirements of these regulations. In addition to permits pursuant to these regulations, permits from the HCD are required where the HCD is the enforcement agency for installation of manufactured homes. Upon completion of installation and prior to the final inspection by the Floodplain Administrator, the installer shall submit certification of the elevation of the manufactured home, prepared by a licensed land surveyor or registered civil engineer, to the Floodplain Administrator.

Sec. 304-2. - Foundations. All new and replacement manufactured homes, including substantial improvement of manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of Section R322.2 of the residential code (CCR Title 24 Part 2.5) and these regulations. Foundations for manufactured homes subject to Section 304-5 of these regulations are permitted to be reinforced piers or other foundation elements of at least equivalent strength.

Sec. 304-3. - Anchoring. All new and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring are authorized to include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind loads and seismic loads.

Sec. 304-4. - General elevation requirement. Unless subject to the requirements of Section 304-5 of these regulations, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the lowest floor, or bottom of the lowest horizontal member of the lowest floor, as applicable to the flood hazard area, is at or above the base flood elevation.

Sec. 304-5. - Elevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to Section 304-4 of these regulations, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as a result of flooding has occurred, shall be elevated such that either the:

- (1) Lowest floor, or bottom of the lowest horizontal structural member, as applicable to the flood hazard area, is at or above the base flood elevation.
- (2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

Sec. 304-6. - Flood damage-resistant materials. Materials below elevated manufactured homes shall comply with the flood-damage resistant materials requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

Sec. 304-7. - Enclosures. Fully enclosed areas below elevated manufactured homes shall comply with the enclosed area requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

Sec. 304-8. - Protection of mechanical equipment and outside appliances. Mechanical equipment and outside appliances shall be elevated to or above the lowest floor or bottom of the lowest horizontal structural member of the manufactured home, as applicable to the flood hazard area.

Exception. Where such equipment and appliances are designed and installed to prevent water from entering or accumulating within their components and the systems are constructed to resist

hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, occurrence of flooding up to the elevation required by Section 304-4 or Section 304-5, as applicable, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

ARTICLE 305 RECREATIONAL VEHICLES

Sec. 305-1. - Temporary placement. Recreational vehicles in flood hazard areas, shall be placed on a site for less than 180 consecutive days or shall be fully licensed and ready for highway use. Ready for highway use means the recreational vehicle is on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions, such as rooms, stairs, decks and porches.

Sec. 305-2. - Permanent placement. Recreational vehicles that do not meet the limitations in Section 305-1 for temporary placement shall meet the requirements of Article 304 for manufactured homes.

ARTICLE 306 OTHER DEVELOPMENT

Sec. 306-1. - General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the building code, shall:

- (1) Be located and constructed to minimize flood damage.
- (2) Meet the limitations of Section 303-4 of these regulations when located in a regulated floodway.
- (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- (4) Be constructed of flood damage-resistant materials.
- (5) Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of the building code for wet locations.

Sec. 306-2. - Tanks. Tanks that serve buildings shall comply with the requirements of the building code. Underground and above-ground tanks that serve other purposes shall be designed, constructed, installed and anchored in accordance with ASCE 24.

Sec. 306-3. - Requirements for temporary structures and temporary storage in flood hazard areas. Temporary structures shall be erected for a period of less than 180 days and temporary storage of goods and materials shall be permitted for a period of less than 180 days. Extensions may be granted in accordance with Section 104-5 of these regulations. In addition, the following apply:

- (1) Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit of flood waters.
- (2) Temporary stored materials shall not include hazardous materials.
- (3) The requirements of Section 303-4 of these regulations, when located in floodways.

Sec. 306-4. - Fences in floodways. Fences in floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 303-4 of these regulations.

Sec. 306-5. - Oil derricks. Oil derricks located in flood hazard areas shall be designed in conformance with flood loads required by the building code.

Sec. 306-6. - Retaining walls, sidewalks and driveways in floodways. Retaining walls and sidewalks and driveways that involve placement of fill in floodways shall meet the limitations of Section 303-4 of these regulations and the requirements for site grading in Chapter 18 of the building code.

Sec. 306-7. - Roads and watercourse crossings in floodways. Roads and watercourse crossings that encroach into floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side shall meet the limitations of Section 303-4 of these regulations. Alteration of a watercourse that is part of work proposed for a road or watercourse crossing shall meet the requirements of Section 105-3(3) of these regulations.

Sec. 306-8. - Swimming pools. Above-ground swimming pools, on-ground swimming pools, and in-ground swimming pools that involve placement of fill in floodways shall meet the requirement of Section 303-4 of these regulations.

ARTICLE 307 FLOOD CONTROL PROJECTS

Sec. 307-1. - Flood control projects; general. In addition to applicable Federal, State and other local permits, a permit for floodplain development is required for construction of flood control projects. The purpose for the permit is to examine the impact on flood hazard areas, floodways, and base flood elevations shown on the FIRM. Unless otherwise authorized by separate regulations, issuance of this permit does not address the sufficiency of the structural elements of the proposed flood control project. Permits for floodplain development and building permits in areas affected by proposed flood control projects shall not be issued based on Conditional Letters of Map Revision issued by FEMA.

Sec. 307-2. - Flood control projects; applications. Applications for permits for flood control projects shall include documentation including but not limited to:

- (1) Site plan or document showing the existing topography and the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations shown on the FIRM.
- (2) Site plan or document showing the proposed topography and the proposed changes to the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations.
- (3) The documentation submitted to FEMA for a Conditional Letter of Map Revision (CLOMR) and, if issued, the Conditional Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. A CLOMR is required when a proposed flood control project alters a floodway and increases base flood elevations more than greater than 0.00 feet, or alters a watercourse a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated and increases base flood elevations more than 1.0 foot.

SECTION 3. APPLICABILITY. For the purposes of jurisdictional applicability, this ordinance shall apply in all incorporated areas within the City of Clearlake. This ordinance shall apply to all applications for development, including building permit applications, zoning clearances, and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 4. INCLUSION INTO THE CODE OF ORDINANCES.
It is the intent of the City Council that the provisions of this ordinance shall become and be made a part of the City of Clearlake’s Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word “ordinance” may be changed to “section,” “article,” “regulation,” or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. SEVERABILITY.
If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as

a whole, or any part thereof, other than the part so declared.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect on **September 18, 2021 (30 days from August 19)**

PASSED on first reading **August 5, 2021**

PASSED and ADOPTED in regular session, with a quorum present and voting, by the City Council of the City of Clearlake, upon second and final reading this **August 19, 2021.**

AYES:

NOES:

ABSTAIN:

ABSENT:

Dirk Slooten, Mayor

ATTEST:

Melissa Swanson, City Clerk



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Repeal and Replace Chapter 17 of the CMC

MEETING DATE: 8/5/21

SUBMITTED BY: Susanna Gutierrez, Assistant Planner; Mark Roberts, Senior Planner; Dave Swartz, City Engineer/Flood Plain Manager

PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to consider revisions to Chapter 17 of the Clearlake Municipal Code “Floodplain Management” as reviewed by the Federal Emergency Management Agency (FEMA) and the California Department of Water Resources (DWR) in order to ensure compliance with the National Flood Insurance Program (NFIP).

BACKGROUND/DISCUSSION:

- The City has been an active member of the NFIP, a program that makes federally backed flood insurance available in those states and communities that agree to adopt and enforce flood-plain management ordinances to reduce future flood damage, since before incorporation starting October 17, 1978.
- The National Flood Insurance Act of 1968 was enacted by title XIII of the Housing and Urban Development Act of 1968 to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide protection was added to the Program by the Housing and Urban Development Act of 1969. Flood-related erosion protection was added to the Program by the Flood Disaster Protection Act of 1973. The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program.
- The National Flood Insurance Act of 1968 prohibits FEMA from providing flood insurance in a community unless the community adopts and enforces floodplain management regulations that meets or exceeds the minimum NFIP criteria. **A community can be suspended from the NFIP for failure to adopt compliant floodplain management measures as well as failure to enforce its floodplain management regulations.**
- Suspension from the Program Implies:
 - **No new flood insurance shall be provided** for any property which the Federal Insurance Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances

which are intended to discourage or otherwise restrict land development or occupation in flood-prone areas.

- Staff has been working closely with both FEMA's NFIP branch and DWR implementing Clearlake's Corrective Action plan since early 2020 in order to avoid suspension, part of which involves updating the City's Floodplain Management Ordinance (Chapter 17 of the Clearlake Municipal Code). The state model ordinance was updated in August of 2020 and is attached for reference with minimal substantive edits for review by Council.

OPTIONS:

- Suggested motion:

Move to hold first reading of Ordinance No. 256-2021 An Amendment to Chapter 17 of the Clearlake Municipal Code Repealing and Replacing Floodplain Management Regulations, read it by title only, waive further reading and set adoption for the August 19, 2021, meeting.

- Alternative motion:

Move to deny Ordinance No. 256-2021 Amending Chapter 17 of the Clearlake Municipal Code Repealing and Replacing Floodplain Management Regulations, and direct staff to make the amendments as directed.

- Provide alternative direction to Staff.

FISCAL IMPACT:

☒ None ☐ \$ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

- ☐ Goal #1: Make Clearlake a Visibly Cleaner City
- ☒ Goal #2: Make Clearlake a Statistically Safer City
- ☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☐ Goal #4: Improve the Image of Clearlake
- ☒ Goal #5: Ensure Fiscal Sustainability of City
- ☒ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

Attachments: 1) Ordinance 256-2021

ORDINANCE NO. 256-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE AMENDING THE CLEARLAKE CODE OF ORDINANCES TO REPEAL CHAPTER 17, FLOODPLAIN MANAGEMENT OF THE CLEARLAKE MUNICIPAL CODE; TO ADOPT A NEW CHAPTER 17, FLOODPLAIN MANAGEMENT OF THE CLEARLAKE MUNICIPAL CODE; TO ADOPT FLOOD HAZARD MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Clearlake and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the City of Clearlake was accepted for participation in the National Flood Insurance Program on October 17, 1978 and the City Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, pursuant to the California Health and Safety Code, Division 13, Part 1.5 and Part 2.5, the City of Clearlake is required to administer and enforce the *California Building Standards Code*, and such building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas; and

WHEREAS, the City Council has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the *California Building Standards Code*.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Clearlake that the following floodplain management regulations are hereby adopted.

SECTION 1. RECITALS.

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

SECTION 2. These regulations specifically repeal and replace the following ordinance(s) and regulation(s): Chapter 17, Floodplain Management of the Clearlake Municipal Code

CHAPTER 17 – FLOODPLAIN MANAGEMENT

PART I. – SCOPE AND ADMINISTRATION

ARTICLE 101 GENERAL PROVISIONS

Sec. 101-1. - Title. These regulations, in combination with the flood provisions of California Code of Regulations Title 24, the *California Building Standards Code* (hereinafter “building codes,” consisting of the Part 2 (building), Part 2.5 (residential), Part 10 (existing building), and related codes), shall be known as the *Floodplain Management Regulations* of the City of Clearlake (hereinafter “these regulations”).

Sec. 101-2. - Statutory authority. Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Sec. 101-3. - Scope. The provisions of these regulations, in combination with the flood provisions of the building codes, shall apply to all proposed development entirely or partially in flood hazard areas established in Section 102-2 of these regulations.

Sec. 101-4. – Purposes and objectives. The purposes and objectives of these regulations and the flood load and flood resistant construction requirements of the building codes are to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding.
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage.
- (3) Manage the alteration of natural floodplains, stream channels and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain.
- (4) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential.
- (5) Prevent or regulate the construction of flood barriers which will divert floodwater or increase flood hazards.
- (6) Contribute to improved construction techniques in the floodplain.
- (7) Minimize damage to public and private facilities and utilities.
- (8) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas.
- (9) Minimize the need for rescue and relief efforts associated with flooding.
- (10) Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.
- (11) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.
- (12) Meet the requirements of the National Flood Insurance Program for community participation as set forth in Title 44 Code of Federal Regulations, Section 59.22.

Sec. 101-5. - Coordination with *California Building Standards Code*. Pursuant to the requirement established in State statute that the City of Clearlake administer and enforce the *California Building Standards Code*, the City Council of the City of Clearlake hereby acknowledges that the building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the building codes.

Sec. 101-6. - Warning. The degree of flood protection required by these regulations and the building codes is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations and the building codes does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations,

Sections 59 and 60 may be revised by the Federal Emergency Management Agency, re community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with these regulations.

Sec. 101-7. - Disclaimer of liability. These regulations shall not create liability on the part of the City Council, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder. The Floodplain Administrator and any employee charged with the enforcement of these regulations, while acting for the community in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by a legal representative of the community until the final termination of the proceedings. The Floodplain Administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

Sec. 101-8. - Other laws. The provisions of these regulations shall not be deemed to nullify any provisions of local, State or federal law.

Sec. 101-9. - Abrogation and greater restrictions. These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal, abrogate or impair any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes, nor any existing easements, covenants, or deed restrictions. In the event of an overlap or conflict between these regulations and any other ordinance, code, regulation, easement, covenant, or deed restriction, the more restrictive shall govern.

ARTICLE 102 APPLICABILITY

Sec. 102-1. - General applicability. These regulations, in conjunction with the building codes, provide minimum requirements for development located in flood hazard areas, including the subdivision of land; filling, grading and other site improvements; installation of utilities; installation, placement and replacement of manufactured homes; placement of recreational vehicles; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; certain building work exempt from permit under the building codes; and flood control projects.

Sec. 102-2. - Establishment of flood hazard areas. The Flood Insurance Study for Lake County, California and Incorporated Areas dated October 17, 1978, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are hereby adopted by reference as a part of these regulations and serve as the basis for establishing flood hazard areas. Where the building code establishes flood hazard areas, such areas are established by this section. Additional maps and studies, when specifically adopted, supplement the FIS and FIRMs to establish additional flood hazard areas. Maps and studies that establish flood hazard areas are on file at Clearlake City Hall at 14050 Olympic Drive.

Sec. 102-3. - Interpretation. In the interpretation and application of these regulations, all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Deemed neither to limit nor repeal any other powers granted under state statutes.

ARTICLE 103 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

Sec. 103-1. - Designation. The City Engineer is designated the Floodplain Administrator. The Floodplain Administrator shall have the authority to delegate performance of certain duties to other employees.

Sec. 103-2. - General authority. The Floodplain Administrator is authorized and directed to administer and enforce these regulations. The Floodplain Administrator shall have the authority to render interpretations of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to Article 107 of these regulations. The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a qualified professional engineer or licensed land surveyor when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with these regulations.

Sec. 103-3. - Coordination. The Floodplain Administrator shall coordinate with and provide comments to the Building Official to administer and enforce the flood provisions of the building code and to ensure compliance with the applicable provisions of these regulations. The Floodplain Administrator and the Building Official have the authority to establish written procedures for reviewing applications and conducting inspections for buildings and for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 103-5 of these regulations.

Sec. 103-4. - Duties. The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

- (1) Review all permit applications and plans to determine whether proposed development is located in flood hazard areas.
- (2) Review all applications and plans for development in flood hazard areas for compliance with these regulations.
- (3) Review, in coordination with the Building Official, required design certifications and documentation of elevations specified by the building code to determine that such certifications and documentations are complete.
- (4) Review applications and plans for modification of any existing development in flood hazard areas for compliance with these regulations.
- (5) Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.
- (6) Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.
- (7) Determine whether additional flood hazard data shall be obtained from other sources or developed by the applicant.
- (8) Complete the appropriate section of the Department of Housing and Community Development Floodplain Ordinance Compliance Certification for Manufactured Home/Mobilehome Installations when submitted by applicants.
- (9) Review requests submitted to the Building Official seeking approval to modify the strict application of the flood load and flood resistant construction requirements of the building code, to determine whether such requests require consideration as a variance pursuant to Article 107 of these regulations.
- (10) Coordinate with the Building Official and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the requirement to obtain permits for repairs.
- (11) 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.

- (12) 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).
- (13) Inspect development in accordance with Article 106 of these regulations and inspect flood hazard areas to determine when development is undertaken without issuance of permits.
- (14) Prepare comments and recommendations for consideration when applicants seek variances for development other than buildings in accordance with Article 107 of these regulations.
- (15) Cite violations in accordance with Article 108 of these regulations.
- (16) Notify FEMA when the corporate boundaries of the City of Clearlake have been modified and provide a map and legal description of the changes in the corporate boundaries.

Sec. 103-5. - Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- (2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, when applicable, to the market value of the building or structure.
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
- (4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

Sec. 103-6. - Department records. In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the building codes, including Flood Insurance Studies and Flood Insurance Rate Maps; documents from FEMA that amend or revise FIRMs; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the building codes and these regulations; notifications to adjacent communities, FEMA, and the State related to alterations of watercourses; assurance that the flood carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the building codes.

ARTICLE 104 PERMITS FOR FLOODPLAIN DEVELOPMENT

Sec. 104-1. - Permits required. Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall make application to the Floodplain Administrator and shall obtain the required city permits. No permit shall be issued until compliance with the requirements of these regulations and all other applicable codes and regulations has been satisfied. No building permit shall be

issued based on Conditional Letters of Map Revision issued by FEMA. Depending on the extent of proposed development that includes a building or structure, the Floodplain Administrator may determine a permit for floodplain development is required in addition to a building permit.

Sec. 104-2. - Application for permit. The applicant shall file an application in writing on city standard forms. The information shall include:

- (1) Identify and describe the development to be covered by the permit.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitely locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan and construction documents as specified in Article 105 of these regulations, including grading, excavation and filling plans and other information deemed appropriate by the Floodplain Administrator.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Include such other data and information required by the Floodplain Administrator to demonstrate compliance with these regulations.

Sec. 104-3. - Validity of permit. The issuance of a permit for floodplain development under these regulations or the building codes shall not be construed to be a permit for, or approval of, any violation of these regulations, the building code, or any other ordinance of the community. The issuance of a permit for floodplain development based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations.

Sec. 104-4. - Other permits required. The applicant shall obtain all other required state and federal permits prior to initiating work authorized by these regulations and shall provide documentation of such permits to the Floodplain Administrator. Such permits include but are not limited to the California State Water Resources Control Board for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.

Sec. 104-5. - Expiration. A permit for floodplain development shall run concurrently with the life of the associated city permits.

- (1) **“Start of Construction”** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97348)), includes substantial improvement, 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 of the permit date.

(2) **Expiration:**

- (a) Every Zoning Clearance, Grading, Building, Fire, Plumbing, Mechanical, and Electrical permit issued by the city under this code shall expire by limitation and become null and void two (2) years after the date of issuance (The maximum allowable length for all permits is two (2) years, unless otherwise noted. Extensions will not normally be considered. Applicants with extenuating circumstances may submit written request and a filing fee to the Building Official. Such requests are required to outline extenuating circumstances that did not allow for the completion of the work as permitted) or if the building or work authorized by such permit is not commenced within 180 days from the date of issuance, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced. Suspension and/or abandonment shall be determined by a lack of progress inspections for a period of more than 180 days since a previous documented inspection. If a permit has expired, no work can recommence until a new

permit is obtained.

- (b) The cost of a new permit, the purpose of which is to facilitate completion of work for which a permit has expired, will be based on a quantitative estimation of inspections deemed necessary for completion. If costs for providing services to the project exceed the estimated fees collected at permit issuance, additional fees will apply. Said fees will be in accordance with the City's Building Division Fee Schedule established by resolution of the City Council. It is the responsibility of the permittee to schedule all inspections necessary for a permit to remain current and valid. All inspections for this purpose must verify progress.
- (c) Permits may be issued for a limited period of time when deemed necessary by the Building Official to abate dangerous, substandard, and/or illegal conditions. In such cases, the Building Official will establish the expiration at 30, 60, 90, or 180 days depending on the health and/or safety hazards. Such permit term limitations may be shorter if deemed appropriate and/or necessary by the Building Official.

Sec. 104-6. - Suspension or revocation. The Floodplain Administrator is authorized to suspend or revoke a permit for floodplain development issued under these regulations wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of these regulations or any ordinance or code of this community.

Sec. 104-7. - Appeals of decisions. When it is alleged there is an error in any decision or determination made by the Floodplain Administrator in the interpretation or enforcement of these regulations, such decision or determination may be appealed to the **City Council** by filing a written appeal setting forth the reasons of the appeal.

ARTICLE 105 SITE PLANS AND CONSTRUCTION DOCUMENTS

Sec. 105-1. - Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas; floodway boundaries and flood zone(s); base flood elevation(s); ground elevations; proposed filling, grading, and excavation; and drainage patterns and facilities when necessary for review of the proposed development.
- (2) Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 105-2 or Section 105-3 of these regulations.
- (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with Section 105-2(2) of these regulations.
- (4) Location of the proposed activity and proposed structures; locations of water supply, sanitary sewer, and other utilities; and locations of existing buildings and structures.
- (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- (7) Existing and proposed alignment of any proposed alteration of a watercourse.

Sec. 105-2. - Information in flood hazard areas without base flood elevations (approximate Zone A). Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator is authorized to:

- (1) Require the applicant to include base flood elevation data prepared by a qualified professional engineer or licensed land surveyor in accordance with currently accepted engineering practices. Such analyses shall be performed and sealed by a qualified professional engineer or surveyor. Studies, analyses and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.
- (2) Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- (3) Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
 - (a) Require the applicant to include base flood elevation data in accordance with Section 105-2(1) of these regulations; or
 - (b) Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
- (4) Where the base flood elevation data are to be used to support a request for a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a qualified professional engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

Sec. 105-3. - Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of these regulations, the applicant shall have the following analyses signed and sealed by a qualified professional engineer for submission with the site plan and construction documents:

- (1) For development activities proposed to be located in a floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in Section 105-4 of these regulations and shall submit the Conditional Letter of Map Revision, when issued by FEMA, with the site plan and construction documents.
- (2) For development activities proposed to be located in a riverine flood hazard area where base flood elevations are included in the Flood Insurance Study or on the FIRM but floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices that demonstrates the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in Section 105-4 of these regulations. The applicant shall notify the chief executive officer of adjacent communities and the California Department of Water Resources. The Floodplain Administrator shall maintain a copy of the notification in the permit records and shall submit a copy to FEMA.

Sec. 105-4. - Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway

boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such information to FEMA for such purposes. The analyses shall be prepared by a qualified registered professional engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant. Provided FEMA issues a Conditional Letter of Map Revision, construction of proposed flood control projects and land preparation for development are permitted, including clearing, excavation, grading, and filling. Permits for construction of buildings shall not be issued until the applicant satisfies the FEMA requirements for issuance of a Letter of Map Revision.

ARTICLE 106 INSPECTIONS

Sec. 106-1. - Inspections, in general. Development for which a permit for floodplain development is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

Sec. 106-2. - Inspections of development other than buildings and structures. The Floodplain Administrator shall make or cause to be made, inspections of all development other than buildings and structures that is authorized by issuance of a permit for floodplain development under these regulations. The Floodplain Administrator shall inspect flood hazard areas from time to time to determine when development is undertaken without issuance of a permit.

Sec. 106-3. - Inspections of manufactured homes installations. The Floodplain Administrator shall make or cause to be made, inspections of installation and replacement of manufactured homes in flood hazard areas authorized by issuance of a permit for floodplain development under these regulations. Upon installation of a manufactured home and receipt of the elevation certification required in Section 304-1 of these regulations the Floodplain Administrator shall inspect the installation or have the installation inspected.

Sec. 106-4. - Buildings and structures. The Building Official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit, in accordance with the building code:

- (1) **Lowest floor elevation.** Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in the building code shall be prepared by a licensed land surveyor or registered civil engineer and submitted to the building official.
- (2) **Final inspection.** Prior to the final inspection, certification of the elevation required in the building code shall be prepared by a licensed land surveyor or registered civil engineer and submitted to the building official.

ARTICLE 107 VARIANCES

Sec. 107-1. - Nature of variances. The considerations and conditions for variances set forth in this article are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be issued for a parcel of property with physical characteristics so unusual that complying with the requirements of these regulations would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners. The issuance of a variance is for floodplain management purposes only. Federal flood insurance premium rates are determined by the National Flood Insurance Program according to actuarial risk and will not be modified by the granting of a variance.

It is the duty of the **City Council** to promote public health, safety and welfare and minimize losses from

flooding. This duty is so compelling and the implications of property damage and the cost of structure built below flood level are so serious that variances from the elevation or other requirements in the building codes should be quite rare. The long term goal of preventing and reducing flood loss and damage, and minimizing recovery costs, inconvenience, danger, and suffering, can only be met when variances are strictly limited. Therefore, the variance requirements in these regulations are detailed and contain multiple provisions that must be met before a variance can be properly issued. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

Sec. 107-2. – Variances; general. The **City Council** shall hear and decide requests for variances from the strict application of these regulations.

Sec. 107-3. - Limitations on authority. The **City Council** shall base its determination on technical justifications submitted by applicants, the considerations and conditions set forth in this article, the comments and recommendations of the Floodplain Administrator and Building Official, as applicable, and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations and the building code.

Sec. 107-4. - Records. The Floodplain Administrator shall maintain a permanent record of all variance actions, including justification for issuance.

Sec. 107-5. - Historic structures. A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic structure upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure. When the proposed work precludes the structure's continued designation as a historic building, a variance shall not be granted and the structure and any repair, improvement, and rehabilitation shall be subject to the requirements of the building code.

Sec. 107-6. - Restrictions in floodways. A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analyses required in Section 105-3(1) of these regulations.

Sec. 107-7. - Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use provided the criteria in Section 1612 of the building code (CCR Title 24 Part 2) or Section R322 of the residential code (CCR Title 24 Part 2.5) are met, as applicable, and the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damages during the base flood and create no additional threats to public safety.

Sec. 107-8. - Agricultural structures. A variance is authorized to be issued for the construction or substantial improvement of agricultural structures that are not elevated or dry flood proofed, provided the requirements of this section are satisfied and:

- (1) A determination has been made that the proposed agricultural structure:
 - (a) Is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.
 - (b) Has low damage potential.
 - (c) Does not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.
 - (d) Complies with the wet floodproofing construction requirements of Section 107-8(2), below.

(2) Wet floodproofing construction requirements.

- (a) Anchored to resist flotation, collapse, and lateral movement.
- (b) When enclosed by walls, walls have flood openings that comply with the flood opening requirements of ASCE 24, Chapter 2.
- (c) Flood damage-resistant materials are used below the base flood elevation.
- (d) Mechanical, electrical, and utility equipment are elevated above the base flood elevation.

Sec. 107-9. - Considerations for issuance of variances. In reviewing applications for variances, all technical evaluations, all relevant factors, all other requirements of these regulations and the building code, as applicable, and the following shall be considered:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- (4) The importance of the services provided by the proposed development to the community.
- (5) The availability of alternate locations for the proposed development that are not subject to flooding or erosion and the necessity of a waterfront location, where applicable.
- (6) The compatibility of the proposed development with existing and anticipated development.
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, if applicable, expected at the site.
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

Sec. 107-10. - Conditions for issuance of variances. Variances shall only be issued upon:

- (1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site limit compliance with any provision of these regulations or renders the elevation standards of the building code inappropriate.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or future property owners, or conflict with existing local laws or ordinances.
- (4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) When the request is to allow construction of the lowest floor of a new building or substantial improvement of a building below the base flood elevation, notification to the applicant in writing over the signature of the Floodplain Administrator specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that issuance of a variance to construct below the elevation required in the building code will result in increased premium rates for federal flood insurance up to amounts as high as \$25 for \$100 of insurance coverage,

ARTICLE 108 VIOLATIONS

Sec. 108-1. - Violations. Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of the elevation of the lowest floor, other required design certifications, or other evidence of compliance required by these regulations or the building code, is presumed to be a violation until such time as required documentation is submitted. Violation of the requirements shall constitute a misdemeanor.

Sec. 108-2. - Authority. The Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of property involved, to the owner's agent, or to the person or persons doing the work for development that is not within the scope of the building codes, but is regulated by these regulations and that is determined to be a violation.

Sec. 108-3. - Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

PART II. – DEFINITIONS

ARTICLE 201 DEFINITIONS

Sec. 201-1. - General. The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Where terms are not defined in these regulations and are defined in the building code (CCR Title 24 Part 2) and used in the residential code (CCR Title 24 Part 2.5), such terms shall have the meanings ascribed to them in those codes. Where terms are not defined in these regulations or the building code, such terms shall have ordinarily accepted meanings such as the context implies.

Sec. 201-2. - Definitions

“Accessory Structure” means a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used for parking and storage.

“Agricultural Structure” means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

“Alteration of a watercourse” means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“ASCE 24” means the standard *Flood Resistant Design and Construction*, referenced by the building code, developed and published by the American Society of Civil Engineers, Reston, VA. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the building code.

“Base flood” means the flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in CCR Title 24 Part 2.]

“Base flood elevation” means the elevation of the base flood, including wave height, relative to the

National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in CCR Title 24 Part 2.]

“Basement” means, for the purpose of floodplain management, the portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in CCR Title 24 Part 2.]

“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).
- (4) Other specified codes.

“Design flood” means the flood associated with the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

- (1) Area with a flood plain subject to a 1-percent or greater chance of flooding in any year.
- (2) Area designated as a flood hazard area on a community’s flood hazard map, or otherwise legally designated.

“Design flood elevation” means the elevation of the “design flood,” including wave height, relative to the datum specified on the community’s legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building’s perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where a depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet (610 mm). [Also defined in CCR Title 24 Part 2.]

“Development” means any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations, flood control projects, and other land-disturbing activities.

“Encroachment” means the placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

“Exceptional hardship” means, for the purpose of variances from these regulations or the building code, the exceptional difficulty that would result from a failure to grant a requested variance. Mere economic or financial hardship is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors do not, as a rule, qualify as exceptional hardships. All of these circumstances can be resolved through other means without granting variances, even when the alternatives are more expensive or require the property owner to build elsewhere or put the parcel to a different use than originally intended.

“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) was completed before October 17, 1978.

“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).

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- (3) Mudslides (i.e., mudflows) which are proximately caused by flooding.

“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 damage-resistant materials” means any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in CCR Title 24 Part 2.]

“Flood hazard area” means the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

- (1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community’s flood hazard map, or otherwise legally designated.

“Flood Insurance Rate Map (FIRM)” means an official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas and the risk premium zones applicable to the community. [Also defined in CCR Title 24 Part 2.]

“Flood Insurance Study” means the official report provided by the Federal Emergency Management Agency containing the Flood Insurance Rate Map (FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevation of the base flood and supporting technical data. [Also defined in CCR Title 24 Part 2.]

“Floodplain Administrator” means the community official designated by title to administer and enforce the floodplain management regulations.

“Floodway” means the channel of the river, creek 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. [Also defined in CCR Title 24 Part 2.]

“Fraud or victimization” means, for the purpose of variances from these regulations or the building code, the intentional use of deceit to deprive another of rights or property, making a victim of the deprived person or the public. As it pertains to buildings granted variances to be constructed below the elevation required by the building code, future owners or tenants of such buildings and the community as a whole may bear the burden of increased risk of damage from floods, increased cost of flood insurance, and increased recovery costs, inconvenience, danger, and suffering.

“Functionally dependent use” means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding or ship repair facilities. The term does not include long-term storage, manufacture, sales or service facilities.

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation 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 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 preliminarily determined by the Secretary to qualify as a registered historic district;

- (3) Individually listed on the inventory of historic places maintained by the California Office of Historic Preservation; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the California Office of Historic Preservation.

“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) Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (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.
- (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.

“Light-duty truck” means, as defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (2) Designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

“Lowest floor” means the lowest floor of the lowest enclosed area, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the building codes. [Also defined in CCR Title 24 Part 2.]

“Manufactured home” means a structure that is transportable in one or more sections, built on a permanent chassis, designed for use as a single-family dwelling with or without a permanent foundation when connected to the required utilities, and constructed to the Manufactured Home Construction and Safety Standards promulgated by the U.S. Department of Housing and Urban Development. Also see definitions in Health and Safety Code sections 18000.(a)(2) and 18001.(a). For the purposes of floodplain management, the term also includes mobile homes and recreational vehicles, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

“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.

“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.

"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) was completed on or after October 17, 1978.

"Nuisance" means that which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Permit for floodplain development" means an official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specified development activities that are located in flood hazard areas and that are determined to be compliant with these regulations.

"Recreational vehicle" means a vehicle that is built on a single chassis, 400 square feet (37.16 m²) or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use when it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions. Also see definitions in Health and Safety Code section 18010.

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

"Special flood hazard area (SFHA)" means the land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE, or V1-30. [Also defined in CCR Title 24 Part 2.]

"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. [Also defined in CCR Title 24 Part 2.]

"Substantial improvement" means any repair, reconstruction, rehabilitation, alteration, addition or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. When the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in CCR Title 24 Part 2.]

- (1) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

"Utility and Miscellaneous Group U" means buildings and structures of an accessory character and miscellaneous structure not classified in any special occupancy, as described in the building code.

"Variance" means a grant of relief from the requirements of these regulations which permits construction in a manner otherwise prohibited and where specific enforcement would result in exceptional hardship.

"Violation" means a development that is not fully compliant with these regulations or the flood provisions of the building code, as applicable.

"Watercourse" means a river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

PART III. – FLOOD RESISTANT DEVELOPMENT

ARTICLE 301 BUILDINGS AND STRUCTURES

Sec. 301-1. - Requirements for buildings and structures in flood hazard areas. Applications for building and structures within the scope of the building code that are proposed in flood hazard areas shall comply with the applicable requirements of the building code

Sec. 301-2. – Detached garages and accessory storage structures. Detached garages and accessory storage structures used only for parking or storage are permitted below the base flood elevation provided the garages and accessory storage structures:

- (1) Are one story and not larger than 600 square feet in area when located in special flood hazard areas.
- (2) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
- (3) Have flood openings in accordance with the building code.
- (4) Have flood damage-resistant materials used below the base flood elevation.
- (5) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation.

Sec. 301-3. - Utility and Miscellaneous Group U. Utility and miscellaneous Group U includes buildings that are accessory in character and miscellaneous structures not classified in any specific occupancy in the building code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, fences more than 6 feet (1829 mm) high, grain silos (accessory to a residential occupancy), greenhouses, livestock shelters, private garages, retaining walls, sheds, stables, and towers. In addition to the building code requirements for fire and life safety, the following shall apply to utility and miscellaneous Group U buildings and structures in flood hazard areas:

- (1) New construction and substantial improvement of such buildings and structures shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions of the design flood.
- (2) New construction and substantial improvement of such buildings and structures, when fully enclosed by walls, shall be elevated such that the lowest floor, including basement, is elevated to or above the design flood elevation in accordance with ASCE 24 or shall be dry floodproofed in accordance with ASCE 24.
- (3) Unless dry floodproofed, fully enclosed areas below the design flood elevation shall be constructed in accordance with ASCE 24 and limited to parking, storage, and building access.
- (4) When fully enclosed by walls, flood openings shall be installed in accordance with ASCE 24.
- (5) Flood damage-resistant materials shall be used below the design flood elevation.
- (6) Mechanical, plumbing and electrical systems, including plumbing fixtures, shall be located or installed in accordance with ASCE 24.

ARTICLE 302 SUBDIVISIONS

Sec. 302-1. - Minimum requirements. Subdivision proposals in flood hazard areas, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.
- (2) All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage in accordance with Section 303-2 and Section 303-3 of these regulations, as applicable, and appropriate codes.
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed

Sec. 302-2. - Subdivision requirements. In addition to the requirements of Section 302-1 of these regulations, where any portion of proposed subdivisions, including proposals for manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- (1) The flood hazard area, including floodways, as appropriate, shall be delineated on preliminary subdivision plats.
- (2) Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 105-2(1) of these regulations.
- (3) When, as part of a proposed subdivision, fill will be placed to support buildings, the fill shall be placed in accordance with the building code and approval of the subdivision shall require submission of as-built elevations for each filled pad certified by a licensed land surveyor or registered civil engineer.

ARTICLE 303 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

Sec. 303-1. - Minimum requirements. All proposed development in flood hazard areas shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.
- (2) Where the proposed development has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 105-2(1) of these regulations.
- (3) All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage.
- (4) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed structures.

Sec. 303-2. - Sanitary sewer facilities. All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

Sec. 303-3. - Water supply facilities. All new and replaced water supply facilities shall be designed in accordance with the provisions of Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the systems.

Sec. 303-4. - Development in floodways. Development, site improvements and land disturbing activity involving fill or regrading shall not be authorized in the floodway unless the floodway encroachment analysis required in Section 105-3(1) of these regulations demonstrates the proposed work will not result in any increase in the base flood level during occurrence of the base flood discharge.

Sec. 303-5. - Limitations on placement of fill. Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures, fill shall comply with the requirements of the building code. The placement of fill intended to change base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs shall be subject to the requirements of Section 105-4 of these regulations.

Sec. 304-1. - Installation. All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to the Business and Professions Code and shall comply with the requirements of the Department of Housing and Community Development (HCD) and the requirements of these regulations. In addition to permits pursuant to these regulations, permits from the HCD are required where the HCD is the enforcement agency for installation of manufactured homes. Upon completion of installation and prior to the final inspection by the Floodplain Administrator, the installer shall submit certification of the elevation of the manufactured home, prepared by a licensed land surveyor or registered civil engineer, to the Floodplain Administrator.

Sec. 304-2. - Foundations. All new and replacement manufactured homes, including substantial improvement of manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of Section R322.2 of the residential code (CCR Title 24 Part 2.5) and these regulations. Foundations for manufactured homes subject to Section 304-5 of these regulations are permitted to be reinforced piers or other foundation elements of at least equivalent strength.

Sec. 304-3. - Anchoring. All new and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring are authorized to include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind loads and seismic loads.

Sec. 304-4. - General elevation requirement. Unless subject to the requirements of Section 304-5 of these regulations, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the lowest floor, or bottom of the lowest horizontal member of the lowest floor, as applicable to the flood hazard area, is at or above the base flood elevation.

Sec. 304-5. - Elevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to Section 304-4 of these regulations, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as a result of flooding has occurred, shall be elevated such that either the:

- (1) Lowest floor, or bottom of the lowest horizontal structural member, as applicable to the flood hazard area, is at or above the base flood elevation.
- (2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

Sec. 304-6. - Flood damage-resistant materials. Materials below elevated manufactured homes shall comply with the flood-damage resistant materials requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

Sec. 304-7. - Enclosures. Fully enclosed areas below elevated manufactured homes shall comply with the enclosed area requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

Sec. 304-8. - Protection of mechanical equipment and outside appliances. Mechanical equipment and outside appliances shall be elevated to or above the lowest floor or bottom of the lowest horizontal structural member of the manufactured home, as applicable to the flood hazard area.

Exception. Where such equipment and appliances are designed and installed to prevent water

from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding up to the elevation required by Section 304-4 or Section 304-5, as applicable, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

ARTICLE 305 RECREATIONAL VEHICLES

Sec. 305-1. - Temporary placement. Recreational vehicles in flood hazard areas, shall be placed on a site for less than 180 consecutive days or shall be fully licensed and ready for highway use. Ready for highway use means the recreational vehicle is on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions, such as rooms, stairs, decks and porches.

Sec. 305-2. - Permanent placement. Recreational vehicles that do not meet the limitations in Section 305-1 for temporary placement shall meet the requirements of Article 304 for manufactured homes.

ARTICLE 306 OTHER DEVELOPMENT

Sec. 306-1. - General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the building code, shall:

- (1) Be located and constructed to minimize flood damage.
- (2) Meet the limitations of Section 303-4 of these regulations when located in a regulated floodway.
- (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- (4) Be constructed of flood damage-resistant materials.
- (5) Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of the building code for wet locations.

Sec. 306-2. - Tanks. Tanks that serve buildings shall comply with the requirements of the building code. Underground and above-ground tanks that serve other purposes shall be designed, constructed, installed and anchored in accordance with ASCE 24.

Sec. 306-3. - Requirements for temporary structures and temporary storage in flood hazard areas. Temporary structures shall be erected for a period of less than 180 days and temporary storage of goods and materials shall be permitted for a period of less than 180 days. Extensions may be granted in accordance with Section 104-5 of these regulations. In addition, the following apply:

- (1) Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit of flood waters.
- (2) Temporary stored materials shall not include hazardous materials.
- (3) The requirements of Section 303-4 of these regulations, when located in floodways.

Sec. 306-4. - Fences in floodways. Fences in floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 303-4 of these regulations.

Sec. 306-5. - Oil derricks. Oil derricks located in flood hazard areas shall be designed in conformance

with flood loads required by the building code.

Sec. 306-6. - Retaining walls, sidewalks and driveways in floodways. Retaining walls and sidewalks and driveways that involve placement of fill in floodways shall meet the limitations of Section 303-4 of these regulations and the requirements for site grading in Chapter 18 of the building code.

Sec. 306-7. - Roads and watercourse crossings in floodways. Roads and watercourse crossings that encroach into floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side shall meet the limitations of Section 303-4 of these regulations. Alteration of a watercourse that is part of work proposed for a road or watercourse crossing shall meet the requirements of Section 105-3(3) of these regulations.

Sec. 306-8. - Swimming pools. Above-ground swimming pools, on-ground swimming pools, and in-ground swimming pools that involve placement of fill in floodways shall meet the requirement of Section 303-4 of these regulations.

ARTICLE 307 FLOOD CONTROL PROJECTS

Sec. 307-1. - Flood control projects; general. In addition to applicable Federal, State and other local permits, a permit for floodplain development is required for construction of flood control projects. The purpose for the permit is to examine the impact on flood hazard areas, floodways, and base flood elevations shown on the FIRM. Unless otherwise authorized by separate regulations, issuance of this permit does not address the sufficiency of the structural elements of the proposed flood control project. Permits for floodplain development and building permits in areas affected by proposed flood control projects shall not be issued based on Conditional Letters of Map Revision issued by FEMA.

Sec. 307-2. - Flood control projects; applications. Applications for permits for flood control projects shall include documentation including but not limited to:

- (1) Site plan or document showing the existing topography and the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations shown on the FIRM.
- (2) Site plan or document showing the proposed topography and the proposed changes to the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations.
- (3) The documentation submitted to FEMA for a Conditional Letter of Map Revision (CLOMR) and, if issued, the Conditional Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. A CLOMR is required when a proposed flood control project alters a floodway and increases base flood elevations more than greater than 0.00 feet, or alters a watercourse a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated and increases base flood elevations more than 1.0 foot.

SECTION 3. APPLICABILITY. For the purposes of jurisdictional applicability, this ordinance shall apply in all incorporated areas within the City of Clearlake. This ordinance shall apply to all applications for development, including building permit applications, zoning clearances, and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 4. INCLUSION INTO THE CODE OF ORDINANCES.

It is the intent of the City Council that the provisions of this ordinance shall become and be made a part of the City of Clearlake's Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by

the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance in whole or in part, or any part thereof, other than the part so declared.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect on September 18, 2021

PASSED on first reading August 5, 2021

PASSED and ADOPTED in regular session, with a quorum present and voting, by the City Council of the City of Clearlake, upon second and final reading this August 19, 2021.

AYES:

NOES:

ABSTAIN:

ABSENT:

Dirk Slooten, Mayor

ATTEST:

Melissa Swanson, City Clerk