

## ORDINANCE NO. 2-2010

### AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE EXTENDING THE MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES

The City Council of the City of Elk Grove does ordain as follows:

#### Section 1: Purpose and Authority

The purpose of this urgency ordinance is to continue and extend the moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries.

The City of Elk Grove has the authority to adopt this ordinance pursuant to California Constitution Article XI, section 7 and California Government Code section 65858.

#### Section 2: Findings.

In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 ("CUA" or the "Act"). The Act was subsequently codified as California Health and Safety Code section 11362.5. The Act was designed to provide a defense to persons charged with possessing or cultivating marijuana for the personal medical use of patients who have received a recommendation from a physician that the use of marijuana may be beneficial in the treatment of that patient. CUA further prevented criminal prosecution of doctors who recommend the use of marijuana by patients for medical purposes.

The state legislature subsequently enacted the "Medical Marijuana Program", also codified as Health and Safety Code section 11362.7 (the "Program"). The Medical Marijuana Program provides guidance for the use and cultivation of medical marijuana. The hallmark of the Program is that it prohibits the arrest of any qualified patient (or that patient's primary caregiver) for the possession, transportation, delivery or cultivation of medical marijuana. In order to qualify for this immunity, the person must possess an identification card issued by the State Department of Health Services through a voluntary program. However, at this time, the State of California has yet to implement a statewide identification card program for qualified patients and their primary caregivers.

Despite CUA and the Program, the possession, sale and distribution of marijuana are still criminal offenses under both California state and Federal law. Moreover, no provision of California law authorizes the sale or distribution of cannabis by medical marijuana dispensaries to any primary care giver, a qualified patient, or a person with a valid identification card obtained under the auspices of the Program.

Neither CUA nor the Program expressly authorize or address the role of dispensaries in the scheme of providing medical marijuana to qualified patients and/or their primary caregivers. Despite this, local agencies throughout California have seen medical

marijuana dispensaries established in their communities. Once established, these locations have created a number of secondary effects associated with them, including:

- ✓ Illegal drug activity and drug sales in the vicinity of dispensaries
- ✓ Robbery of persons leaving dispensaries;
- ✓ Driving under the influence of controlled substances obtained from dispensaries;
- ✓ Persons acquiring marijuana from a dispensary and then selling it to non-qualified persons;
- ✓ Burglaries and robberies; and
- ✓ Increased vacancies in the commercial areas near such dispensaries.

These impacts have been compiled in an extensive report prepared by the California Police Chiefs Association. A copy of that report is attached to this Ordinance as Exhibit "A" and is incorporated herein by this reference. The City Council of the City of Elk Grove hereby finds that the report contains persuasive anecdotal and documented evidence that medical marijuana dispensaries pose a threat to the public health, safety and welfare.

At present, the City of Elk Grove Zoning Code does not contain any explicit provisions contemplating the approval of medical marijuana dispensary facilities within the City of Elk Grove. Moreover, the City has experienced a recent increase in the number of contacts received by the City about opening medical marijuana dispensaries. The City Council hereby finds that it is in the best interest for the health, safety and welfare of the residents of the City of Elk Grove to prevent potentially harmful secondary effects of medical marijuana dispensaries to adopt this urgency ordinance to allow City staff time to study the impacts of permitting medical marijuana dispensaries, as well as to determine which zoning districts may be appropriate for such use, and what level of discretionary review may be required for approval of such use.

### Section 3: Moratorium.

There shall be an interim moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries. As used in this ordinance, "medical marijuana dispensary" includes, but is not limited to any site, facility, location, use, cooperative business that distributes, sells, exchanges, processes, delivers, gives away or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers or physicians, pursuant to (1) CUA and the Program or (2) any state regulations adopted in furtherance thereof. As used in this ordinance, "marijuana" shall mean cannabis and all parts of that plant. Based on the findings contained in this ordinance, no permit, license, or other applicable entitlement for use, which has as its result the final approval or allowance of a medical marijuana dispensary within the City of Elk Grove, shall be granted or approved by any employee, department, or commission of the City for a period of ten (10) months and fifteen (15) days immediately following the effective date of this ordinance unless repealed or extended by a later enacted ordinance.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

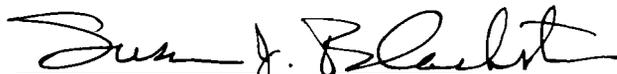
Section 6: Effective Date and Publication

This Ordinance is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

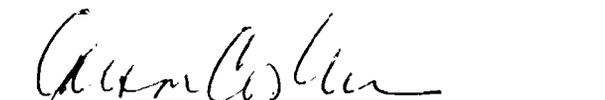
**ORDINANCE:** 2-2010  
**ADOPTED:** January 13, 2010  
**EFFECTIVE:** January 13, 2010

  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:

  
SUSAN COCHRAN, CITY ATTORNEY

Date signed: January 19, 2010

**EXHIBIT A**

**WHITE PAPER ON MARIJUANA DISPENSARIES**

**by**

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S  
TASK FORCE ON MARIJUANA DISPENSARIES**

## ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice  
Jacob Appelsmith, Office of the California Attorney General  
John Avila, California Narcotics Officers Association  
Phebe Chu, Office of San Bernardino County Counsel  
Scott Collins, Los Angeles County District Attorney's Office  
Cathy Coyne, California State Sheriffs' Association  
Lorrac Craig, Trinity County Sheriff's Department  
Jim Denney, California State Sheriffs' Association  
Thomas Dewey, California State University—Humboldt Police Department  
Dana Filkowski, Contra Costa County District Attorney's Office  
John Gaines, California Department of Justice/Bureau of Narcotics Enforcement  
Craig Gundlach, Modesto Police Department  
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

Nate Johnson, California State University Police  
Mike Kanalakis, Monterey County Sheriff's Office  
Bob Kochly, Contra Costa County Office of District Attorney  
Tommy LaNier, The National Marijuana Initiative, HIDTA  
Carol Leveroni, California Peace Officers Association  
Kevin McCarthy, Los Angeles Police Department  
Randy Mendoza, Arcata Police Department  
Mike Nivens, California Highway Patrol  
Rick Oules, Office of the United States Attorney  
Mark Pazin, Merced County Sheriff's Department  
Michael Regan, El Cerrito Police Department  
Melissa Reisinger, California Police Chiefs Association  
Kimberly Rios, California Department of Justice, Conference Planning Unit  
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement  
Crystal Spencer, California Department of Justice, Conference Planning Unit  
Sam Spiegel, Folsom Police Department  
Valerie Taylor, ONDCP  
Thomas Toller, California District Attorneys Association  
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

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# WHITE PAPER ON MARIJUANA DISPENSARIES

by

## CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

### EXECUTIVE SUMMARY

#### INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

#### FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

## **CALIFORNIA LAW**

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

## **PROBLEMS POSED BY MARIJUANA DISPENSARIES**

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

## **LOCAL GOVERNMENTAL RESPONSES**

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

## **LIABILITY**

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

## **ENFORCEMENT OF MARIJUANA LAWS**

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

# WHITE PAPER ON MARIJUANA DISPENSARIES

by

## CALIFORNIA POLICE CHIEFS ASSOCIATION

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### INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

### FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9<sup>th</sup> Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (*See Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.<sup>1</sup> The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”<sup>2</sup>

*Gonzales v. Raich* addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.<sup>3</sup> “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”<sup>4</sup> (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.<sup>5</sup> California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.<sup>6</sup>

## **CALIFORNIA LAW**

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.<sup>7</sup> The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician . . . .”<sup>8</sup> The codified section is known as the Compassionate Use Act of 1996.<sup>9</sup> Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.<sup>10</sup> This act expanded the definitions of “patient” and “primary caregiver”<sup>11</sup> and created guidelines for identification cards.<sup>12</sup> It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.<sup>13</sup> It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,<sup>14</sup> as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

## **1. Conduct**

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.<sup>15</sup> If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.<sup>16</sup>

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

## 2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.<sup>17</sup> A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

## 3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.<sup>18</sup> He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.<sup>19</sup> (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).) “Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: “One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party ‘who has consistently assumed responsibility for the housing, health, or safety’ of that purchaser as section 11362.5(e) requires.”)

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as “primary caregivers.” Those included in the list clearly show the Legislature’s intent to restrict the definition to one involving a significant and long-term commitment to the patient’s health, safety, and welfare. The only facilities which the Legislature authorized to serve as “primary caregivers” are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

#### **4. Cooperatives and Collectives**

According to the California Attorney General’s recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that “Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions” for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California’s marijuana laws.

Further, the common dictionary definition of “collectives” is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”<sup>20</sup> Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal or state law.

## LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.<sup>21</sup>

## STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.<sup>22</sup> Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.<sup>23</sup> Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.<sup>24</sup> These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.<sup>25</sup> Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.<sup>26</sup> Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”<sup>27</sup> Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.<sup>28</sup> Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

## HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.<sup>29</sup>

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the “contribution” will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the available evidence, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient.”<sup>30</sup> The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety.**”<sup>31</sup> The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health: the responsibility for the patient’s health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business’s relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant “primary caregiver” relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient’s act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

## **ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILIARLY OPERATING COOPERATIVES**

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

### **ANCILLARY CRIMES**

#### **A. ARMED ROBBERIES AND MURDERS**

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.<sup>32</sup> And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”<sup>33</sup>

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.<sup>34</sup> And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.<sup>35</sup> He did not survive.<sup>36</sup>

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.<sup>37</sup>

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.<sup>38</sup> Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.<sup>39</sup>

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.<sup>40</sup>

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.<sup>41</sup>

## **B. BURGLARIES**

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.<sup>42</sup> And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.<sup>43</sup>

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.<sup>44</sup> Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.<sup>45</sup> After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise . . . .”<sup>46</sup>

## **C. TRAFFIC, NOISE, AND DRUG DEALING**

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,<sup>47</sup> as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.<sup>48</sup> Sharing just purchased marijuana outside dispensaries also regularly takes place.<sup>49</sup>

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,<sup>50</sup> “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.<sup>51</sup> Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old . . . .”<sup>52</sup> Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”<sup>53</sup>

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.<sup>54</sup> And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.<sup>55</sup> It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

#### **D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS**

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.<sup>56</sup> The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.<sup>57</sup> Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,<sup>58</sup> which seem to go hand in hand with medical marijuana cultivation and dispensaries.<sup>59</sup>

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.<sup>60</sup> The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.<sup>61</sup> Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.<sup>62</sup>

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.<sup>63</sup> Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,<sup>64</sup> and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.<sup>65</sup>

#### **E. POISONINGS**

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.<sup>66</sup> The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.<sup>67</sup>

## **OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES**

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.<sup>68</sup>

## **SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE**

### **A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS**

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."<sup>69</sup> Other individuals just make up their own phony doctor recommendations,<sup>70</sup> which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.<sup>71</sup> Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.<sup>72</sup>

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

## **B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS**

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to “high priced McMansions . . . .”<sup>73</sup> Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.<sup>74</sup> In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.<sup>75</sup> Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the “THC-rich ‘B.C. bud’ strain” of marijuana originally produced in British Columbia “can be grown only in controlled indoor environments,” and the Canadian market is now reportedly saturated with the product of “competing Canadian gangs,” often Asian in composition or outlaw motorcycle gangs like the Hells Angels.<sup>76</sup> Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.<sup>77</sup> With a street value of \$3,000 to \$5,000 per pound” for high-potency marijuana, and such multiple harvests, “a successful grow house can bring in between \$4.5 million and \$10 million a year . . . .”<sup>78</sup> The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.<sup>79</sup>

## **C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES**

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift “no code” electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, “Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord.” Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.<sup>80</sup> Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, “We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints.” House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.<sup>81</sup>

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.<sup>82</sup> Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.<sup>83</sup> To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.<sup>84</sup>

#### **D. INCREASED ORGANIZED GANG ACTIVITIES**

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.<sup>85</sup> In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.<sup>86</sup>

#### **E. EXPOSURE OF MINORS TO MARIJUANA**

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.<sup>87</sup> Dispensaries also sell marijuana to minors.<sup>88</sup>

#### **F. IMPAIRED PUBLIC HEALTH**

Indoor marijuana grow operations emit a skunk-like odor,<sup>89</sup> and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,<sup>90</sup> all of which are dangerous to any children or adults who may be living in the residence,<sup>91</sup> although many grow houses are uninhabited.

## **G. LOSS OF BUSINESS TAX REVENUE**

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

## **H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL**

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,<sup>92</sup> and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.<sup>93</sup>

## **ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS**

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

## **POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES**

### **A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS**

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.<sup>94</sup>

## **B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS**

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.<sup>95</sup> Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.<sup>96</sup>

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.<sup>97</sup> And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.<sup>98</sup> It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.<sup>99</sup> To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.<sup>100</sup>

## **C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS**

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

**“Categories:**

1. Personal Use
2. Cooperatives or Collectives

**Medical Marijuana for Personal Use:** An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
  - a. Cultivation lighting shall not exceed 1200 watts;
  - b. Gas products (CO<sub>2</sub>, butane, etc.) for medical marijuana cultivation or processing is prohibited.
  - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
  - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
  - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
  - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
  - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
  - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
  - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
  - b. Include written permission from the property owner.
  - c. City Building Official must inspect for California Building Code and Fire Code.
  - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
  - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

**Medical Marijuana Cooperatives or Collectives.**

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
  - a. A 300 foot radius from any existing residential zoning district,
  - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
  - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
  - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
  - b. Operating hours.
  - c. Site, floor plan of the facility.
  - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
  - e. Screening, registration and validation process for qualified patients.
  - f. Qualified patient records acquisition and retention procedures.
  - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
  - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
  - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
  - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
  - c. Display the client rules and/or regulations at each building entrance.
  - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
  - e. Persons under the age of eighteen (18) are precluded from entering the premises.
  - f. No on-site display of marijuana plants.
  - g. No distribution of live plants, starts and clones on through Use Permit.
  - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
  - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
  - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
  - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

## LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

## **A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES**

### **1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY**

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

## **The Investigation**

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

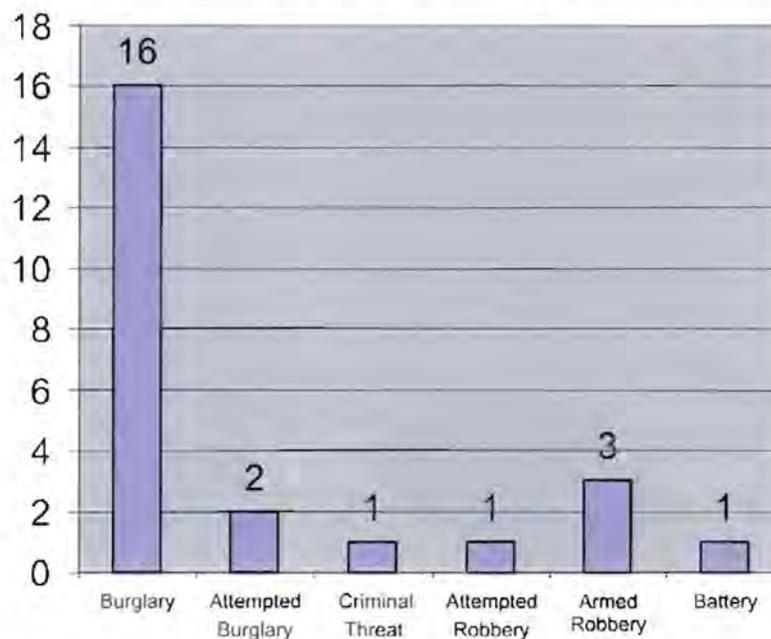
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law and California law.

**Press Materials:**

**Reported Crime at Marijuana Dispensaries  
From January 1, 2005 through June 23, 2006**



**Information showing the dispensaries attracted crime:**

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

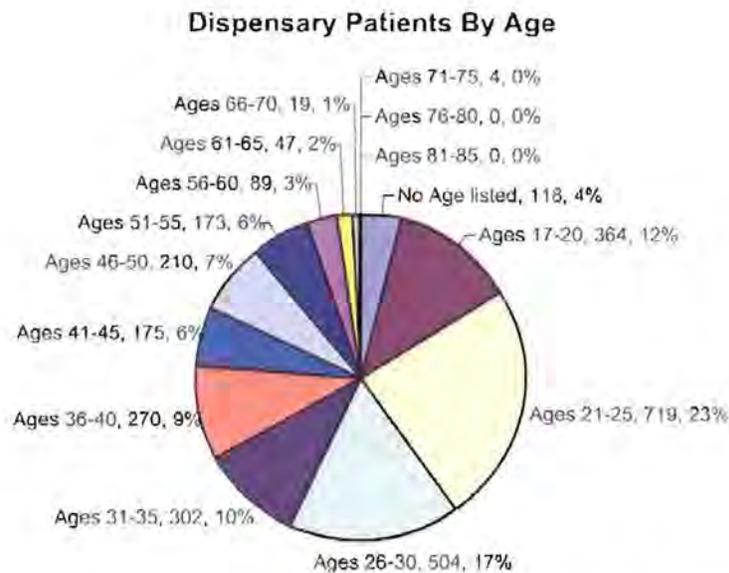
Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

**Why these businesses were deemed to be criminal--not compassionate:**

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

## **2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY**

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

## **3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES**

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

#### **A. Alameda County**

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

#### **B. Santa Clara County**

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

#### **C. San Francisco County**

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

#### **D. Crime Rates in the Vicinity of MariCare**

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

#### **E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante**

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

#### **F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County**

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars “as a joke.” They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend “Brandon,” who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a “blunt” (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician’s recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing “honey oil” for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special “honey oil” extractor tube. The butane extraction operation **exploded** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the “honey oil” with marijuana and butane that they brought up from one of Estes’ San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the “designated driver.” When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12<sup>th</sup> Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.<sup>101</sup> A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

#### 4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

#### 5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

## **6. ORANGE COUNTY**

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

## PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

### QUESTION

- 1. Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

### ANSWER

- 1. Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

### ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.<sup>1</sup> Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

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<sup>1</sup> As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."<sup>2</sup> If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

## QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

## ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.<sup>3</sup>

## ANALYSIS

### A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

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<sup>2</sup> A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

<sup>3</sup> Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.<sup>4</sup>

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

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<sup>4</sup> Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. *State Law*

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)<sup>5</sup> Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

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<sup>5</sup> Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

### QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

### ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

### ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

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1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

## QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

## ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

## ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.")) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

## QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

## ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

## ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

## OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.<sup>6 102</sup>

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

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<sup>6</sup> Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

## CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.<sup>103</sup> Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

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## ENDNOTES

- <sup>1</sup> U.S. Const.. art. VI, cl. 2.
- <sup>2</sup> U.S. Const., art. I, sec. 8, cl. 3.
- <sup>3</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- <sup>4</sup> *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
- <sup>5</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
- <sup>6</sup> Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at [http://www.latimes.com/news/local/la-me-medpot19-2009mar19\\_0,4987571.story](http://www.latimes.com/news/local/la-me-medpot19-2009mar19_0,4987571.story)
- <sup>7</sup> See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- <sup>8</sup> Health and Safety Code section 11362.5(b)(1)(A). All references hereafter to the Health and Safety Code are by section number only.
- <sup>9</sup> H&S Code sec. 11362.5(a).
- <sup>10</sup> H&S Code sec. 11362.7 *et. seq.*
- <sup>11</sup> H&S Code sec. 11362.7.
- <sup>12</sup> H&S Code secs. 11362.71–11362.76.
- <sup>13</sup> H&S Code sec. 11362.77.
- <sup>14</sup> H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4<sup>th</sup> 747 at p. 786.
- <sup>15</sup> H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.
- <sup>16</sup> H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
- <sup>17</sup> H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.
- <sup>18</sup> *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.
- <sup>19</sup> *Id.* Emphasis added.
- <sup>20</sup> Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.
- <sup>21</sup> Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.
- <sup>22</sup> For a statewide list, see <http://canorml.org/prop/cbclist.html>.
- <sup>23</sup> Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.
- <sup>24</sup> H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.
- <sup>25</sup> *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.
- <sup>26</sup> *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.
- <sup>27</sup> Israel Packel, 4-5. Italics added.
- <sup>28</sup> H&S Code sec. 11362.7(d)(1).
- <sup>29</sup> See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.
- <sup>30</sup> H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2),(3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.
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- <sup>56</sup> National Drug Intelligence Center, *Domestic Cannabis Cultivation Assessment 2007*, February 2007; available at <http://www.usdoj.gov/ndic/pubs21/22486/>; Jaxon Van Derbeken, Charlie Goodyear, & Rachel Gordon, "3 S.F. Pot Clubs Raided in Probe of Organized Crime," *San Francisco Chronicle*, 23 June 2005, available at [http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL](http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL;); LAPD report information, 2007.

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<sup>60</sup> City of San Diego, *Crime Statistics*, 2007, available at <http://www.sandiego.gov>

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<sup>78</sup> Bigham, 23 September 2007.

<sup>79</sup> Heather Allen, "Marijuana Grow Houses Flourish as Southwest Florida Market Drops," *HeraldTribune.com*, 24 July 2007, available at <http://www.heraldtribune.com/article/20070724/NEWS/707240498>

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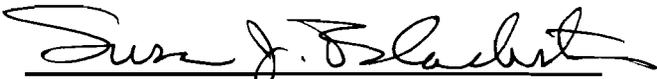
**CERTIFICATION**  
**ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 2-2010**

STATE OF CALIFORNIA       )  
COUNTY OF SACRAMENTO    )     ss  
CITY OF ELK GROVE         )

*I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing Urgency Ordinance, published and posted in compliance with State law, was duly approved and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on January 13, 2010 by the following vote:*

- AYES :**       **COUNCILMEMBERS:**       *Scherman, Detrick, Cooper, Davis, Hume*
- NOES:**       **COUNCILMEMBERS:**       *None*
- ABSTAIN:**   **COUNCILMEMBERS:**       *None*
- ABSENT:**    **COUNCILMEMBERS:**       *None*

*A summary of the ordinance was published pursuant to GC 36933(c) (1).*

  
\_\_\_\_\_  
**Susan J. Blackston, City Clerk**  
**City of Elk Grove, California**

**ORDINANCE NO. 10-2004**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE TO AMEND THE ELK GROVE ZONING CODE REGARDING PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS AND TO AMEND TITLE 4 OF THE ELK GROVE MUNICIPAL CODE REGARDING BUSINESS REGULATION REGARDING BUSINESSES PERMITTED BY §11360 ET SEQ. OF THE CALIFORNIA HEALTH AND SAFETY CODE**

**[THIS ORDINANCE AMENDS TITLE 1, CHAPTER 25, ARTICLE 1 (DEFINITIONS) OF THE ELK GROVE ZONING CODE; TITLE II, CHAPTER 25, ARTICLE 2 (PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS) OF THE ELK GROVE ZONING CODE; AND TITLE 4, (BUSINESS REGULATION) OF THE ELK GROVE MUNICIPAL CODE]**

The City Council of the City of Elk Grove does ordain as follows:

**Section 1: Purpose**

The purpose of this Ordinance is to amend Title I, Chapter 25, Article 1 of the Elk Grove Zoning Code, creating definitions of "Medical Cannabis Dispensary" to amend Title II, Chapter 25, Article 2 of the Elk Grove Zoning Code, establishing Medical Cannabis Dispensaries as conditionally permitted use within the buildable area of lots with a zoning designation of SC; and amend Title 4 of the Elk Grove Municipal Code regarding Business Regulation requiring a license for the operation of a Medical Cannabis Dispensary within the City of Elk Grove.

**Section 2: Findings**

1. In adopting this Ordinance, the City Council makes the following findings:
  - A. The People of the State of California passed Proposition 215, The Compassionate Use Act of 1996, which protects patients and physicians who prescribe marijuana for medical treatment.
  - B. The Legislature of the State of California passes SB 420 which was designed to provide greater certainty regarding the medical use of marijuana and establishes use procedures and voluntary identification/registration cards to qualified patients.
  - C. The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the People of the State of California by passing Proposition 215, and the Legislature of the State of California by passing SB 420, have provided for the medical use of marijuana, and with that in mind, the City Council wishes to insure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove.

- D. On March 25, 2004, the Elk Grove Planning Commission held public hearings on the proposed amendment to the City Code, and recommended that the City Council approve the proposed amendment.
- E. On April 7, 2004, the City Council held a public hearing on the proposed amendment to the City Code, at which time public testimony was taken and duly considered.
- F. The City Council finds that the revised Code is consistent with the goals, policies, implementation programs and land use designations specified in the City's General Plan, as required by Government Code Section 65860.
- G. The establishment of Medical Cannabis Dispensaries is contemplated by Health & Safety Code sections 11362.5 et seq.
- H. Medical Cannabis Dispensaries create adverse secondary effects, including but not limited to, an increase in driving under the influence of marijuana in the community in which they exist, increase illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

### **Section 3. CEQA Findings**

- 1. The proposed project is exempt pursuant to CEQA §15061(b)(3).
- 2. The City Council finds that adoption of this ordinance does not have the potential for causing a significant effect on the environment.

### **Section 4. Amendments to Title I, Chapter 25, Article 1 and to Title II, Chapter 25, Article 2 of the Elk Grove Zoning Code**

- 1) Title I, Chapter 25, Article 1 of the Zoning Code of the City of Elk Grove is hereby amended by adding the sections as shown below:

#### **a) §130-122.3. Medical Cannabis Dispensary**

“Medical Cannabis Dispensary” shall mean a “Primary Care Giver,” provides education, referral, network services, facilitation or assistance in the lawful possession, acquisition, and distribution of medical cannabis, to two (2) or more “Qualified Patients” and/or “Primary Care Givers”, in possession of an identification card, or Written Recommendation, issued by the County of Sacramento, or the State of California, or other agency recognized by the City of Elk Grove pursuant to the California Health & Safety Code

Medical cannabis may not be provided to another person in the City of Elk Grove except by a Medical Cannabis Dispensary.

**B. §130-137.1. Primary Care Giver**

“Primary Care Giver” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

**C. §130- 138.5. Qualified Patient**

“Qualified Patient” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

**D. §130-198.9.e. Written Recommendation**

“Written Recommendation” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

- 2) Title II, Chapter 25, Article 2 of the Elk Grove Zoning Code is hereby amended to establish Medical Cannabis Dispensaries as conditionally permitted uses in the SC zoning designation, as shown below by the additional rows added to Table II, in §225-11 and by the additional condition of approval in §225-14.

**A. §225-11. Table II**

TABLE II PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS									
USE, SERVICE OR FACILITY (Unless otherwise indicated, listings denote retail sales operations)	MP*	BP	SC	LC	GC	AC	TC	CO	DW
<b>C. Health Services</b>									
1 Acupuncture or Acupuncture Office	X	14	X	X	X	X			
1.5 Adult Day Health Center		14	X	X	X			14	
2 Ambulance Service			14	X	X	X	X		
3. Clinic, Child-Family Guidance	X	X	X	X	X				
4. Clinic, Counseling	X	X	X	X	X				
4.5 Clinic, Diet Counseling with Incidental Sales of Diet Products	X	X	X	X	X				
5. Clinic, Kidney Dialysis	X	X	X	X	X				
6. Clinic; Physical Therapy	X	X	X	X	X				
7. Convalescent Hospital		14		14	14			14	
8. Eyeglasses, Frames, Contact Lens - Sales and Service	X	X	X	X	X				

9. Hearing Aids - Sales and Service	X	X	X	X	X				
10 Hospital		14		14	14			14	
11. Laboratory - Medical, Dental or Optical	X	X	X	X	X				
12. Laboratory - Research, Analysis	14			10	10				
13. Medical or Dental Office	X	X	X	X	X	X			
14. Psychiatric Facility				14	14				
15 Sanitarium		14		14	14				
16 Social Rehabilitation Center		14		14	14				
17. Orthopedic Appliances Sales/Service	X	X	X	X	X				
18 Medical Cannabis Dispensary			63						

B. §225-14. Special Conditions

(63) Permitted, subject to the issuance of a conditional use permit by the Elk Grove Planning Commission, and when all of the following criteria are met:

1. **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
2. **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
3. **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.
4. **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
5. **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.

6. **On-site Use Prohibited:** On-site use of cannabis is prohibited.
7. **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.
8. **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
9. **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
10. **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
11. **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.
  - a. The City Council finds that the public interest served in preserving the confidentiality of any such Safety and Security Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove.
  - b. Said current approved written Safety and Security Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
12. **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
13. **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all "Qualified Patients" and/or "Primary Care Givers" to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
  - a. The City Council finds that there is an important security public interest served in preserving the confidentiality of any such Confidentiality Plan and not disclosing the Plan to the general public far outweighs

the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

- b. Said current approved written Confidentiality Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.

14. **No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.

15. **Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license.

**Section 5: Title 4, of the Elk Grove Municipal Code is hereby amended as follows:**

- a) Section 4.06.015(a) is amended to add a subsection 4.06.15 (a) (1) that shall read as follows: "A Medical Cannabis Dispensary shall not for the purposes of this Title be considered a medical delivery service and any Medical Cannabis Dispensary shall be subject to the general and special licensing requirements."
- b) Section 4.10.005 is amended to add subsection 4.10.005 (p) that shall read as follows: "Any Medical Cannabis Dispensary."
- c) Section 4.10.045 is amended to add a subsection 4.10.045 (a) that shall read as follows:

"A Medical Cannabis Dispensary shall obtain a Special Business License pursuant to Elk Grove Municipal Code chapter 4.10 and in addition to the general and special licensing requirements each business license for a Medical Cannabis Dispensary shall have, and each licensee shall be required to obtain a conditional use permit from the Elk Grove Planning Commission which conditional use permit shall have, the following conditions:

- 1) **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
- 2) **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
- 3) **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use

Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.

- 4) **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
- 5) **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.
- 6) **On-site Use Prohibited:** On-site use of cannabis is prohibited.
- 7) **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.
- 8) **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §§11014.5, 11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
- 9) **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
- 10) **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
- 11) **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.
  - (a) The City Council finds that the public interest served in preserving the confidentiality of any such Safety and Security Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove.
  - (b) Said current approved written Safety and Security Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
- 12) **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
- 13) **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all "Qualified Patients" and/or "Primary Care Givers" to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
  - (a) The City Council finds that there is an important security public interest served in preserving the confidentiality of any such Confidentiality Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove. Further, the City Council finds there is an important

privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

(b) Said current approved written Confidentiality Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.

**14)No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.

**15)Applications for Employee Permits:** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to work in a Medical Marijuana Dispensary, shall contain the following:

- (a) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;
- (b) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control regulated substances;
- (c) A declaration by a Medical Marijuana Dispensary employer that the applicant is employed by or has an offer of employment by that employer to work in the Medical Marijuana Dispensary;
- (d) A declaration by the Medical Marijuana Dispensary employer that the applicant, who is employed by or has an offer of employment with the employer, has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;
- (e) The name of the Medical Marijuana Dispensary business which the applicant is employed by or has an offer of employment from;
- (f) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;
- (g) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10 of Title 4 of this Code. (SCC 1048 § 20, 1996; SCC 578 § 6 (part), 1983).

**16)Issuance or Renewal of Employee Permit:** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit or renewal of the Permit pursuant to Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

- (a) That the application fails to contain information required by the Chief of Police or Section 4.10.045 (a), or is otherwise incomplete;

- (b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;
- (c) That information contained in the application is false or otherwise inaccurate;
- (d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, the applicant would not work in a Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a Permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction the applicant would not work in the Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm; or
- (e) One or more of the grounds for Permit revocation or suspension exists pursuant to Section 4.14.100 of this Chapter. (SCC 1048 § 21, 1996; SCC 578 § 6 (part), 1983).

**17) Employee Permit Void Upon Termination of Employment.** The Employee Permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after termination of employment.

The holder of the Special Business License employing the holder of the Employee Permit shall notify the Chief of Police within three (3) days upon termination of the holder's employment. (SCC 1048 § 22, 1996).

18) **Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license.”

d) Section 4.10.070 shall be amended to read as follows:

“4.10.065 EMPLOYEE PERMITS. With respect to certain types of enterprises described by Section 4.10.005, protection of the public health, safety and welfare require that personnel retained by the enterprises to perform specified functions or duties be of good moral character, not have been convicted of particular criminal offenses, and, in certain instances, possess minimum skills necessary to insure public safety. Personnel required to possess such minimum qualifications are identified by the provisions of Chapters 4.14 through 4.50 and section 4.10.005(p). The procedures set forth in this Chapter relating to Employee Permits shall be applicable to all personnel required by Chapter 4.14 through 4.50 and section 4.10.005(p) to possess minimum qualifications which are subject to review by the Chief of Police.” (SCC 578 § 4 (part), 1983)

e) Section 4.10.070 shall be amended to read as follows:

“4.10.070 PERMIT REQUIRED. Whenever under the provisions of Chapters 4.14 through 4.50, or section 4.10.005(p), personnel of a particular enterprise are required to meet minimum qualifications or possess a permit or license, it shall be unlawful for a person to perform the duties or functions specified and unlawful for the holder of a Special Business License to permit the person to perform such duties or functions unless the person has first applied for and obtained an Employee's Permit.” (SCC 578 § 4 (part), 1983.)

#### **Section 6: No Mandatory Duty of Care**

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

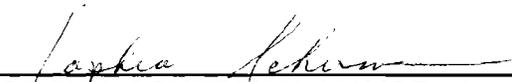
#### **Section 7: Severability**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

**Section 8: Urgency: Effective Date and Publication**

The City Council finds, in addition to the findings above, that the potential adverse secondary effects of the providing of medical marijuana present a clear and present danger to the immediate preservation of the public peace, health or safety such that this Ordinance shall take effect immediately upon its adoption by a 4/5<sup>th</sup>s majority of this City Council. The City Council also intends that the public hearing, City Council consideration and vote on this ordinance on April 7, 2004 also constitute the introduction of a regular ordinance, to be followed by a second reading no sooner than five days after the introduction with the regular ordinance becoming effective on the 31<sup>st</sup> day after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 7<sup>th</sup> day of April 2004.

  
\_\_\_\_\_  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**Effective Date: April 7, 2004**

**AYES: Scherman, Soares, Briggs, Leary**  
**NOES: Cooper**  
**ABSTAIN: None**  
**ABSENT: None**

**ORDINANCE NO. 10-2004**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE TO AMEND THE ELK GROVE ZONING CODE REGARDING PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS AND TO AMEND TITLE 4 OF THE ELK GROVE MUNICIPAL CODE REGARDING BUSINESS REGULATION REGARDING BUSINESSES PERMITTED BY §11360 ET SEQ. OF THE CALIFORNIA HEALTH AND SAFETY CODE**

**[THIS ORDINANCE AMENDS TITLE 1, CHAPTER 25, ARTICLE 1 (DEFINITIONS) OF THE ELK GROVE ZONING CODE; TITLE II, CHAPTER 25, ARTICLE 2 (PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS) OF THE ELK GROVE ZONING CODE; AND TITLE 4, (BUSINESS REGULATION) OF THE ELK GROVE MUNICIPAL CODE]**

The City Council of the City of Elk Grove does ordain as follows:

**Section 1: Purpose**

The purpose of this Ordinance is to amend Title I, Chapter 25, Article 1 of the Elk Grove Zoning Code, creating definitions of “Medical Cannabis Dispensary” to amend Title II, Chapter 25, Article 2 of the Elk Grove Zoning Code, establishing Medical Cannabis Dispensaries as conditionally permitted use within the buildable area of lots with a zoning designation of SC; and amend Title 4 of the Elk Grove Municipal Code regarding Business Regulation requiring a license for the operation of a Medical Cannabis Dispensary within the City of Elk Grove.

**Section 2: Findings**

1. In adopting this Ordinance, the City Council makes the following findings:
  - A. The People of the State of California passed Proposition 215, The Compassionate Use Act of 1996, which protects patients and physicians who prescribe marijuana for medical treatment.
  - B. The Legislature of the State of California passes SB 420 which was designed to provide greater certainty regarding the medical use of marijuana and establishes use procedures and voluntary identification/registration cards to qualified patients.
  - C. The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the People of the State of California by passing Proposition 215, and the Legislature of the State of California by passing SB 420, have provided for the medical use of marijuana, and with that in mind, the City Council wishes to insure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove.

- D. On March 25, 2004, the Elk Grove Planning Commission held public hearings on the proposed amendment to the City Code, and recommended that the City Council approve the proposed amendment.
- E. On April 7, 2004, the City Council held a public hearing on the proposed amendment to the City Code, at which time public testimony was taken and duly considered.
- F. The City Council finds that the revised Code is consistent with the goals, policies, implementation programs and land use designations specified in the City's General Plan, as required by Government Code Section 65860.
- G. The establishment of Medical Cannabis Dispensaries is contemplated by Health & Safety Code sections 11362.5 et seq.
- H. Medical Cannabis Dispensaries create adverse secondary effects, including but not limited to, an increase in driving under the influence of marijuana in the community in which they exist, increase illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

### **Section 3. CEQA Findings**

- 1. The proposed project is exempt pursuant to CEQA §15061(b)(3).
- 2. The City Council finds that adoption of this ordinance does not have the potential for causing a significant effect on the environment.

### **Section 4. Amendments to Title I, Chapter 25, Article 1 and to Title II, Chapter 25, Article 2 of the Elk Grove Zoning Code**

- 1) Title I, Chapter 25, Article 1 of the Zoning Code of the City of Elk Grove is hereby amended by adding the sections as shown below:

#### **a) §130-122.3. Medical Cannabis Dispensary**

“Medical Cannabis Dispensary” shall mean a “Primary Care Giver,” provides education, referral, network services, facilitation or assistance in the lawful possession, acquisition, and distribution of medical cannabis, to two (2) or more “Qualified Patients” and/or “Primary Care Givers”, in possession of an identification card, or Written Recommendation, issued by the County of Sacramento, or the State of California, or other agency recognized by the City of Elk Grove pursuant to the California Health & Safety Code

Medical cannabis may not be provided to another person in the City of Elk Grove except by a Medical Cannabis Dispensary.

**B. §130-137.1. Primary Care Giver**

“Primary Care Giver” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

**C. §130- 138.5. Qualified Patient**

“Qualified Patient” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

**D. §130-198.9.e. Written Recommendation**

“Written Recommendation” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

- 2) Title II, Chapter 25, Article 2 of the Elk Grove Zoning Code is hereby amended to establish Medical Cannabis Dispensaries as conditionally permitted uses in the SC zoning designation, as shown below by the additional rows added to Table II, in §225-11 and by the additional condition of approval in §225-14.

**A. §225-11. Table II**

TABLE II PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS									
USE, SERVICE OR FACILITY (Unless otherwise indicated, listings denote retail sales operations)	MP*	BP	SC	LC	GC	AC	TC	CO	DW
<b>C. Health Services</b>									
1 Acupuncture or Acupuncture Office	X	14	X	X	X	X			
1.5 Adult Day Health Center		14	X	X	X			14	
2 Ambulance Service			14	X	X	X	X		
3. Clinic, Child-Family Guidance	X	X	X	X	X				
4. Clinic, Counseling	X	X	X	X	X				
4.5 Clinic, Diet Counseling with Incidental Sales of Diet Products	X	X	X	X	X				
5. Clinic, Kidney Dialysis	X	X	X	X	X				
6. Clinic, Physical Therapy	X	X	X	X	X				
7. Convalescent Hospital		14		14	14			14	
8. Eyeglasses, Frames, Contact Lens - Sales and Service	X	X	X	X	X				

9 Hearing Aids - Sales and Service	X	X	X	X	X				
10 Hospital		14		14	14			14	
11 Laboratory - Medical, Dental or Optical	X	X	X	X	X				
12 Laboratory - Research, Analysis	14			10	10				
13 Medical or Dental Office	X	X	X	X	X	X			
14 Psychiatric Facility				14	14				
15 Sanitarium		14		14	14				
16 Social Rehabilitation Center		14		14	14				
17. Orthopedic Appliances Sales/Service	X	X	X	X	X				
18 Medical Cannabis Dispensary			63						

**B. §225-14. Special Conditions**

(63) Permitted, subject to the issuance of a conditional use permit by the Elk Grove Planning Commission, and when all of the following criteria are met:

1. **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
2. **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
3. **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.
4. **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
5. **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.

6. **On-site Use Prohibited:** On-site use of cannabis is prohibited.
7. **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.
8. **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
9. **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
10. **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
11. **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.
  - a. The City Council finds that the public interest served in preserving the confidentiality of any such Safety and Security Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove.
  - b. Said current approved written Safety and Security Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
12. **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
13. **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all "Qualified Patients" and/or "Primary Care Givers" to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
  - a. The City Council finds that there is an important security public interest served in preserving the confidentiality of any such Confidentiality Plan and not disclosing the Plan to the general public far outweighs

the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

b. Said current approved written Confidentiality Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.

14. **No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.

15. **Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license.

**Section 5: Title 4, of the Elk Grove Municipal Code is hereby amended as follows:**

- a) Section 4.06.015(a) is amended to add a subsection 4.06.15 (a) (1) that shall read as follows: "A Medical Cannabis Dispensary shall not for the purposes of this Title be considered a medical delivery service and any Medical Cannabis Dispensary shall be subject to the general and special licensing requirements."
- b) Section 4.10.005 is amended to add subsection 4.10.005 (p) that shall read as follows: "Any Medical Cannabis Dispensary."
- c) Section 4.10.045 is amended to add a subsection 4.10.045 (a) that shall read as follows:

"A Medical Cannabis Dispensary shall obtain a Special Business License pursuant to Elk Grove Municipal Code chapter 4.10 and in addition to the general and special licensing requirements each business license for a Medical Cannabis Dispensary shall have, and each licensee shall be required to obtain a conditional use permit from the Elk Grove Planning Commission which conditional use permit shall have, the following conditions:

- 1) **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
- 2) **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
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Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.

- 4) **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
- 5) **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.
- 6) **On-site Use Prohibited:** On-site use of cannabis is prohibited.
- 7) **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.
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privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

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**14)No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.

**15)Applications for Employee Permits:** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to work in a Medical Marijuana Dispensary, shall contain the following:

- (a) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;
- (b) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control regulated substances;
- (c) A declaration by a Medical Marijuana Dispensary employer that the applicant is employed by or has an offer of employment by that employer to work in the Medical Marijuana Dispensary;
- (d) A declaration by the Medical Marijuana Dispensary employer that the applicant, who is employed by or has an offer of employment with the employer, has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;
- (e) The name of the Medical Marijuana Dispensary business which the applicant is employed by or has an offer of employment from;
- (f) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;
- (g) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10 of Title 4 of this Code. (SCC 1048 § 20, 1996; SCC 578 § 6 (part), 1983).

**16)Issuance or Renewal of Employee Permit:** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit or renewal of the Permit pursuant to Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

- (a) That the application fails to contain information required by the Chief of Police or Section 4.10.045 (a), or is otherwise incomplete;

- (b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;
- (c) That information contained in the application is false or otherwise inaccurate;
- (d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, the applicant would not work in a Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a Permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction the applicant would not work in the Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm; or
- (e) One or more of the grounds for Permit revocation or suspension exists pursuant to Section 4.14.100 of this Chapter. (SCC 1048 § 21, 1996; SCC 578 § 6 (part), 1983).

**17) Employee Permit Void Upon Termination of Employment.** The Employee Permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after termination of employment.

The holder of the Special Business License employing the holder of the Employee Permit shall notify the Chief of Police within three (3) days upon termination of the holder's employment. (SCC 1048 § 22, 1996).

18) **Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license.”

d) Section 4.10.070 shall be amended to read as follows:

”4.10.065 EMPLOYEE PERMITS. With respect to certain types of enterprises described by Section 4.10.005, protection of the public health, safety and welfare require that personnel retained by the enterprises to perform specified functions or duties be of good moral character, not have been convicted of particular criminal offenses, and, in certain instances, possess minimum skills necessary to insure public safety. Personnel required to possess such minimum qualifications are identified by the provisions of Chapters 4.14 through 4.50 and section 4.10.005(p). The procedures set forth in this Chapter relating to Employee Permits shall be applicable to all personnel required by Chapter 4.14 through 4.50 and section 4.10.005(p) to possess minimum qualifications which are subject to review by the Chief of Police.” (SCC 578 § 4 (part), 1983)

e) Section 4.10.070 shall be amended to read as follows:

”4.10.070 PERMIT REQUIRED. Whenever under the provisions of Chapters 4.14 through 4.50, or section 4.10.005(p), personnel of a particular enterprise are required to meet minimum qualifications or possess a permit or license, it shall be unlawful for a person to perform the duties or functions specified and unlawful for the holder of a Special Business License to permit the person to perform such duties or functions unless the person has first applied for and obtained an Employee's Permit.” (SCC 578 § 4 (part), 1983.)

#### **Section 6: No Mandatory Duty of Care**

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

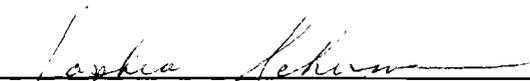
#### **Section 7: Severability**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

**Section 8: Urgency: Effective Date and Publication**

The City Council finds, in addition to the findings above, that the potential adverse secondary effects of the providing of medical marijuana present a clear and present danger to the immediate preservation of the public peace, health or safety such that this Ordinance shall take effect immediately upon its adoption by a 4/5<sup>th</sup>s majority of this City Council. The City Council also intends that the public hearing, City Council consideration and vote on this ordinance on April 7, 2004 also constitute the introduction of a regular ordinance, to be followed by a second reading no sooner than five days after the introduction with the regular ordinance becoming effective on the 31<sup>st</sup> day after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 7<sup>th</sup> day of April 2004.

  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**Effective Date: April 7, 2004**

**AYES:** Scherman, Soares, Briggs, Leary  
**NOES:** Cooper  
**ABSTAIN:** None  
**ABSENT:** None

AGENDA ITEM TYPE	
<input type="radio"/>	Consent
<input checked="" type="radio"/>	Public Hearing
<input type="radio"/>	Regular Action

# CITY OF ELK GROVE

## ELK GROVE CITY COUNCIL AGENDA ITEM November 9, 2005

**TO:           MAYOR AND COUNCIL**

**FROM:       JOE CHINN, FINANCE DIRECTOR  
              ANDREW GRIFFIN, FINANCE ANALYST**

**SUBJECT:    UPDATE BUSINESS LICENSE ORDINANCE,  
              ADJUST FY05-06 BUDGET**

**RECOMMENDATION:**

Staff recommends the City Council:

- Introduce and waive the full reading, by substitution of title only, an Ordinance of the City Council of the City of Elk Grove repealing Title 4 and Chapter 5.04 of the Elk Grove Municipal Code and enacting a new Title 4 regarding business licensing and related matters.
- Adopt the attached resolution updating the business license fee, and adjust the FY05-06 budget

**BACKGROUND:**

The current business license ordinance was originally adopted by Sacramento County in 1983 and was inherited by the City of Elk

Grove upon incorporation. The current ordinance was designed to regulate certain businesses to ensure proper land use and to ensure businesses did not create nuisances for surrounding businesses and residents. The current business license code exempts a wide variety of businesses with the idea they could operate in most zones without detailed review and would not create nuisances.

However, businesses no longer restrict themselves to traditional operating hours, with many now operating twenty-fours a day or for extended periods in the evening, resulting in disturbances of neighborhoods, traffic, noise, and nuisances at times and places not considered when the current license ordinance was developed twenty years ago.

In addition, the current exemptions also inhibit the City from receiving accurate and up to date information regarding City businesses. This information resource could be utilized to address public peace, health, safety, and welfare. Also this resource will promote and protect economic health by providing an economic database about enterprises operating within the City and provide tools for successful growth of the community.

Under the City's current business license code businesses are divided into three categories: (1) Exempt, (2) Regular Businesses, and (3) Special Businesses. Generally, Regular Business License holders file a periodic registration with the City and pay a modest administrative fee. Special Business License holders file annual renewals and are subject to varying levels of regulation including criminal background checks depending upon the public health, safety and welfare issues implicated by their business.

<b>Current Elk Grove Business Licenses</b>	
<b>Regular Business License</b>	<b>Special Business License</b>
<p>All businesses must obtain unless one of the following:</p> <ul style="list-style-type: none"> <li>▪ Professional Offices</li> <li>▪ Financial Institutions</li> <li>▪ Real Estate</li> <li>▪ Stock Brokerage</li> <li>▪ Family Guidance Centers</li> <li>▪ Travel Agencies</li> <li>▪ Telephone Answering</li> <li>▪ Business Skill Schools</li> <li>▪ Dance and Charm schools</li> <li>▪ Retail Stores</li> <li>▪ Data Processing</li> <li>▪ Tailors</li> <li>▪ Barbershops and Beauty Parlors</li> <li>▪ Apartments &amp; Rooming Houses</li> <li>▪ Residential Care Homes</li> <li>▪ Family Day Care Homes</li> <li>▪ Churches</li> <li>▪ Labor Union Halls and Temples</li> <li>▪ Fraternal Halls and Lodges</li> <li>▪ Libraries, Museums, &amp; Art Galleries</li> <li>▪ Recording Studios</li> <li>▪ Agricultural Pursuits</li> </ul> <p>All special business license holders, except Adult-Oriented businesses, must get a general license.</p>	<ul style="list-style-type: none"> <li>▪ Businesses required a Special Business License investigated by the Chief of Police:</li> <li>▪ Adult-Related Businesses</li> <li>▪ Ambulance</li> <li>▪ Antique Dealers</li> <li>▪ Auto Dismantlers</li> <li>▪ Auto Repairs at Homes</li> <li>▪ Auto Towing, Repossession or Storage</li> <li>▪ Bazaar or Flea Market Booth Operators</li> <li>▪ Bingo Game Operators &amp; Parlors &amp; Suppliers</li> <li>▪ Cardrooms/Casinos</li> <li>▪ Carnivals &amp; Circuses</li> <li>▪ Concealed Firearms and Gunpowder Vendors</li> <li>▪ Dancehalls and Poolhalls</li> <li>▪ Home Repair Services</li> <li>▪ Itinerant Food Vendors</li> <li>▪ Medical Cannabis Dispensary</li> <li>▪ Motorcycle Sales</li> <li>▪ Movie Production</li> <li>▪ Outdoor Festivals</li> <li>▪ Pawnbroker/Second Hand Dealers</li> <li>▪ Precious &amp; Scrap Metal Dealers</li> <li>▪ Security Companies</li> <li>▪ Tree Trimmers</li> <li>▪ Storage of Junk Tires</li> <li>▪ Taxicabs</li> <li>▪ Wrecking Yards</li> <li>▪ Adult-Oriented, Fireworks Retailers and Tobacco Retailers have own special licenses.</li> </ul>

City staff is proposing to eliminate most exemptions from the regular business license requirement. This would result in an expansion of the number and types of businesses that would be subject to the business registration requirement and payment of the business license fee. Special Business License holders will continue to file annual renewals and remain subject to varying levels of regulation.

<b>Proposed Elk Grove Business Licenses</b>	
<b>Regular Business License</b>	<b>Special Business License</b>
<p>All businesses must obtain unless one of the following:</p> <ul style="list-style-type: none"> <li>▪ Tax-exempt charitable organizations (churches, educational institutions, museums, libraries, charities, etc.) except commercial activities of those organizations that are regarded as taxable under federal law</li> <li>▪ All residential rental businesses</li> <li>▪ Group homes exempted by law</li> <li>▪ Financial institutions who pay State in lieu tax</li> <li>▪ Other minor statutory exemptions</li> </ul> <p>All special business license holders, except Adult-Oriented businesses, must get a general license.</p>	<p>All of the following must obtain a special business license:</p> <ul style="list-style-type: none"> <li>▪ All of the businesses listed above except emergency transport ambulances which are now regulated only by the County.</li> <li>▪ The following businesses are added to special business license regulation: <ul style="list-style-type: none"> <li>▪ Dating and introduction services</li> <li>▪ Swimming Pool Cleaners</li> <li>▪ Janitorial, Maid or Carpet Cleaning</li> </ul> </li> </ul>

The current term of a general business license would also be reduced from three years to two years allowing for the collection of more timely, accurate information.

The proposed business license process, if approved will begin February 1<sup>st</sup>. Business that are affected by the update and required to obtain a business license, will have 90 days to do so.

General Business Licenses will be issued to both commercial and home-based businesses. Proposed business license fee updates are listed below and are established in the attached resolution:

- Currently general licenses have a three-year term and are \$125, with \$100-\$125 renewal depending on the type of business.
- Proposed general licenses if approved will have a two-year term and are \$100, with \$75 renewal.
- There is no change in fee structure for special business licenses, employee permits, or background checks. Special licenses remain at \$125 annually, employee permits remain at \$75 annually, and background check remains at \$44.

The attached Resolution authorizes an updated fee schedule and a revenue and expense budget adjustment related to the program changes. The costs of the business license program are fully offset by business license fee revenue. The City receives no license fee revenue above the cost of the program.

Other proposed changes include:

- Simplified language throughout the Business License Ordinance
- To reduce paper work and enhance customer service the City would be authorized to set up business license applications and renewals at the City's website using electronic signatures.
- Some violations of the Business License ordinance would be considered a misdemeanor as opposed to an infraction.
- Additional provisions have been added barring aggressive solicitation and limiting the hours of solicitation.

### **COMMUNITY OUTREACH:**

As part of the business license update, staff conducted an outreach program to interested stakeholders in the business community to discuss the proposed changes and obtained feedback.

Presentations were made:

- October 26, 2005 - Rotary Club of Elk Grove
- October 26, 2005 - Rotary Club of Laguna Elk Grove
- October 28, 2005 - Elk Grove Chamber of Commerce
- November 1, 2005 - Informational electronic mailing sent to members of the Elk Grove Chamber of Commerce.
- November 1, 2005 - Publicly noticed workshops at City Hall
- November 3, 2005 - Publicly noticed workshops at City Hall

Overall, the feedback from the meetings was positive.

Staff continues the community outreach and continues to receive input. As such there may be some minor additional changes to the

proposed redraft ordinance between now and the time of the City Council's meeting on this matter.

**FINANCIAL IMPLICATIONS TO CITY:**

The costs of the business licenses program are fully offset by business license fees, as it is a 100% cost recovery program. The City receives no license fee revenue above cost of the business license program.

The volume of business licenses is anticipated to double with the proposed program changes described. The attached resolution authorizes a FY05-06 expense increase and revenue increase of \$40,000 corresponding to the updated business license program.

There are no net General Fund impacts from this action.

Attachments:

1. Ordinance
2. Resolution

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
REPEALING TITLE 4 AND CHAPTER 5.04 OF THE ELK GROVE MUNICIPAL  
CODE AND ENACTING A NEW TITLE 4 REGARDING BUSINESS LICENSING  
AND RELATED MATTERS.**

The City Council of the City of Elk Grove does ordain as follows:

**Section 1: Purpose and Authority.**

Under California Constitution art. XI, Sec. 7, the City of Elk Grove may enact ordinances to preserve and protect the public safety, health, and welfare. To this end, the City Council of the City of Elk Grove has undertaken a comprehensive revision of Title 4 of the Municipal Code that regulates businesses as part of the licensing of business.

**Section 2: Repeal of Title 4 and Chapter 5.04.**

Title 4 and Chapter 5.04 of the Elk Grove Municipal Code are hereby repealed.

**Section 3: Enactment of New Title 4.**

A new Title 4 is hereby enacted and added to the Elk Grove Municipal Code to read as follows:

**TITLE 4**

**BUSINESS REGULATION**

Chapters:

- 4.02 General Provisions for Business Licenses
- 4.04 Solicitation Licenses and Permits
- 4.06 General Business Licenses
  - Article 1 -- Applicability and Issuance
  - Article 2 -- Denial and Revocation
- 4.10 Special Business Licenses and Employee Permits
  - Article 1 -- Applicability and Issuance
  - Article 2 -- Denial and Revocation
  - Article 3 -- Additional Special License Requirements
- 4.15 Taxicabs
- 4.20 Cardrooms
- 4.21 Bingo Games
- 4.22 Bingo Parlors
- 4.23 Bingo Suppliers
- 4.25 Pawnbroker, Secondhand Dealers and Junk Dealers
- 4.26 Junk Tire Storage

- 4.27 Tobacco Retailers
- 4.30 Adult-Related Establishments
  - Article 1 -- General Provisions
  - Article 2 -- Licenses and Permits
- 4.31 Adult-Oriented Businesses
  - Article 1 – General Provisions
  - Article 2 – Definitions
  - Article 3 – Adult-Oriented Business Licenses
  - Article 4 – Adult-Oriented Business Employee Permits
  - Article 5 – Denial, Suspension, and Revocation
  - Article 6 – Development and Performance Standards
  - Article 7 -- Enforcement
- 4.35 Outdoor Festivals
  - Article 1 -- General Provisions and Requirements
  - Article 2 -- Special Business License
- 4.54 Additional Regulations and Prohibitions for Businesses
  - Article 1 -- Street Businesses
  - Article 2 -- Aggressive Solicitation
  - Article 3 -- Drug Paraphernalia
  - Article 4 – Fireworks
  - Article 5 -- Public Convenience Determination for Alcohol

Licenses

## CHAPTER 4.02

### GENERAL PROVISIONS FOR BUSINESS LICENSES

Sections:

- 4.02.010 Purposes
- 4.02.015 Organization of title
- 4.02.020 Definitions
- 4.02.021 Same – “Solicitation Activity”
- 4.02.022 Same – “Solicitor”
- 4.02.023 Same – “Solicitation Permit”
- 4.02.024 Same – “Business”
- 4.02.025 Same - "Employee Permit"
- 4.02.030 Same - "Fixed Location"
- 4.02.035 Same - "General Business License"
- 4.02.040 Same - "Person"
- 4.02.045 Same - "Convicted"
- 4.02.050 Same - "Special Business License"
- 4.02.055 Authority of City Officers
- 4.02.060 License fees
- 4.02.065 Transferability

- 4.02.070 Transferability - Partial change in ownership -  
Special business license
- 4.02.075 Transferability - Partial change in ownership -  
General business license
- 4.02.076 Transferability - Partial change in function -  
General business license
- 4.02.080 Term
- 4.02.085 Administration
- 4.02.090 Notices
- 4.02.095 Hearing authority
- 4.02.100 Violations
- 4.02.105 Inspection
- 4.02.110 Laws not enforced
- 4.02.115 Statutory References
- 4.02.120 Effectiveness
- 4.02.125 Severability

**4.02.010 PURPOSES.** The purposes of this Title are to regulate businesses and other enterprises within the City in order to insure compliance with City ordinances and State laws, protect the public, health, safety, and welfare in the event of a disaster, prevent disturbances of neighborhoods and nuisances, and otherwise, protect the health, safety and welfare of the residents of the City.

A vast array of City Ordinances and State laws administered and enforced by City officials regulate the location, construction, improvements in, off-street parking for and other aspects of business-associated enterprises with fixed locations. Such regulation is for the purpose of protecting members of the public against building, safety and other hazards, adverse environmental impacts, risks to health and of public nuisance, risks of fire, disasters, and other life-threatening dangers, and other threats to the public peace, health, safety and welfare.

A purpose of this Ordinance and each of its chapters is to license all enterprises within the City's jurisdiction in order to maintain certain vital information about such enterprises operating within the City that could be detrimentally affected by or could be essential to provide assistance in the event of an extraordinary natural or man-made disaster.

Additionally, other purposes of this Ordinance and each of its chapters are to license enterprises that typically generate significant ordinance enforcement effort, promote improved enforcement of related Ordinances, reduced overall enforcement costs, provide a higher level of protection of the public, and reduce the risk that well-intentioned business operators are prejudiced by the unexpected enforcement of regulations at a time when compliance is least convenient.

Additional purposes of this Ordinance and each of its chapters are to license enterprises that generate economic activity to promote and protect the economic health and safety of the City by providing an economic data base about enterprises operating within the City so as to allow public officials to plan and anticipate economic threats to the well being of the City.

The purposes set forth herein are incorporated into every chapter of this title and each chapter may or may not set forth additional specific purposes for regulation of particular types of businesses.

The City Council does hereby declare that it finds any one of these manifold purposes sufficient in and of itself for justification for the adoption of this Ordinance and independently each of its chapters, and it further declares that it would have adopted this Ordinance and independently each of its chapters in their entirety based upon any one of the above-stated purposes, and invalidation of any one purpose or more of the above purposes would not have caused the City Council not to adopt the entire Ordinance or independently each of its chapters.

**4.02.015 ORGANIZATION OF TITLE.** The provisions of this Title 4 are organized as follows:

(a) This Chapter 4.02 contains introductory and master provisions governing the application of the balance of the Chapters in this Title.

(b) Chapter 4.04 establishes, defines the applicability of, and proscribes procedures and the basis for issuance, denial, renewal and revocation of the Solicitation License and Solicitor Permits.

(c) Chapter 4.06 establishes, defines the applicability of, and prescribes procedures and the basis for issuance, denial, renewal and revocation of the General Business License.

(d) Chapter 4.10 establishes, defines the applicability of, and prescribes procedures and the basis for issuance, denial, renewal and revocation of the Special Business License and Employee Permits.

(e) Chapters 4.15 through 4.50 establish special procedural and substantive regulations applicable to specified enterprises required to obtain a Special Business License and personnel thereof required to obtain Employee Permits.

(f) Chapter 4.54 contains regulations and prohibitions applicable to specified enterprises which are not required to obtain a Special Business License, and may or may not be required to obtain a General Business License.

**4.02.020 DEFINITIONS.** Unless the context indicates otherwise, the definitions of terms contained in Sections 4.02.021 through 4.02.050 shall govern the meaning of those terms as used in this Title.

**4.02.021 SAME- "SOLICITATION ACTIVITY"** – shall mean actions of any person who attempts to sell, solicit or take orders for goods, wares, merchandise, books, periodicals, subscriptions, photographs, and any personal service by going from private residence to private residence, or by appointment arranged by an unsolicited contact with a resident of the private residence, or by any other similar method and not from a fixed business location within the City.

**4.02.022 SAME- "SOLICITOR"** – shall mean a person who engages in solicitation activities as a sole business owner or as an agent, representative, employee, or independent contractor to a person or entity required to obtain a solicitation license.

**4.02.023 SAME- "SOLICITATION PERMIT"** – shall mean a Permit issued by the Chief of Police and required pursuant to the provisions of Chapter 4.04 below to a solicitor.

**4.02.024 SAME – “BUSINESS”** – shall mean any enterprise or endeavor by a Person operated or conducted for profit or non-profit purposes.

**4.02.025 SAME - "EMPLOYEE PERMIT"** -- shall mean a Permit issued by the Chief of Police to certain personnel retained as employees, independent contractors or otherwise to perform specified duties or functions by particular types of enterprises required by Chapters 4.10 through 4.50 to possess a Special Business License for the purpose of insuring protection of the public health, safety or welfare.

**4.02.030 SAME - "FIXED LOCATION"** -- shall mean a particular place where an enterprise is either regularly conducted or kept open, or is conducted or kept open on four or more days during any consecutive thirty-day period. An enterprise operated from a residence shall be deemed to be conducted at a fixed location.

**4.02.035 SAME - "GENERAL BUSINESS LICENSE"** -- shall mean a license issued by the City Manager and required pursuant to the provisions of Chapter 4.06 below, in order to insure compliance with specified ordinances, prevent disturbances of neighborhoods and nuisances, and prevent safety hazards.

**4.02.040 SAME - "PERSON"** -- shall mean a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture or other individual or entity carrying on a business for which a Permit or License must first be procured, and shall include any officer, employee, agent or other representative by or through whom the business is operated or conducted.

"Person" shall not include a public agency or any officer, employee or agent thereof while acting in the capacity as such.

**4.02.045 SAME - "CONVICTED"** - or "conviction" in relation to the outcome of criminal charges shall include a plea of nolo contendere.

**4.02.050 SAME - "SPECIAL BUSINESS LICENSE"** -- shall mean a license issued by the Chief of Police or other designated official and required pursuant to the provisions of Chapters 4.10 through 4.50 for specified types of businesses which are potentially injurious to the public interest, are not regulated by the State in such a manner as to preempt local regulation, and which the health, safety and welfare of the community demand be operated by responsible persons in compliance with all laws, including any special regulations applicable to such businesses.

**4.02.055 AUTHORITY OF CITY OFFICERS.** Whenever reference in this Title is made to the City Council or any department, office, division, officer or official, the reference shall be deemed to be to, respectively, the City Council, or a department, office, division, officer or official of the City.

Whenever in this Title an authority or power is vested in or a duty is imposed upon an officer or official, a City employee subordinate to the officer or official to whom an appropriate delegation has been made shall be entitled to exercise the power or authority and perform the duty.

**4.02.060 LICENSE FEES.** The City Council may, by resolution and from time to time, prescribe fees for the issuance and renewal of Solicitation Licenses, Solicitor Permits, General Business Licenses, Special Business Licenses and Employee Permits; and fees for the filing of appeals relating to denial of such Permits or Licenses or the revocation thereof. Such fees shall be for the sole purpose of defraying costs incurred in the administration of this Title, and shall be prescribed in amounts yielding revenues which do not exceed the costs of administration by each office and department charged with responsibility under this Title. To the extent the City Council determines to be practical, such fees may be varied in amounts for different types of permits or licenses, types of businesses, issuance and renewal, and on the basis of other factors, for the sole purpose of apportioning relative regulatory costs to parties regulated. Commercial enterprises subject to Unrelated Business Taxable Income under sections 511 to 515 of the Internal Revenue Code not exempted by 4.06.010(a) and operated by certain types of non-profit organizations may be exempted from fees for the issuance or renewal of General Business Licenses, or appeals associated with the denial or revocation thereof, if a contribution from the general or another fund supported by tax revenues is made by the City Council to underwrite the costs of regulation.

Fees related to the costs which a department incurs in reviewing and acting upon a particular type of application for a license or permit may be made payable within a general fee chargeable by the City Manager, or may be charged individually by the department reviewing and acting upon the application as a condition precedent to processing of the approval required from that department.

All fees for the issuance and renewal of permits and licenses shall be paid at the time of and with the filing of the application with the City Manager or pursuant to a request for approval by another department charged with the responsibility of reviewing the application. All fees for an appeal shall be paid at the time of and with the filing of the appeal. No application or request for approval or appeal shall be deemed valid or complete until all prescribed fees have been paid.

**4.02.065 TRANSFERABILITY.** A Solicitation Permit, General Business License or Special Business License shall not be transferable or assignable from one person to another.

Each such license shall terminate and be deemed to have no further force or effect upon: (a) a transfer from one person to another of the whole ownership of the business or enterprise; or, (b) a change of the whole function or operation for which the permit or license has been issued.

During the term of a General Business License or a Special Business License

and within thirty (30) days of the occurrence thereof, the holder shall file in writing with the City Manager notice of: (a) the transfer from one person to another of the whole ownership of the business or enterprise, or, (b) a change of the whole function or operation for which the permit or license has been issued.

**4.02.070 TRANSFERABILITY - PARTIAL CHANGE IN OWNERSHIP SPECIAL BUSINESS LICENSE.** During the term of a Special Business License the holder of the permit or license shall file in writing with the Chief of Police notice of each:

(a) addition or deletion of a general or limited partner, when the holder is a partnership;

(b) addition or deletion of a joint venturer, when the holder is a joint venture;

(c) transfer of more than one-half of one percent of the voting shares of stock, when the holder is a commercial corporation;

(d) change of directors, when the holder is either a for profit or non-profit corporation;

(e) change of membership in management committee composed of persons holding ownership interests, when the holder is a partnership or joint venture;

(f) change in membership of a governing body or other board or committee to which management is entrusted, when the holder is an unincorporated association; and

(g) change in president or general manager, vice-president or chief assistant manager, secretary and treasurer, or any officer with equivalent or similar authority.

The holder of a license or permit shall provide in writing such detailed information respecting any such change as the Chief of Police may require.

A termination of a Special Business License shall be deemed to have occurred whenever the Chief of Police determines that effective management or control of the holder has been transferred in significant part to a person whose character or business responsibility was not reviewed at the time the license was issued, and when written notice of the Chief of Police's determination and of termination of the license is served on the holder. The effective date of termination shall be fifteen days following the date of service of the notice of termination except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.075 TRANSFERABILITY - PARTIAL CHANGE IN OWNERSHIP GENERAL BUSINESS LICENSE.** During the term of a General Business License the holder shall file in writing with the City Manager notice of each: (a) addition or deletion of a general partner, when the holder is a partnership; (b) addition or

deletion of a joint venturer, when the holder is a joint venture; and (c) transfer of more than ten percent of the voting shares of stock, when the holder is a commercial corporation.

A termination of the license shall be deemed to have occurred whenever the City Manager determines that a change in ownership has occurred in significant part to another person and when written notice of the determination and of termination is served upon the holder. The effective date of termination shall be fifteen days following the date of service of the notice of termination except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.076 TRANSFERABILITY - PARTIAL CHANGE IN FUNCTION GENERAL BUSINESS LICENSE.** During the term of a General Business License the holder of the permit or license shall file in writing with the City Manager notice of any change in the business function, operation, or enterprise for which the permit or license has been issued. The holder shall provide in writing such detailed information relating to any alteration in the business function, operation, or enterprise as the City Manager may require.

A termination of the license shall be deemed to have occurred when the City Manager determines that any such change materially alters the business function, operation, or enterprise for which the license has been issued in a manner which requires a new investigation of the applicability of or compliance with the laws enforced through the license, and when written notice of the determination and of termination is served upon the holder.

The effective date of termination shall be fifteen days following the date of service of notice of termination except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.080 TERM.** General Business Licenses shall expire when the person to whom the License is issued ceases operations authorized thereby. The term of a General Business License shall be two years from the date of issuance. Licenses previously issued under prior provisions of this section prescribing a three year term shall expire three years from the date of issuance and shall then be reissued upon qualification for a two year term.

Solicitation Licenses and Special Business Licenses shall expire when the person to whom the License is issued ceases operations authorized thereby. The term of a Solicitation License, Special Business License, a Solicitor Permit, and an Employee Permit shall be one year from the date of issuance.

**4.02.085 ADMINISTRATION.** Except as otherwise provided, the City Manager is charged with the responsibility of administering General Business Licenses, and shall be authorized from time to time to promulgate and enforce such

rules or regulations consistent with the purposes, intent, and express terms of this Title as he or she deems necessary to implement such purposes, intent and express terms. Whenever in this Title the City Manager is charged with responsibility to administer a particular provision, the City Manager may delegate such responsibility to other departments and subordinate personnel of the City.

Except as otherwise provided, the Chief of Police is charged with the responsibility of administering Special Business Licenses, and shall be authorized from time to time to promulgate and enforce such rules or regulations consistent with the purposes, intent and express terms of this Title as he or she deems necessary to implement such purposes, intent and express terms. No rules or regulations promulgated by the City Manager or Chief of Police, or amendments thereof, shall be enforced or become effective until thirty (30) calendar days following the date on which the proposed rules or regulations are filed with the Clerk of the City Council.

**4.02.090 NOTICES.** Any notice or other writing authorized or required by this Title shall be deemed served and effective for all purposes on the date when it is reduced to writing and is either personally delivered to the party to whom it is directed or is deposited in the United States mail, postage prepaid, and addressed to the party to whom it is directed. When under the provisions of this Title any notice or other writing is authorized or required to be filed, it shall not be deemed to have been filed until it is received in the office of the official with whom filing is required.

Whenever a provision in this Title requires a public hearing to be conducted, notice of the time, date, place and purpose of the hearing shall be published at least once not later than ten calendar days in advance of the date of commencement of the hearing in a newspaper of general circulation which is published within the County. The same type of notice shall also be served on each Licensee whose License would be affected by the action taken at the conclusion of the hearing.

**4.02.095 HEARING AUTHORITY.** Whenever the term "Hearing Authority" is utilized in this Title, it shall be deemed to refer to a person assigned the responsibility of conducting a hearing by the City Manager. The City Manager shall be authorized to assign hearing responsibilities from time to time to:

- (a) City management personnel who the City Manager finds are qualified by training and experience to conduct such hearings;
- (b) Any attorney who the City may employ for the purpose of conducting administrative hearings;
- (c) Attorneys engaged in practice within the Sacramento community who are retained by contract to conduct such hearings; or
- (d) Administrative Law Judges assigned to the State of California Office of Administrative Hearings.

The City Manager is hereby authorized to contract in the name of the City for

the retention of hearing services either by attorneys engaged in private practice or the Office of Administrative Hearings at rates which do not exceed those payable by the City for the legal defense of tort liability claims within financial limitations established by the City's annual budget.

**4.02.100 VIOLATIONS.** Except as otherwise specifically provided, pursuant to the provisions of Government Code Section 36900 , violation of any of the provisions contained in this Title shall constitute an infraction subject to a fine of one hundred (\$100.00) dollars for each day or any portion thereof a violation continues.

Violation of any of the following provisions of this Title following service at the business of a written notice by an enforcing official advising of the violation and ordering a cessation thereof, shall pursuant to the provisions of Section 1.01.190 of Title 1 of this Code, constitute a misdemeanor: Sections 4.06.005, 4.06.006, 4.10.005, 4.15.015, 4.16.010, 4.20.010, 4.21.005, 4.22.020, 4.23.025, 4.25.005, 4.34.200, 4.34.210, 4.35.205, 4.54.010, 4.54.020, 4.54.105, 4.54.220, 4.54.225, 4.54.300, 4.54.330 and 4.54.340. As used in this Paragraph, an enforcing official includes the Chief of Police, City Manager and any other City officer charged with the responsibility of administering the provisions of this Title. Pursuant to the provisions of Section 836.5 of the Penal Code, City personnel acting under the direction and control of the City Manager, shall be authorized to enforce and arrest persons without a warrant for violations of those provisions within those Chapters and Articles of this Title which are assigned, respectively, to the administrative responsibility of the City Manager. .

Violation of any of the provisions of this Title may be remedied by injunction or other civil proceedings commenced in the name of the City by the City Attorney. In prosecution of criminal violations of this Title, the City Attorney may, in his or her discretion, reduce the charge of a misdemeanor to an infraction.

**4.02.105 INSPECTION.** The City Manager and Chief of Police are charged with the responsibility of enforcing the provisions of this Title, and to that end may inspect any and all types or classes of businesses which are by this Title licensed and regulated. The City Manager, Chief of Police, Deputy City Manager for Development Services and their deputies or subordinate personnel may enter any place of business which is subject to the provisions of this Title for the purpose of inspection for compliance with this Title.

The City Manager and Chief of Police may, during the term of a license, require the licensee to complete a license information update form for the purpose of assuring continued compliance with this Title. The licensee shall, within fifteen (15) calendar days of the date of mailing by the City Manager of such an information form, file the completed form with the City Manager or to the Chief of Police, whichever officer has requested the information update form.

**4.02.110 LAWS NOT ENFORCED.** There are many ordinances and other laws applicable to businesses licensed under Chapters 4.06 through 4.50 which are

not sought to be enforced under that licensing process. Such laws include, but are not limited to, building, fire, electrical and other codes and regulations contained in Chapter 4.54 of this Title, and noise control, sewage disposal and other health measures. It has been determined that the administrative costs of enforcing such laws would result in fee levels which are so high as to exceed the benefits produced by such enforcement.

Neither the issuance of a General Business License nor a Special Business License shall be deemed to constitute a representation that the business so licensed or the premises upon which it is situated complies with such ordinances or other laws. Nor shall the existence of such an unrevoked License be deemed to preclude any criminal or civil remedy for violation of such ordinances or laws, including, but not limited to, the closure of the business if otherwise warranted under remedies sought to be invoked. The possession of either a General Business License or Special Business License shall not be deemed to relieve the holder of the requirement to apply for or obtain any other License or Permit required by ordinance or statute.

**4.02.115 STATUTORY REFERENCES.** Any reference to a state or federal statutory or regulatory provision contained in this Title shall be interpreted to refer to such provision as it may be amended or renumbered from time to time.

**4.02.120 EFFECTIVE DATE.** The provisions of this Title shall become effective February 1, 2006.

**4.02.125 SEVERABILITY.** The provisions of this Title are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Title, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this title, or the validity of its application to other persons or circumstances.

## CHAPTER 4.04

### SOLICITATION LICENSES AND PERMITS

#### Sections:

- 4.04.000 Purposes
- 4.04.010 Solicitation License required.
- 4.04.090 Solicitation License application.
- 4.04.100 Solicitation License issuance.
- 4.04.140 Revocability of license.
- 4.04.300 Door-to-door salesmen.
- 4.04.390 Solicitor permit.
- 4.04.400 Statement of exemption.
- 4.04.510 Transferability of license.
- 4.04.520 Proceeds to charitable organization.
- 4.04.560 Penalty for conducting business without a license.
- 4.04.640 Renewal.
- 4.04.650 Enforcement.
- 4.04.651 Authority to arrest.
- 4.04.660 Appeal.

**4.04.000 PURPOSES.** City Council finds that door to door solicitation, including appointments arranged through cold calling residents of the City, historically have generated complaints regarding the sale of goods, services, securities, investments, and other products. With unfortunate frequency, many solicitation schemes prey upon the elderly and infirm of the community. Without the requirement that such solicitors obtain a permit from the City, residents are exposed to higher risk of unfair sales and business practices by businesses and organizations with no physical presence in the City and therefore less accountability for their business practices. For these reasons, the City Council a licensing of businesses and their solicitor agents is required to protect the public, safety, and welfare.

**4.04.010 SOLICITATION LICENSE AND SOLICITOR PERMIT REQUIRED.** It is unlawful for any person or entity to engage in, conduct or carry on any business, exhibition, occupation or service that is based upon solicitation activities as defined in Section 4.02.021, without first having, upon written application, procured a solicitation license from the City Manager.

It is unlawful for any person employed or working on behalf of a business engaged in a solicitation business to engage in the solicitation activities as defined in Section 4.02.021, without first having, upon written application, procured a solicitor permit from the City Manager.

**4.04.015 EXEMPTIONS.** This Chapter does not apply to:

(a) Girl Scouts, Camp Fire Girls, Boy Scouts, Little League members and members of similar organizations when soliciting on behalf of such organizations;

(b) Persons who represent a fixed place of business in the City who regularly make deliveries, normally not involving personal contact with customers for the purpose of making sales or obtaining orders, over an established route and who only occasionally make calls on persons residing within the area covered by such route for the purpose of obtaining additional customers for such regular deliveries. The foregoing provisions intended to cover only such persons as milk delivery person, newspaper delivery persons and other persons engaged in substantially similar activities;

(c) Persons soliciting charitable contributions on behalf of any nonprofit corporation or nonprofit voluntary unincorporated association organized for charitable purposes.

(d) Persons who go from private residence to private residence for political purposes or for the purpose of influencing legislation.

**4.04.400 STATEMENT OF EXEMPTION.**

(a) Every person claiming to be entitled to exemption from the payment of any license fee or from any other requirement provided for in this chapter upon the ground that such license casts a burden upon his right to engage in commerce with foreign nations or among the several states, or conflicts with the regulations of the United States Congress respecting interstate commerce, shall file a verified statement with the City Manager, disclosing the interstate or other character of his or her business entitling such exemption. The statement shall contain the name and location of the company or firm for which the orders are to be solicited or secured, the name of the nearest local or state manager, if any, and his or her address, the kind of goods, wares or merchandise to be delivered, the place from which the same are to be shipped or forwarded, the method of solicitation or taking orders, the location of any warehouse, factory or plant within the state, the method of delivery, the name and location of the residence of the applicant, and any other facts necessary to establish such claim of exemption. A copy of the order blank, contract form or other papers used by such person in taking orders shall be attached to the affidavit. The affidavit may be filed by a firm on behalf of one or more employees or representatives of the firm who are subject to the requirements of this chapter.

(b) If the City Manager determines that a license fee is not applicable with respect to any person because of interstate commerce requirements, a license fee shall not be required and the person may be issued an exempt license. Such license shall be valid only for the purpose of authorizing solicitation of orders to be filled directly from another state. Any person who is eligible for a license pursuant to this section shall be subject to all applicable provisions of this chapter.

**4.04.090 SOLICITATION LICENSE APPLICATION.** A person may apply for a solicitation license by filing an application with the City Manager and paying the required fees. The City Manager shall forward the application for the solicitation license to the Chief of Police for investigation in the same manner as provided for a Special Business License under 4.10.035.

**4.04.100 SOLICITATION LICENSE ISSUANCE.**

The City Manager shall issue a solicitation license unless he or she finds that:

(a) The City Manager finds in writing that the application is not complete despite requests for supplemental information;

(b) The City Manager finds in writing that the application or any supplementary material contains false information;

(c) The City Manager finds in writing that any of the following persons has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially injure another; and the City Manager concludes that by reason of the crime or act there is

a risk that the applicant would not conduct the enterprise in a law abiding manner or in a manner which does not subject patrons of the enterprise to risk of harm or criminal, deceitful or otherwise unethical practices:

- (1) A general or limited partner of a partnership which possesses an ownership interest in the enterprise;
- (2) A joint venturer in a joint venture which possesses an ownership interest in the enterprise and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this Section would apply if the partnership or corporation were the sole owner of the enterprise;
- (3) A sole proprietor when the enterprise is a sole proprietorship;
- (4) An owner of more than one-half of one percent of the voting shares of stock when a commercial corporation possesses an ownership in the enterprise;
- (5) A director, when either a commercial or non-profit corporation possesses an ownership in the enterprise;
- (6) A member of a management committee when a partnership or joint venture possesses an ownership interest in the enterprise;
- (7) A member of a governing body or other Board or committee to which management is entrusted, when an unincorporated association possesses an ownership interest in the enterprise; or,
- (8) A president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm possessing an ownership interest in the enterprise.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.01 et seq.

(d) The City Manager finds in writing that when the applicant or enterprise is a "contractor," as that term "contractor" is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, the applicant has failed to provide sufficient proof, as determined by the City Manager, that the applicant is licensed to engage in the business as a contractor, by the State of California, Contractors' State License Board, and that the license is presently valid, effective, not suspended, and in good standing.

**4.04.200 CONDITIONS ON SOLICITATION LICENSE AND PERMIT.**

Every solicitation license issued by the City Manager shall include the following conditions:

- (a) Solicitation activities shall not be conducted by any license holder or any solicitor between the hours of 9:00 p.m. to 8:00 a.m. the following day weekdays, 9:00 p.m. on Fridays to 9:00 a.m. on Saturdays, and 9:00 p.m. on Saturdays to 10:00 a.m. on Sundays;
- (b) Every solicitor shall carry on his or her person the City-issued solicitor permit at all times when conducting solicitation activities and shall produce such permit to any law enforcement officer upon demand; and
- (c) Any other condition reasonably related to protection of the public interest in solicitation activities.

**4.04.300 SOLICITORS.** The employees, agents, solicitors or representatives of any firm, irrespective of the form of organization, may be covered under a single license obtained by and issued in the name of the firm as long as each such person holds a valid solicitor permit issued pursuant to Section 4.04.390.

**4.04.390 SOLICITOR PERMIT.**

- (a) It is unlawful for any solicitor to conduct solicitation activities within the City without having first obtained a solicitor permit pursuant to this section.

For the purposes of this section the word "solicitor" includes all employees, agents, solicitors or representatives of any firm, irrespective of the form of organization, subject to the solicitation license requirement of this Chapter.

- (b) A solicitor may file a written application for a solicitor's permit with the City Manager, giving the name and address of the applicant, the firm or organization which he represents, a description of the purpose for which the applicant proposes to conduct solicitation activities and such other information the City Manager may require.

- (c) The City Manager shall refer the applicant to the Chief of Police who shall fingerprint and photograph the applicant and obtain reports from the state Department of Justice of any record regarding the applicant which is available from those agencies. After an applicant has been fingerprinted and photographed by the Chief of Police, the applicant shall be issued temporary permit by the City Manager, valid for forty-five days, unless the Chief of Police, based on a check of any immediately available record or source of information regarding the character of the applicant or the business responsibility of the firm which he represents disapproves the issuance of a temporary permit. If the Chief of Police disapproves, his reasons for disapproval shall be specified in writing, a copy of which shall be delivered to applicant. When he or she receives the reports, the Chief of Police shall forward them to the City Manager together with any other relevant information from the Chief

of Police's files regarding the applicant and the firm which the applicant plans to represent in the City.

(d) On the face of each permit, including temporary permits, there shall be placed each of the following:

- (1) The solicitor's permit number;
- (2) The solicitor permit holder's name and address;
- (3) The name and address of the firm or organization which the holder represents;
- (4) A physical description of the holder or a photo ID;
- (5) The expiration date of the permit.

(e) While engaged in solicitation activities, the solicitor's permit shall be carried on the person of solicitor who, upon demand, shall show such permit to any person authorized to enforce this chapter.

**4.04.640 RENEWAL.** Not later than forty-five days prior to expiration of the term of a Solicitation License or a Solicitor's Permit, the City Manager shall transmit to the licensee or permit holder by mail an application for renewal. The application for renewal shall be on such a form, and include such information, as prescribed and required by the City Manager.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the immediately preceding License. The City Manager may provide an option for businesses to renew and pay license and permit fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a solicitation license or solicitor's permit renewal electronically, the Licensee consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the renewal was submitted with a manual signature consistent with Civil Code section 1633.1 et seq

**4.04.650 SUSPENSION OR REVOCATION.**

A Solicitation License issued pursuant to this Chapter may be immediately suspended or revoked during its term if the City Manager finds in writing that one or more of the following grounds exist:

- (a) That information in the latest application was untrue;
- (b) That the City Manager has acquired information supporting a finding that one of the persons listed in Section 4.04.100(c) has a new criminal conviction or a criminal conviction previously undisclosed;

(c) That the Licensee or any one of the Licensee's Solicitors has violated one or more conditions imposed; or

(d) That the Licensee or any one of the Licensee's Solicitor's has violated any term, condition or requirement or prohibition established by this Chapter or Chapter 4.02, which are applicable to the License or the holder, or any administrative regulation promulgated thereunder, or any other applicable law.

**4.04.660 APPEAL.** Any person aggrieved by any decision or action of any City officer or employee may file a written notice of appeal with the City Manager within fifteen days following of the date of issuance of written notice of such decision or action. Any such appeal shall be conducted by the City under the provisions of sections 4.10.115 to 4.10.150 to the extent equally applicable to determination of an appeal of a denial of initial application or renewal, or the proposed suspension or revocation of a solicitation license or solicitor's permit under this Chapter.

**CHAPTER 4.06**  
**GENERAL BUSINESS LICENSES**

**Article 1**  
**Applicability and Issuance**

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- 4.06.005 License Required
- 4.06.006 Temporary Concessions
- 4.06.010 Exemption
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- 4.06.200 Grounds for Denial
- 4.06.205 Method of Denial
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**Article 1**  
**Applicability and Issuance**

**4.06.000 PURPOSES.** The purposes of this Chapter are set forth in Section 4.02.010.

**4.06.005 LICENSE REQUIRED.** Except as provided by Section 4.06.010, no person shall operate or conduct at a fixed location within the City any enterprise whatsoever, including but not limited to, a manufacturing, fabricating, processing, assembly or repair; wholesaling or storage; lodging, rental housing, or other temporary or permanent housing; entertainment; service; retailing; educational; hospital or other medical care; or business or professional office enterprise; home occupation or family contractor's business; or other facility to which members of the general public are invited; or adult-related or adult-oriented uses as defined in this Title; unless under and by authority of a valid, unexpired and unrevoked General Business License authorizing the enterprise issued pursuant to the provisions of this Chapter. It is intended by this Chapter to license, unless expressly exempted, every enterprise operated at a fixed location which is of a type described by this section, whether the enterprise is operated for commercial, non-profit, charitable or other purposes, and whether the enterprise is operated or conducted independently or in association with or at the same location as an enterprise or activity for which a License is not required.

A person shall be deemed to operate or conduct an enterprise and violate this Section if the person, without a required General Business License in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for or in charge of the enterprise for which the License is required.

**4.06.006 TEMPORARY CONCESSIONS.** No person shall operate or conduct within the City a Temporary Concession, whether or not the Temporary Concession is conducted at a fixed location, unless under and by authority of a valid, unexpired and unrevoked General Business License issued pursuant to the provisions of this Chapter authorizing the Temporary Concession at the location where it operates.

As used in this Section, and except as hereinafter expressly provided, a "Temporary Concession" is any out-of-doors retail sales operation, whether conducted for an hour or less, a day, or longer, established for the purpose of selling flowers, produce, Christmas trees or greens, clothing, paintings or other artistic products, books or other written materials, or other goods from a table, stand, temporary sheltered enclosure, cart, motor vehicle or similar equipment.

A "Temporary Concession" shall not be deemed to include:

(a) The sale of Christmas trees or greens in connection with and on the same premises as a supermarket, hardware or home maintenance or repair store, or other established business, if a temporary structure and electrical wiring are not

employed in connection with such sales;

(b) Residential "garage sales" conducted for the purpose of disposing household goods formerly utilized in a home which have become surplus where such garage sale is conducted on the residential premises where the goods to be sold were utilized;

(c) The sale from stands of fireworks preceding and in connection with the celebration of the Fourth of July as such temporary sales are permitted as provided in Chapter 4.54;

(d) The sale of agricultural products on the site where the product is grown; and

(e) The sale or offering for sale or distribution from public sidewalks or pedestrian circulation areas of shopping centers or malls of products to pedestrians who are traversing such areas or patrons of retail stores.

The exemption of the above activities from the licensing requirement shall not be deemed to authorize any activity which is illegal under other laws or to exempt any such activities from other applicable laws; or to deprive the owner or occupant of private property of any otherwise applicable right to consent to such activity.

Notwithstanding the provisions of Section 4.02.085, the Chief of Police shall enforce the provisions of this Section by citing and charging pursuant to the provisions of Section 4.02.100 such persons who violate this Section.

**4.06.010 EXEMPTIONS.** A business license shall be issued to the following enterprises at no charge and marked as "EXEMPT" upon the completion of an application that demonstrates to the satisfaction of the City Manager that the business qualifies for an exemption provided in law including, but not limited to, the following California constitutional or statutory exemptions:

a. Any non-profit organization exempt from tax as provided in section 501(c)(3) of the Internal Revenue Code (churches, educational institutions, charitable organizations, and scientific organizations) to the extent of its tax-exempt activities, however, no exemption is granted to any commercial business activity of a 501(c)(3) organization for which it has Unrelated Business Taxable Income as provided in section 511-515 of the Internal Revenue Code (bookstores, coffeeshops, child care centers, etc.);

b. Any apartment, rooming house, duplex, and other residential facility in which living units are rented or leased solely on a term of thirty days and longer;

c. Any agricultural activities such as the growing of crops or raising of livestock and all the auxiliary and ancillary uses incidental to operation of a farm or ranch, however, no exemption is granted to any wholesaling, processing or storage of products of multiple farms or other cooperative marketing arrangement;

- d. Any sale of produce (vegetables, nuts, fruits, etc.) raised on the same parcel of land from a roadside stand served by no public utility services on a seasonable basis not to exceed four (4) months;
- e. Any enterprise that solely manufactures, sells, purchases, possesses or transports alcoholic beverages as provided in Cal. Constitution, art. XX, § 22;
- f. Any enterprise operating as a bank or financial corporation subject to the in lieu taxes payable to the State under California Revenue and Taxation Code section 23182;
- g. Any enterprise operating solely as an intercity transportation business for household goods or other property for hire that is under the jurisdiction of the Public Utilities Commission pursuant to Public Utilities Code section 5327;
- h. Any commercial traveler whose business is limited to goods, wares, and merchandise sold or dealt in at wholesale as provided in California Business and Professions Code section 16002;
- i. Any enterprise operating solely as a real estate auctioneer whose principal place of business is located outside the City as provided in California Business and Professions Code section 16002.1;
- j. Any café musician who plays a musical instrument at any retail establishment where food or alcoholic beverages are sold or given away as provided in California Business and Professions Code section 16000.5;
- k. Any enterprise operating solely for the solicitation of donations for the support of veterans by federally chartered veterans' organizations specified in Title 36 of the United States Code as provided in California Business and Professions Code section 16001.7
- l. Any person honorably discharged or honorably relieved veteran who is unable to earn a livelihood from manual labor as provided in California Business and Professions Code section 16001.5;
- m. Any blind person operating a vending facility as provided in California Welfare and Institutions Code section 19633;
- n. Any residential care facility or residential day care home of six or less people, or a small family day care of eight children or less as provided in California Health and Safety Code sections 1523.1(b), 1566.2, 1568.05(b), 1569.185, 1596.803 or 1597.45; and
- o. Any professional services business, not based at a location within the City, whose work in the corporate limits, in the judgment of the City Manager, constitutes such a de minimus contact with the City that the imposition of the regulatory fee would unfairly burden intercity business as provided in *City of San Jose v. Ruthroff & Englekirk Consulting Structural Engineers, Inc.* (1982) 131 Cal. App. 3d 462.

**4.06.055 HOME OCCUPATIONS.** Unless exempt under Section 4.06.010, a General Business License shall be required for any business, enterprise or activity which is operated or conducted as a Home Occupation. A General Business License shall also be required for a family contractor's business.

As used in this Chapter, a "Home Occupation" shall mean and include any commercial use conducted in a dwelling unit which is also utilized for residential purposes. The terms "Family Contractor's Business" shall mean a business operated at or from a residence which employs only members of the resident's family, and which may include the storage of contractor's equipment or supplies at the residence of one of the family members engaged in the business.

**4.06.060 ZONING ENFORCEMENT.** The administration of the General Business License under the provisions of this Chapter shall assist the Deputy City Manager for Development Services and the Community Services Director or any successor City division to enforce the provisions of the City of Elk Grove Zoning Code, as those provisions may hereafter be amended, and the terms, conditions and requirements of rezoning ordinances and any and all contracts associated therewith, variances, conditional use permits and other legislative and administrative approvals issued pursuant to the Zoning Code.

**4.06.065 NUMBER OF LICENSES.** In instances where space within an office building, shopping center, warehouse, department store or other structure or property is leased for business or commercial use, each tenant of the premises operating an enterprise required to be licensed hereunder shall apply for and obtain a General Business License.

When a particular enterprise has more than one fixed location or branch within the unincorporated area, a separate General Business License shall be required for each location or branch.

Certain types of persons required to obtain General Business Licenses hereunder are also required to obtain a Special Business License or other license or permit under this or other Titles. The issuance of a Special Business License or other license or permit for an enterprise shall not be deemed to excuse the requirement that a General Business License be obtained, and the provisions of this Chapter are declared to be independently applicable to each enterprise to which the provisions of this Chapter apply.

The provisions of this Chapter shall also be deemed to be independently applicable to any enterprise required to be licensed hereunder which is also required by any State or other law to obtain a license, permit or certificate.

**4.06.070 APPLICATION FILING.** All applications for General Business Licenses shall be filed in the office of the City Manager as delegated herein to the City Manager.

**4.06.075 APPLICATION CONTENTS.** The application for a General Business License shall be filed on a form and contain such information as is prescribed by the City Manager, including the following:

(a) The name and address of the person or entity who owns the enterprise for which application is made;

- (b) A complete description of the enterprise to be conducted at the location for which the license is sought;
- (c) The address of the location for which the license is sought;
- (d) The assessor's parcel number;
- (e) The number of employees reporting to and/or located at the business site. If the business is seasonal, the highest and lowest number of employees reporting to and/or located at the business site with the corresponding month or months of the year for each period;
- (f) The number of electronic, mechanical and video games to be operated in the business;
- (g) Whether or not the applicant or enterprise is a contractor, as that term is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, and if such contractor is licensed as a contractor by the State of California, Contractors' State License Board, with a license in good standing, and the License Number and Class thereof; and,
- (h) Such other and further information as is deemed necessary to enforce the City of Elk Grove Zoning Ordinance, and administer the provisions of this Chapter.

The City Manager may provide an option for businesses to initially apply and pay business license fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a business license application electronically, the applicant consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the application was submitted with a manual signature consistent with Civil Code section 1633.1 et seq.

**4.06.080 INVESTIGATION.** The City Manager shall refer the application for review by:

- (a) The Deputy City Manager for Development Services and the Community Services Director; and
- (b) The Chief of Police, if the enterprise requires a Special Business License.

The Deputy City Manager for Development Services and Community Services Director shall examine the application for the purpose of determining whether the enterprise complies with the City of Elk Grove Zoning Ordinance, and whether any conditions should be attached to issuance of the License. Inspection of

the site shall be conducted as necessary to determine applicability, compliance with, or the adequacy of corrections to achieve compliance with such laws.

**4.06.085 ISSUANCE.** The City Manager shall act upon an application not later than forty-five (45) days after the date a complete application is validly filed except where Section 4.06.206 of this Chapter is applicable. An application is complete and deemed validly filed when all information requested on the application form is provided by the applicant and any associated fees paid. The City Manager shall act upon the application by issuing the license unless one of the following occurs:

(a) The City Manager, the Deputy City Manager for Development Services, or the Community Services Director find in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit determinations respecting compliance with the City of Elk Grove Zoning Ordinance;

(b) The Deputy City Manager for Development Services or the Community Services Director finds in writing that the enterprise at the location proposed would violate the City of Elk Grove Zoning Ordinance, and that such violation or violations must be corrected in advance of the conduct of the enterprise; or

(c) With respect to an enterprise required by Chapter 4.10 to obtain a Special Business License, the Special Business License has not been issued; or,

(d) Pursuant to Business and Professions Code Section 16100 subdivision (c), when the applicant or enterprise is a "contractor", as that term is defined in Section 7026, et seq., of the Business and Professions Code, and the as determined by the City Manager the applicant has failed to provide sufficient proof that he or she holds a State of California Contractor's License presently valid, effective, not suspended, and in good standing.

A General Business License issued under this Chapter shall authorize the holder thereof to operate or conduct a business enterprise only on such property the address of which is stated on the license. In the event the licensee ceases to use the property for the business, activity or enterprise listed, the License shall have no further force or effect and becomes void.

**4.06.090 CONDITIONS.** Upon recommendation by the Deputy City Manager for Development Services or the Community Services Director, the City Manager may issue the General Business License upon such conditions as are necessary to ensure safety and prevent the enterprise from disturbing the peace and tranquility of the neighborhood in which it is located. Such conditions may include the following:

(a) With respect to minor and correctable violations of the City of Elk Grove Zoning Ordinance, that the holder of the License correct the violation within a prescribed period of time;

(b) Limitations upon hours or days of operation; when required in order to prevent disturbance of the peace and quiet of a neighborhood caused by the enterprise or the patrons thereof at a particular location;

(c) The provision of adequate off-street parking to prevent the enterprise from inconveniencing neighbors or causing traffic disruptions at a particular location;

(d) The installation of on-site improvements required to prevent operation of the enterprise from disturbing its neighbors at a particular location; or

(e) Other conditions related to operations or improvements demonstrated under the particular circumstances to be necessary in order to prevent hazards, disturbance of the peace, quiet or safety of the neighborhood or other nuisance.

Such conditions may be imposed at the time a General Business License is initially issued, upon renewal of the License, or at any time during the term of the License.

**4.06.095 PROCEDURE FOR IMPOSITION.** Any condition imposed pursuant to the provisions of Section 4.06.090, together with the written reasons therefor, whether established at the time of issuance, at the time of renewal or during the term of a general business license, shall be served upon the applicant or holder in a written notice.

The conditions shall become effective fifteen (15) days following the date of service of the notice thereof except if an appeal is filed within the time and in the manner prescribed, the conditions shall not become effective until the appeal is finally determined.

**4.06.100 CONTENTS AND DISPLAY OF LICENSES.** The General Business License shall include but not be limited to a complete description of the enterprise for which it is issued, the date of issuance and date of expiration, and a description of any and all conditions upon which the license has been issued. The License shall be conspicuously posted at the place of business in full public view.

**4.06.105 APPLICATION FOR RENEWAL.** Not later than forty-five days prior to expiration of the term of a General Business License, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be on such a form, and include such information, as prescribed and required by the City Manager, including the following:

(a) A description of any change in the type of business conducted on the premises since the last License was issued; and

(b) A description of any and all improvements which the applicant has made upon the premises since the last License was issued.

The application for renewal shall be filed with the City Manager not later than

the date of expiration of the immediately preceding License. The City Manager may provide an option for businesses to renew and pay business license fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a business license renewal electronically, the Licensee consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the renewal was submitted with a manual signature consistent with Civil Code section 1633.1 et seq.

**4.06.110 PROCESSING AND ISSUANCE - RENEWAL.** An application for renewal shall be investigated and processed in the manner prescribed by Section 4.06.080. The City Manager shall act upon the application for renewal not later than thirty days after the date a valid application is filed unless the applicant has filed with him or her, before expiration of the 30 days, written notice of a request for extension of the time within which action is taken on the application for renewal by the City Manager on grounds that such additional time is required by the applicant to prepare and present plans or other information, obtain zoning variances or other permits, remodel the premises or make other corrections necessary to comply with the City of Elk Grove Zoning Ordinance or for other similar reasons. The City Manager may, pursuant to such a notice request, extend the time within which action is required by the City Manager on the application to such a period as the he or she deems reasonable and appropriate to accomplish the corrections. The City Manager shall act upon the application for renewal within the 30 day period, or the extended period of time, as applicable, by issuing the renewed license unless:

- (a) One or more of the conditions identified in Section 4.06.085 apply; or,
- (b) The City Manager finds in writing that one or more conditions applicable to the preceding license at the same location have been violated, and it is determined pursuant to the provisions of Section 4.06.090 that such conditions shall also be applicable to the renewed license.

With respect to any application for renewal which is filed on or before the date of expiration of the immediately preceding License, the City Manager shall extend the term of the immediately preceding License, without charge, during the period of any investigation required in order to determine whether the License should be renewed.

**4.06.115 UNDETECTED VIOLATIONS.** Under Sections 4.06.085 and 4.06.110 the City Manager is required to issue new and renewed General Business Licenses in the absence of any identified deficiencies or violations of laws. Such action is required within limited time periods in order to promote expeditious processing of applications and reduce damaging delays to applicants in awaiting administrative determinations.

The mandates of Sections 4.06.085 and 4.06.110 may result in the issuance of General Business Licenses notwithstanding the existence of violations of the laws

sought to be enforced. Therefore, neither the issuance nor receipt of a General Business License shall constitute evidence of compliance with the City of Elk Grove Zoning Ordinance, or, as required pursuant to Section 16100 of the Business and Professions Code, evidence of compliance with the licensing provisions of contractors, as contractors are defined in Business and Professions Code section 7026, or valid licensure by the Contractors State License Board, or a representation or assurance to the recipient upon which reliance is authorized or intended by the City that the enterprise for which the License is issued or the property or premises upon or in which it is housed complies with such laws.

## **Article 2 Denial and Revocation**

**4.06.200 GROUNDS FOR DENIAL.** The City Manager shall deny an initial application for or application for renewal of a General Business License if any written finding of Section 4.06.085 applies.

The City Manager shall also deny an application for renewal upon a finding that one or more conditions applicable to the preceding License at the same location have been violated, if, pursuant to the provisions of Section 4.06.090, it is determined that such conditions should also be applicable to the renewed License.

**4.06.205 METHOD OF DENIAL.** A denial of an initial application or application for renewal of a General Business License by the City Manager shall be in writing, with the reasons stated therefor. Written notice of the denial, together with a copy of the provisions of this Chapter, shall be served upon the applicant pursuant to the provisions of Section 4.02.090.

Denial of an initial application or application for renewal of a General Business License shall relate solely to the location at which the enterprise is proposed, and shall not affect the conduct of such enterprise at another location within the City.

With respect to denial of an application for renewal or termination, the immediately preceding General Business License shall be deemed to be in full force and effect for a period of fifteen days following the date of service upon the applicant of the notice of denial or of termination. In the event the applicant files an appeal from the denial or termination in the manner and within the time prescribed by Section 4.06.210, the immediately preceding General Business License shall continue in full force and effect during the pendency of the appeal, until the date of final decision by the appellate authority.

**4.06.206 REQUEST FOR EXTENSION.** The denial of an initial application or application for renewal of a General Business License shall be set aside by the City Manager if the applicant has filed with the him or her a timely written notice of a request for extension of time within which action is taken on grounds that additional time is required to prepare and present plans or other information, obtain zoning

variances or other permits, remodel the premises or make other corrections for the purpose of remedying violations of the City of Elk Grove Zoning Ordinance or for other similar reasons. Such written request for extension shall be filed with the City Manager not later than fifteen days after the date of service of the notice of denial prescribed in Section 4.06.205. The City Manager shall by regulation establish reasonable periods of time to grant a licensee or applicant extension in order for the licensee or applicant to complete the tasks enumerated above in this section.

If the period of extension elapses without correction of the deficiencies for which the extension was granted, within fifteen (15) days from the last day of that period of extension, the City Manager shall deny the application pursuant to the procedure set forth in Section 4.06.205. If the deficiency for which the extension was granted is corrected, the City Manager shall issue the General Business License no later than fifteen (15) days from the last day of the period of extension as provided in Section 4.06.085 or Section 4.06.110.

**4.06.210 APPEALS.** The holder of a General Business License or applicant therefor may file an appeal from the following:

- (a) The denial of an initial application for or application for renewal of a General Business License pursuant to the provisions of Section 4.06.200;
- (b) The imposition of conditions at the time of issuance of an initial or renewed General Business License or during the term thereof, pursuant to the provisions of Section 4.06.095; or
- (c) The termination of a General Business License as a result of a change in ownership or a business function pursuant to the provisions of Sections 4.02.075 or 4.02.076.

Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the City Manager not later than fifteen days after the date of service of the notices prescribed by Sections 4.02.075, 4.02.076, 4.06.095, or 4.06.205, as the case may be. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which complaint is made shall be deemed to have been waived.

**4.06.215 APPEAL HEARING.** Not later than twenty (20) days following the date of filing an appeal within the time and in the manner prescribed by Section 4.06.210, the Hearing Authority shall conduct a hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date and place of the hearing shall be served upon the appellant not later than ten (10) days preceding the date of the hearing.

During the hearing, the burden of proof shall be upon the City Manager. The provisions of the California Administrative Procedure Act (commencing at Section 11500 of the Government Code) shall not be applicable to such hearings; nor shall formal rules of evidence in civil or criminal judicial proceedings be applicable. At the

conclusion of the hearing, the Hearing Authority shall prepare a written decision which either shall grant or deny the appeal, and contains findings of fact and conclusions of law. The written decision, including a copy thereof, shall be filed with the City Manager and served by the Hearing Authority upon the appellant not later than ten (10) days following the date on which the hearing is closed.

**4.06.220 FINALITY OF DETERMINATION.** The decision by the Hearing Authority shall become final upon the date of filing and service with respect to any appeal from either denial of an initial application for a General Business License pursuant to Section 4.06.200 or termination of a License as a result of a change in ownership or change in function pursuant to Section 4.02.075 or 4.02.076.

With respect to an appeal from either denial of an application for renewal of a General Business License pursuant to Section 4.06.200 or from the imposition of conditions upon a License pursuant to Section 4.06.095, the decision by the Hearing Authority shall become final fifteen days following the filing and service thereof unless review of the decision by the City Council is requested either by the City Manager or appellant. Such review may be requested by filing with the Clerk of the City Council a written request for review not later than fifteen calendar days following the date of filing and service of the Hearing Authority's decision. The request for review shall state in detail the reasons therefor and error alleged in the Hearing Authority's decision, and shall have attached thereto a copy of the decision.

**4.06.225 REVIEW BY CITY COUNCIL.** Upon receipt by the Clerk of the City Council of the request for review, a hearing shall be scheduled before the City Council. The City Council shall be authorized to deny the introduction of evidence and decide the matter after oral argument presented during the hearing, or to admit supplementary evidence with respect to challenges or particular findings, or reject the findings and conclusions and conduct a de novo hearing. The determination by the City Council granting or denying the appeal shall be final, and shall be accompanied by findings of fact and conclusions of law, which may consist of an adoption by reference of those by the Hearing Authority. The decision of the City Council shall become final upon its filing with the Clerk of the City Council and service upon the City Manager and the applicant or licensee pursuant to Section 4.02.090 hereof. Pursuant to the granting of an appeal, the City Council shall be authorized to order the issuance, renewal or continuance of a license upon such terms and conditions as in the discretion of the City Council are deemed to be necessary and appropriate.

**4.06.230 GROUNDS FOR REVOCATION.** Any General Business License issued pursuant to this Chapter may be revoked during its term upon one or more of the following grounds:

(a) That the enterprise is operated in a manner or is housed on premises or within a building which violates or is in violation of City of Elk Grove Zoning

Ordinance;

(b) That the holder of the License has violated one or more conditions upon which the License has been issued; or,

(c) That the enterprise is that of contractor as defined in Section 7026, et seq., of the Business and Professions Code, and the City Manager finds that the licensee possesses no State of California Contractor's License presently valid, effective, not suspended, and in good standing .

**4.06.235 METHOD OF REVOCATION.** The City Manager may revoke a General Business License by issuing a written notice of revocation, stating the reasons therefor, and serving same, together with a copy of the provisions of this Chapter, upon the holder of the License. The revocation shall become effective fifteen days after the date of service, unless the holder of the License files an appeal within the time and in accordance with the provisions of Section 4.06.240. If such an appeal is filed, the revocation shall not become effective until a final decision on the appeal is issued.

**4.06.240 APPEAL OF REVOCATION.** Within fifteen days following the date on which the notice of revocation is served, the holder of the License may file a written appeal with the City Manager, stating the reasons therefor. If such an appeal is not filed within the time and in the manner prescribed above, the right to review of the revocation shall be deemed to have been waived.

A hearing on such appeal shall be conducted by the Hearing Authority. Notice of the time, date and place of the hearing shall be served upon the appellant not later than ten days before the commencement thereof. The burden of proof shall be upon the City Manager. Except as provided herein to the contrary, the hearing shall be scheduled and conducted in the manner and a decision shall be issued and served as prescribed by Section 4.06.215 and Section 4.06.220. The decision shall become final as prescribed, and be subject to review by the City Council at the request of either the City Manager or appellant, pursuant to the procedure for review prescribed by Section 4.06.220.

Any review by the City Council shall be scheduled, conducted in the manner, determined, and have the effect prescribed by Section 4.06.225. A hearing shall be held promptly but not later than sixty days from the date of filing of a request for review with the Clerk of the City Council.

**4.06.245 EFFECT OF REVOCATION.** With respect to any enterprise required by the provisions of Chapter 4.10 of this Title to possess a Special Business License, revocation of the Special Business License shall automatically and without notice also revoke each General Business License issued for the same business at each location at which the enterprise is located.

With the foregoing exception, revocation of a General Business License shall terminate only the privilege of doing business at the location to which the License

relates.

**4.06.250 OTHER PROCEDURES.** Any administrative remedy, including an appeal procedure, applicable to the interpretation, administration or enforcement of those ordinances and the City of Elk Grove Zoning Ordinance shall be exhausted. The failure to exhaust such a remedy shall constitute grounds for denial of an appeal under this Article.

**4.06.255 JUDICIAL REVIEW OF ADMINISTRATIVE DETERMINATION.**

An applicant for, or holder of, a General Business License may seek immediate judicial review in any court of competent jurisdiction as provided by law of any determination rendered by the City Council pursuant to Section 4.06.225 hereof upon such determination becoming final.

## **SPECIAL BUSINESS LICENSES AND EMPLOYEE PERMITS**

### **Article 1 Applicability and Issuance**

#### Sections:

- 4.10.000 Purposes.
- 4.10.005 License Required.
- 4.10.010 Number of Licenses Required.
- 4.10.015 Business Location.
- 4.10.020 Special Regulations.
- 4.10.025 Application Filing.
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- 4.10.040 Issuance.
- 4.10.045 Conditions.
- 4.10.050 Contents and Display of Licenses.
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**Article 1**  
**Applicability and Issuance**

**4.10.000 PURPOSES.** There are certain types of enterprises which require special investigation, review and regulation in order to ensure that the public health, safety and welfare is adequately protected. The necessity to conduct such investigation, review and regulation arises for reasons which include, but are not necessarily limited to, the following:

(a) the tendency of certain types of enterprises to engage, whether intentionally or unintentionally, in the promotion of crime, whether through the sale of stolen goods or otherwise;

(b) the tendency of certain types of enterprises to be placed where criminal activity occurs either by virtue of the type of clientele attracted or for other reasons;

(c) the fact that patrons of particular types of enterprises are vulnerable to fraudulent charging or other practices either because of the nature of the business, the type of service or merchandise offered, the circumstances under which the merchandise or service is purchased, or for other reasons;

(d) the fact that certain types of enterprises create health or safety risks which require special regulation; and

(e) the fact that certain types of enterprises require access to private property, particularly residential property, or frequent residential neighborhoods, generating high risks to the safety of persons and property.

Other types of enterprises provide services essential to the health, safety or welfare of the community, and require special regulation in order to insure delivery of such services in a volume, manner and quality sufficient to insure protection of the community.

The purposes of this Chapter are to establish special regulations applicable to the types of enterprises regulated hereunder, and to regulate such enterprises through a Special Business Licensing procedure in order to protect and safeguard the health, safety and welfare of the residents within the City.

**4.10.005 LICENSE REQUIRED.** No person shall, unless under and by authority of a valid unexpired and unrevoked Special Business License, conduct or operate within the City, whether singularly or in connection with another type of enterprise, the following:

(a) Any enterprise or activity for which a Special Business License is required by Chapter 4.15 through 4.50, inclusive;

(b) Antique Dealers -- in firearms, jewelry, art objects, furniture or other valuables;

- (c) Automobile Dismantlers -- and marketers of used parts for automobiles;
- (d) Automobile Repairs -- when the person or firm makes calls at the home or business of the customer to make repairs;
- (e) Circuses and Carnivals -- including the maintenance of animals for display to, riding by or petting by children;
- (f) Sales of Concealable Firearms -- including gunpowder;
- (g) Home Repair Services -- consisting of services related to the repair or maintenance of single family residential dwellings, mobilehomes, or gardens by persons who are not licensed to perform such services by the State of California, including businesses offering energy-saving appliances, equipment, or services, whether in connection with solar, wind or other power;
- (h) Purchase or Sale of Metals -- including precious and scrap metals;
- (i) Auto Towing -- consisting of persons who engage in the business of towing automobiles which require repair, are abandoned on public rights of way, or are parked illegally;
- (j) Repossession or Storage of Automobiles -- or any other thing of value;
- (k) The Operator of Each Booth -- in a bazaar, flea market, farmer's market, or other similar type of auction established for the purpose of selling merchandise, including food, for private gain;
- (l) Private Security Companies;
- (m) Tree Trimmers;
- (n) Motorcycle Sales -- including the sale of new and used parts;
- (o) Wrecking Yards -- including automobile dismantling and the buying and selling of automobiles of scrap metal or parts;
- (p) Dating and Introduction Services;
- (q) Swimming Pool Cleaning Services;
- (s) Janitorial, Maid, or Carpet Cleaning Services
- (t) Pool Halls -- (1 pool table or more is a pool hall
- (u) Itinerant Food Vendors
- (v) Movie and Television Productions

(w) Dance Clubs, Halls, and Public Dances A person shall be deemed to operate or conduct an enterprise or activity and violate this Section and, if applicable, corresponding prohibitions in Chapters 4.15 through 4.50, inclusive, if the person, without a Special Business License in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for or in charge of the enterprise or activity for which the License is required.

Notwithstanding the foregoing businesses required to obtain a Special Business License, the City will accept on a reciprocal basis a Special Business License or Employee Permit from the County of Sacramento for businesses that are based outside of the City but deliver mobile-based business services to the residents of the City including, but not limited to, Carpet Cleaners, Janitorial or Maid Service, Lawn Care or Tree Trimming, Auto Towing and Repossession, Mobile Auto Repair, Taxicabs, Massage, Private Security, and Home Repair.

**4.10.010 NUMBER OF LICENSES REQUIRED.** If a person conducts or operates more than one of the types of enterprises described by Section 4.10.005, a separate Special Business License shall be required for each type of enterprise which the person operates or conducts.

A person who operates or conducts more than one store, office, outlet or other branch of a particular type of enterprise described by Section 4.10.005 shall not be required to obtain more than one Special Business License for that type of enterprise, regardless of the number of stores, offices, outlets or branches operated or conducted.

**4.10.015 BUSINESS LOCATION.** Except as otherwise expressly provided, a Special Business License shall be required for each particular type of enterprise described by Section 4.10.005 which is operated or conducted within the City, whether or not the enterprise is operated at a fixed location within the City.

An enterprise shall be deemed to be operated or conducted within the City if representatives of the enterprise offer or sell goods or services or provide services within the City, whether the enterprise is operated from a fixed location within another jurisdiction, and whether the enterprise has a fixed location at all.

**4.10.020 SPECIAL REGULATIONS.** Certain of the types of enterprises described by Section 4.10.005 are subjected to special regulations governing their operations. These regulations are set forth in Chapters 4.14 through 4.50. Except as otherwise provided, the provisions of this Chapter shall be fully applicable to the enterprises identified by Chapters 4.14 through 4.50.

The provisions of this Chapter shall be independently applicable to any enterprise described by Section 4.10.005 which are also regulated under the provisions of Chapter 4.06. The issuance of a General Business License to an enterprise described by Section 4.10.005 shall not excuse the enterprise from the

requirement that a Special Business License be obtained pursuant to the provisions of this Chapter. The issuance of a Special Business License shall not be deemed to relieve the holders of a requirement, under Chapter 4.06, that a General Business License be obtained. A Special Business License shall not be deemed to authorize operation of an enterprise business at a particular location, if a General Business License is required and there is no such License in full force and effect.

**4.10.025 APPLICATION FILING.** All applications for Special Business Licenses shall be filed in the Office of the City Manager. The City Manager shall receive any fee required for the application, assure that the application is complete, and refer the application to the Chief of Police for processing, investigation, review and action. The City Manager shall verify pursuant to Section 16100 of the Business and Professions Code that before the City issues a special business license to an enterprise as a "contractor," as that term is defined in Section 7026, Article 2, Chapter 9, Division 3 of the Business and Professions Code, that the applicant or licensee is licensed by the State of California, Contractors' State License Board.

**4.10.030 APPLICATION CONTENTS.** The application for a Special Business License shall be filed on a form and contain such information as is prescribed by the Chief of Police, including the following:

(a) A complete description of the type, nature and extent of the enterprise to be conducted and for which application is made;

(b) The address of each location from which the enterprise for which application is made will be operated;

(c) The name and address of the person who owns the enterprise for which application is made;

(d) Such information as is necessary to permit the determinations prescribed by Section 4.10.040(c);

(e) Identification of each type and location of enterprise conducted by the owner within the City;

(f) Whether or not the applicant or enterprise is a "contractor", as that term is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, and if such contractor is licensed as a contractor by the State of California, Contractors' State License Board, with a license in good standing, and the License Number and Class thereof;

(g) Such other and further information as is deemed necessary to administer the provisions of this Chapter; and

(h) An affirmation under penalty of perjury that the information contained in the application is true and correct.

**4.10.035 INVESTIGATION.** The Chief of Police shall conduct such investigation of the background of the owner or owners and persons managing or supervising the enterprise as is deemed appropriate. The Chief of Police shall evaluate each application to determine whether the operation of the enterprise would involve an unreasonable risk to the health, safety or general welfare of the public. Those persons described by Section 4.10.040(c) shall be fingerprinted and photographed; and consideration shall be given to the criminal record, if any, and character of the owner and other persons connected with the enterprise, the business responsibility of the firm and the owner, and the manner in which the owner intends to conduct the enterprise.

**4.10.040 ISSUANCE.** The Chief of Police shall issue the Special Business License within ninety days after the date of application unless either:

(a) The Chief of Police finds in writing that the applicant fails to provide information in connection with the application requested by the Chief of Police as a basis for enabling the Chief of Police to make his or her determination;

(b) The Chief of Police finds in writing that any of the statements made in the application or any information submitted supplementary thereto is incorrect or untrue;

(c) The Chief of Police finds in writing that any of the following persons has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a risk that the applicant would not conduct the enterprise in a law abiding manner or in a manner which does not subject patrons of the enterprise to risk of harm or criminal, deceitful or otherwise unethical practices:

(1) A general or limited partner of a partnership which possesses an ownership interest in the enterprise;

(2) A joint venturer in a joint venture which possesses an ownership interest in the enterprise and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this Section would apply if the partnership or corporation were the sole owner of the enterprise;

(3) A sole proprietor when the enterprise is a sole proprietorship;

(4) An owner of more than one-half of one percent of the voting shares of stock when a commercial corporation possesses an ownership in the enterprise;

(5) A director, when either a commercial or non-profit corporation possesses an ownership in the enterprise;

(6) A member of a management committee when a partnership or joint venture possesses an ownership interest in the enterprise;

(7) A member of a governing body or other Board or committee to which management is entrusted, when an unincorporated association possesses an ownership interest in the enterprise; or,

(8) A president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm possessing an ownership interest in the enterprise.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.01 et seq.;

(d) The Chief of Police makes any finding in writing authorized as a basis for denial of the License by Chapters 4.14 through 4.50, or finds in writing that the applicant does not satisfy any requirement applicable to the enterprise for which application is made established by Chapters 4.14 through 4.50; or,

(e) The Chief of Police finds in writing that when the applicant or enterprise is a "contractor," as that term "contractor" is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, the applicant has failed to provide sufficient proof, as determined by the Chief of Police, that the applicant is licensed to engage in the business as a contractor, by the State of California, Contractors' State License Board, and that the license is presently valid, effective, not suspended, and in good standing.

If an application does not show on its face a basis for denial, the Chief of Police may, in his or her sole discretion, issue a Temporary Special Business License for a period not to exceed ninety days, pending processing and investigation of the application and final determination thereof.

**4.10.045 CONDITIONS.** The Chief of Police may issue a Special Business License upon such conditions relating to method or manner of operation of the enterprise as he or she deems necessary to adequately protect members of the public in their patronage or dealings with the enterprise, or to reduce the incidence, detect the commission of, or identify perpetrators of crime. Such conditions may be imposed at the time a Special Business License is initially issued, upon renewal of the License, or at any time during the term of the License.

Any condition imposed pursuant to the provisions of this Section, whether established at the time of issuance, at the time of renewal or during the term of a Special Business License, shall be embodied, together with the reasons therefor, in a written notice which is served upon the applicant or holder. The condition shall become effective fifteen days following the date of service of the notice thereof except if an appeal therefrom is filed within the time and in the manner prescribed, the condition shall not become effective until the appeal is finally determined.

**4.10.050 CONTENT AND DISPLAY OF LICENSES.** The Special Business License shall contain but not be limited to a complete description of the enterprise, authorized by the License, the name of the enterprise so licensed, the name and address of the owner or owners of the enterprise, the address of each location of the business covered by the License, and any conditions upon which the License is issued. The License shall be conspicuously posted at each location of the enterprise in full public view.

**4.10.055 CHANGES IN STATUS.** During the term of any Special Business License issued hereunder, in addition to the information required by Section 4.02.070, the holder of the License shall file in writing with the Chief of Police any changes in or new locations of the enterprise so licensed. The Chief of Police shall issue an amended License which shows any changed or new locations of the enterprise so licensed.

**4.10.060 RENEWAL OF LICENSES.** Not later than forty-five days prior to expiration of the term of a Special Business License, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the Chief of Police.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding License. The Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate. The Chief of Police shall extend the term of the immediately preceding License during the period of any investigation or examination required in order to determine whether the License should be issued.

The Chief of Police shall act upon the application for renewal not later than thirty (30) days after the date a valid application is filed. The renewed License shall be issued unless:

(a) The Chief of Police finds in writing that one or more of the conditions identified in Section 4.10.040 apply;

(b) The Chief of Police finds in writing that the Licensee has violated any term, condition, requirement, or prohibition imposed by this Chapter, Chapter 4.02, or Chapters 4.15 through 4.58 of Title 4 which are applicable to the License or the

holder, or any administrative regulations promulgated thereunder, or any other applicable law; or,

(c) The Chief of Police finds in writing that one or more conditions applicable to the preceding License have been violated.

**4.10.065 EMPLOYEE PERMITS.** With respect to certain types of enterprises described by Section 4.10.005, protection of the public health, safety and welfare require that personnel retained by the enterprises to perform specified functions or duties be of good moral character, not have been convicted of particular criminal offenses, and, in certain instances, possess minimum skills necessary to insure public safety. Personnel required to possess such minimum qualifications are identified by the provisions of Chapters 4.15 through 4.50. The procedures set forth in this Chapter relating to Employee Permits shall be applicable to all personnel required by Chapter 4.15 through 4.50 to possess minimum qualifications which are subject to review by the Chief of Police.

**4.10.070 PERMIT REQUIRED.** Whenever under the provisions of Chapters 4.15 through 4.50, personnel of a particular enterprise are required to meet minimum qualifications or possess a permit or license, it shall be unlawful for a person to perform the duties or functions specified and unlawful for the holder of a Special Business License to permit the person to perform such duties or functions unless the person has first applied for and obtained an Employee's Permit.

**4.10.075 APPLICATION FILING.** Applications for an Employee's Permit shall be filed in the Office of the City Manager. The City Manager shall receive any fee required for the application, assure that the application is complete, and refer the application to the Chief of Police for processing, investigation, review and action.

**4.10.080 APPLICATION CONTENTS.** The application for an Employee's Permit shall be filed on a form and contain such information as is prescribed by the Chief of Police, including the following:

- (a) The name and current residential address of the applicant;
- (b) The name and address of the business which has retained the services of the applicant for which the Permit is required; and
- (c) A description of the duties or function which the applicant is to perform for the business.

**4.10.085 INVESTIGATION.** The Chief of Police shall conduct such investigation of the background of the applicant for an Employee's Permit as is necessary in order to determine whether the minimum qualifications which have been prescribed are satisfied and as otherwise deemed appropriate. Such investigation shall include the fingerprinting and photographing of the applicant.

**4.10.090 ISSUANCE OF PERMIT.** Except as hereinafter provided, the Chief

of Police shall issue the Employee's Permit within thirty days after the date the application is filed unless he or she finds in writing that the applicant is disqualified for the Permit under regulations prescribed by Chapters 4.14 through 4.50. If the Chief of Police's investigation has not been completed by the date issuance of the Permit is required, but that portion of the investigation which has been completed has disclosed no basis for denial of the Permit, the Chief of Police shall issue a Temporary Employee's Permit, the term of which shall extend no longer than one hundred twenty days from the date of issuance. A Temporary Employee's Permit shall expire upon either the date of expiration of its term, the date of issuance of an Employee's Permit, or the date of service of notice that an Employee's Permit has been denied. While in force and effect, a Temporary Employee's Permit shall otherwise be accorded the same status as an Employee's Permit.

**4.10.095 INCIDENTS OF EMPLOYEE PERMITS.** An Employee's Permit shall not be transferable or assignable from one person to another. The Permit shall contain such information as the Chief of Police requires, including the permit holder's name and address, the name and address of the enterprise or enterprises retaining his or her services for which the Permit is issued, the expiration date of the Permit, a description of the duties or functions which the Permit authorizes to be performed, and a physical description of the Permit holder.

The holder of an Employee Permit shall carry same on his or her person at all times services authorized by the Permit are being performed, and shall display the Permit for inspection upon request by any peace officer.

Applications for renewal shall be filed, processed and Permits issued in the manner and pursuant to the standards and procedures prescribed by Sections 4.10.075 through 4.10.090.

## **Article 2 Denial and Revocation**

**4.10.100 GROUNDS FOR DENIAL - LICENSES.** The Chief of Police shall deny an initial application for a Special Business License if written findings described by Subdivisions (a), (b), (c), (d), or (e), in Section 4.10.040 are made.

The Chief of Police shall deny an application for renewal of a Special Business License if any of the written findings described by Section 4.10.060 are made.

**4.10.105 GROUNDS FOR DENIAL - PERMITS.** The Chief of Police may deny an initial application for or application for renewal of an Employee Permit if the Chief of Police finds in writing that the applicant therefor is disqualified for the Permit under regulations prescribed by Chapters 4.15 through 4.50.

**4.10.110 METHOD OF DENIAL.** A denial of an initial application or application for renewal of either a Special Business License or Employee Permit by

the Chief of Police shall be in writing, with the reasons stated therefor. Written notice of the denial, together with a copy of the provisions of this Chapter and any provisions of Chapters 4.15 through 4.50 which are applicable to the License or Permit, shall be served upon the applicant pursuant to the provisions of Section 4.02.080.

Denial of an initial application or application for renewal of a Special Business License shall prohibit operation of the enterprise at any location within the City.

With respect to denial of an application for renewal of a Special Business License or Employee Permit or termination of a Special Business License pursuant to Section 4.02.070, the License immediately preceding Special Business License or the Permit immediately preceding the Employee Permit shall be deemed to be in full force and effect for a period of fifteen days following the date of service upon the applicant of the notice of denial or termination. In the event the applicant files an appeal from the denial or termination in the manner and within the time prescribed by Section 4.10.115, the immediately preceding Special Business License or Employee Permit shall continue in full force and effect during the pendency of the appeal, until the date of final decision by the appellate authority.

**4.10.115 APPEALS.** The holder of a Special Business License or Employee Permit or applicant therefor may file an appeal from the following:

(a) The denial of an initial application for or application for renewal of a Special Business License or Employee Permit pursuant to the provisions of Sections 4.10.100 or 4.10.105;

(b) The imposition of conditions at the time of issuance of an initial or renewed Special Business License or during the term thereof, pursuant to the provisions of Section 4.10.045; or

(c) The termination of a Special Business License as a result of a change in ownership, pursuant to the provisions of Section 4.02.070.

Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the Chief of Police not later than fifteen days after the date of service by the Chief of Police of the notices prescribed by Sections 4.02.070, 4.10.045 or 4.10.110, as the case may be. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which complaint is made shall be deemed to have been waived.

**4.10.120 APPEAL HEARING.** Not later than thirty (30) days following the date of filing an appeal within the time and in the manner prescribed by Section 4.10.115, the Hearing Authority shall conduct a hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date and place of the hearing shall be served upon the applicant not later than ten days preceding the date of the hearing.

During the hearing, the burden of proof shall be upon the Chief of Police. The provisions of the California Administrative Procedure Act (commencing at Section 11500 of the Government Code) shall not be applicable to such hearing; nor shall formal rules of evidence in civil or criminal judicial proceedings be applicable. At the conclusion of the hearing, the Hearing Authority shall prepare a written decision which either grants or denies the appeal, and contains findings of fact and conclusions. Notice of the written decision, including a copy thereof, shall be filed with the Chief of Police and served upon the appellant not later than ten (10) days following the date on which the hearing is closed.

**4.10.125 FINALITY OF DETERMINATION.** A decision by the Hearing Authority pursuant to Section 4.10.120 shall become final fifteen (15) days following the filing and service thereof unless review of the decision by the City Council is requested either by the Chief of Police or appellant. Such review may be requested by filing with the Clerk of the City Council a written request for review not later than fifteen (15) calendar days following the date of service of the Hearing Authority's decision. The request for review shall state in detail the reasons therefor and error alleged in the Hearing Authority's decision, and shall have attached thereto a copy of the decision.

**4.10.130 REVIEW BY CITY COUNCIL.** Upon receipt by the Clerk of the request for review, a hearing shall be scheduled promptly before the City Council but no later than forty-five (45) calendar days following the date of filing of the notice of appeal. The City Council shall be authorized to deny the introduction of evidence and decide the matter after oral argument presented during the hearing, or to admit supplementary evidence with respect to challenges or particular findings, or reject the findings and conclusions and conduct a de novo hearing. The determination by the City Council granting or denying the appeal shall be final, and shall be accompanied by findings of fact and conclusions, which may consist of an adoption by reference of those by the Hearing Authority. Pursuant to granting an appeal, the City Council shall be authorized to order the issuance of a license or permit upon such terms and conditions as in the discretion of the City Council are deemed to be necessary and appropriate.

**4.10.135 GROUNDS FOR REVOCATION AND SUSPENSION - LICENSES.** Any Special Business License issued pursuant to this Chapter may be suspended for not longer than one year or revoked during its term if the Chief of Police finds in writing that one or more of the following grounds exist:

(a) That information in the latest application was untrue as provided in Section 4.10.040(b);

(b) That the Chief of Police has acquired information supporting a finding that one of the persons listed in Section 4.10.040(c) has a new criminal conviction or a criminal conviction previously undisclosed;

(c) That the holder of the License has violated one or more conditions

imposed pursuant to Section 4.10.045; or

(d) That the holder of the License has violated any term, condition or requirement or prohibition established by this Chapter, Chapter 4.02, or Chapters 4.5 through 4.54 which are applicable to the License or the holder, or any administrative regulation promulgated thereunder, or any other applicable law.

**4.10.140 GROUNDS FOR REVOCATION AND SUSPENSION - PERMITS.**

Any Employee Permit issued pursuant to this Chapter may be suspended for not more than one year or revoked during its term if the Chief of Police finds in writing the existence of grounds for revocation prescribed by Chapters 4.15 through 4.50.

**4.10.145 METHOD OF REVOCATION.** The Chief of Police may commence proceedings for the suspension or revocation of a Special Business License or Employee Permit by issuing a written notice of suspension or revocation. The notice shall state the reasons for suspension or revocation and shall be served, together with a copy of the provisions of this Chapter and any provisions of Chapters 4.15 through 4.50 which are applicable to the License or Permit, upon the holder of the License or Permit. Except as provided below, the suspension or revocation shall become effective fifteen days after the date of service unless the holder files an appeal within the time and in accordance with the provisions of Section 4.10.150. If such an appeal is filed the suspension or revocation shall not, except as provided below, become effective until a final decision on the appeal is issued.

A Special Business License or Employee Permit may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal pursuant to the commencement of proceeding for the penal suspension or revocation of the License or Permit, if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the License or Permit. In the event the Chief of Police orders a temporary suspension, the notice of suspension or revocation shall be delivered personally to each place of business licensed or to which the Permit relates, served upon the Licensee or Permittee, and shall contain the following:

- (a) The finding justifying the temporary suspension;
- (b) The time, date and place at which the Licensee or Permittee may appear in advance of the commencement of the temporary suspension for the purpose of responding to the Chief of Police to the charges in the notice; and
- (c) The time and date on which the temporary suspension commences, which shall not be earlier than twenty-four hours following the time and date of delivery of the notice.

**4.10.150 APPEAL OF SUSPENSION OR REVOCATION.** Within fifteen (15) days following the date on which the notice of suspension or revocation is served, the holder of the Special Business License or Employee Permit may file a written

appeal at the office of the Chief of Police stating the specific reasons therefor and grounds asserted for relief. If such an appeal is not filed within the time and in the manner prescribed above, the right to review of the suspension or revocation shall be deemed to have been waived.

A hearing on such appeal shall be conducted by the Hearing Authority within (30) days of the filing of such a notice of appeal. Notice of the time, date, and place of the hearing shall be served upon the appellant not later than ten (10) days before the commencement thereof. The burden of proof shall be upon the Chief of Police. The hearing shall be conducted in the manner and a decision shall be issued and served as prescribed by Section 4.10.120. The decision shall become final as prescribed and be subject to review by the City Council at the instance of either the Chief of Police or appellant, pursuant to the procedure for review prescribed by Section 4.10.125. Any review by the City Council shall be scheduled, conducted in the manner, determined and have the effect prescribed by Section 4.10.130.

**4.10.155 EFFECT OF REVOCATION OR SUSPENSION.** The revocation of a Special Business License or Employee Permit shall terminate the right of the holder of the License or Permit to engage in the enterprise authorized by the License or perform the service authorized by the Permit, as the case may be, anywhere within the City for a period of five (5) years following the effective date of revocation. At the conclusion of such period, the former holder may file a written application for issuance of a new License or Permit with City Manager. Upon investigation by the Chief of Police and a new recommendation that must be reviewed by the City Council, the License or Permit may be granted or denied by the City Council. The City Council may, in its sole discretion, grant or deny the application pursuant to such terms and conditions as it may prescribe, and may, in addition to other matters, consider factors relating to the rehabilitation of the applicant in making its determination.

In the event of revocation of a Special Business License, neither the spouse, domestic partner, child, brother, sister or parent of the holder of the revoked License, nor a person possessing an ownership interest in the enterprise for which the License was revoked or who was an employee thereof, shall be entitled to issuance of a Special Business License for the enterprise except upon filing and review of a new written application filed with City Manager, investigation by the Chief of Police, and a new recommendation of the Chief of Police that must be reviewed by the City Council. The Chief of Police may recommend grant of the application to the City Council with such conditions in order to ensure that the person whose conduct constituted the basis for the revocation does not exercise any control or influence over the enterprise or the person to whom the license is issued or the Chief of Police may recommend denial of the application. The City Council may deny the application or grant it with such conditions, in its sole discretion, it deems necessary to protect the public health, safety, and welfare.

The suspension of a Special Business License or Employee Permit shall terminate the right of the holder of the License or Permit to engage in the enterprise

authorized by the License or perform the service authorized by the Permit, as the case may be, anywhere within the City for a period of up to one (1) year following the effective date of the suspension. At the conclusion of the suspension, the license or permit is subject to the normal applicable renewal process.

### Article 3

#### Additional Special License Requirements

##### Division 1 -- Dances

**4.10.300 DEFINITIONS.** As used in this Division the following terms shall be ascribed the following meanings:

(a) "Dance club" means any club or association of persons which conducts dancing for its members or bona fide guests more often than once a month, and to which the public is not admitted.

(b) "Club dance" means any dance held by a dancing club.

(c) "Public dance" means a gathering of persons in or upon any premises where dancing is permitted with or without charge therefor, and to which premises the public is admitted.

(d) "Public dance hall" means a place where dancing is conducted, whether for profit or not for profit, and at which the public is allowed to dance, with or without charge.

**4.10.305 LICENSE REQUIRED.** No person shall operate a public dance, club dance, dancing club or a public dance hall in the City unless under and by authority of a valid, unexpired and unrevoked Special Business License issued pursuant to the provisions of this Chapter and Division authorizing public dances, club dances, a dance club, or public dance hall. In addition, such business is also required to apply for and obtain a Conditional Use Permit from the City Planning Department.

**4.10.310 ISSUANCE.** The Chief of Police shall issue the Special Business License unless, in addition to the grounds prescribed by Section 4.10.040, the City Planning Department finds in writing that it cannot make the appropriate findings and mitigation measures to justify the issuance of the Conditional Use Permit for the proposed club dance or dancing club.

**4.10.315 HOURS.** The Chief of Police may grant written permission for any dance hall, public dance or club dance to remain open between two a.m. and six a.m. on each New Year's Day. With the foregoing exception, and except as provided below, it shall be unlawful for the owner, operator, proprietor or sponsor of a public dance, club dance or public dance hall to authorize or conduct dancing at any time between the hours of two a.m. and twelve noon.

The City Council finds that the crime of operating a motor vehicle while under the influence of alcohol occurs with serious frequency at and immediately following two a.m., when bars close. For the purpose of reducing the incidence of such crime by delaying the departure of intoxicated persons until they have sobered, the Chief of Police shall, upon written request, issue or amend a Special Business License for a public dance, club dance or public dance hall, or issue written permission if no such License is required, authorizing the conduct of dancing between two a.m. and four a.m., if the Chief of Police finds the following:

(a) That the establishment where the dancing is conducted sells alcoholic beverages for on-site consumption in compliance with a license so authorizing issued by the California Alcoholic Beverage Control Board;

(b) That the establishment where the dance is conducted will remain unlocked and available for routine and special inspections by law enforcement authorities during the extended dancing hours;

(c) That no alcoholic beverages are either sold or consumed on the premises during the extended dancing hours; and

(d) That the establishment where the dancing is conducted serves, during the extended dancing hours, a sit-down or buffet meal which is either prepared in an on-site kitchen or provided by a catering service.

The above requirements shall constitute on-going conditions of the authorization to conduct dancing during the extended hours, conditions of any Special Business License which has been issued, and the violation thereof shall constitute grounds for revocation of the permission and of any License.

**4.10.320 EXEMPTION.** Dances held by fraternal organizations, lodges, veterans' organizations, church groups, farm associations, for the members thereof or bona fide guests by schools for the students thereof, or by student groups under the supervision and control of the school authorities, shall be conducted in compliance with Section 4.10.315, but may be conducted without a Special Business License and shall not otherwise be subject to the provisions of this Division.

## **Division 2 -- Poolhalls**

**4.10.330 LICENSE REQUIRED.** No person shall operate a poolhall without possessing a valid, unexpired and unrevoked Special Business License authorizing the poolhall issued pursuant to the provisions this Chapter and Division.

**4.10.335 POOLHALL.** As used in this Division, the term "poolhall" shall mean any place where one or more billiard, pool or combination tables are maintained, and where a charge is made for use of such tables by members of the general public.

**4.10.340 MINORS PROHIBITED.** Except as hereinafter provided, it shall be

unlawful for an operator of a poolhall to permit any person who is under the age of eighteen years to be present in a poolhall at a time when pool or billiards are being played; and unlawful for a person under the age of eighteen years to be present in a poolhall at a time when pool or billiards are being played.

A person who is under the age of eighteen years may be present in a poolhall at a time when pool or billiards are being played if:

(a) The person is accompanied in the poolhall by his or her parent or legal guardian; or

(b) A written consent signed by the parent or legal guardian authorizing such presence is filed with the operator of the poolhall.

### **Division 3 -- Movie and Television Productions**

**4.10.350 PURPOSES.** It is not uncommon for motion picture productions to necessitate or otherwise result in the disruption of motor vehicle traffic, the unusual utilization of public facilities, the employment of actual or potentially dangerous explosives or other activity which could endanger public safety, the creation of noise which disturbs the public quiet or convenience, the attraction of crowds of sightseers, or other circumstances which require the commitment of public resources in order to ensure adequate protection of the health, safety and welfare of the community.

The purposes of this Division are to provide for the licensing of motion picture productions in order to ensure that necessary public resources are provided at the times and in the manner required to protect the health, safety and welfare; that the Licensee bears the cost of such public resources; and that the motion picture productions are otherwise conducted under conditions and in a manner which avoids risk to the health, safety or welfare of the community.

**4.10.355 DEFINITIONS.** As used in this Division, the following terms shall have the following meaning:

"MOTION PICTURE PRODUCTION". The terms "Motion Picture Production" shall mean and include any activity attendant to staging or filming or videotaping of commercial motion pictures or television shows, programs, or advertising.

"STILL PHOTOGRAPHY". The terms "Still Photography" mean and include all activity attendant to staging or making commercial still photographs.

**4.10.360 CITY MANAGER.** The City Manager or his or her designee is charged with the responsibility of administering the regulations imposed by this Division, and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing motion picture productions, promulgate administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to motion picture productions and the issuance and administration of Special Business Licenses therefor, as are vested in the Chief of Police under Chapter 4.02, Sections 4.02.070, 4.02.085, 4.02.100 and 4.02.105; and Chapter 4.10, Sections 4.10.000 through 4.10.155. Any reference to the "Chief of Police" shall be deemed to be a reference to the City Manager or his designee in relation to motion picture productions.

**4.10.365 LICENSE REQUIRED.** No person shall use any public or private property, facility or residence within the City for a motion picture production unless under and by authority of a valid, unexpired and unrevoked Special Business License authorizing the motion picture production issued pursuant to the provisions of Chapter 4.10 and this Division.

**4.10.370 EXCEPTIONS.** The provisions of this Division shall not be applicable to the following:

(a) Reporters, photographers or cameramen in the employ of a newspaper, news service, television station or similar entity engaged in the on-the-spot recording of news events concerning those persons, scenes or occurrences which will be published, telecast or broadcast;

(b) Any motion picture production at a studio located within the City;

(c) Commercial still photography.

**4.10.375 PROCESSING OF APPLICATION.** Upon receipt of a fully completed application, the City Manager shall provide copies thereof to the Chief of Police, the Chief of any Fire Protection District having jurisdiction over the geographical territory in which the motion picture production is to occur, and any other official whose jurisdiction or authority would be affected by the motion picture production. Each of these officials shall determine whether, with regard to their specific areas of responsibility, any conditions are necessary in order to ensure that the proposed motion picture production does not endanger the public health or safety, whether the commitment of any public resources (including staffing) is necessary in order to minimize disruption caused by or risk to the public health or safety resulting from the motion picture production, and, if so, the estimated cost thereof. Each such official shall submit to the City Manager within fifteen (15) calendar days following the date of filing of a completed application his or her written findings, determinations and requirements.

**4.10.380 ISSUANCE.** Notwithstanding the provisions of Section 4.10.040, the City Manager shall act upon the application not later than thirty (30) calendar days following the date of filing of the application, and the provisions of Section 4.10.040(c) shall not constitute grounds for denial of a Special Business License to conduct a motion picture production.

The City Manager shall issue the Special Business License within thirty

calendar days after the date on which the application is filed unless, in addition to the grounds prescribed by Section 4.10.040, either the Director of Public Works, the Chief of Police or the Chief of any Fire Protection District with jurisdiction over the territory in which the motion picture production is proposed finds in writing that the production would constitute a hazard to public safety, and that there are no conditions upon which the License could be issued which would eliminate the hazard.

**4.10.385 CONDITIONS.** Pursuant to the provisions of Section 4.10.045, the City Manager may issue a Special Business License authorizing a motion picture production upon conditions which relate to the following:

(a) The time, place or manner of conducting the motion picture production, for the purpose of reducing disruption of traffic, disruption of public services, disruption of the public peace or quiet, or the minimization of any hazard to the public safety which could result from the production;

(b) The deposit of such cash amounts as may be necessary to cover the costs of any public resources (including personnel) required to be provided by the City or any Fire Protection District with jurisdiction over the territory in which the production is proposed, required in order to facilitate the production or reduce the disruption of traffic, public peace and quiet or safety hazards arising therefrom;

(c) If the motion picture production involves a potential risk of a safety hazard to the public, a requirement that the Licensee enter into an agreement indemnifying the City and any Fire Protection District with jurisdiction over the area where the production will occur, and, in their capacities as such, their officers, employees and agents, against any liability which may arise out of or result from the production, secured by liability insurance in such amount as is required by the Risk Management Office of the Department of Personnel Management and in such form and by such an insurer as may be required by the City Counsel.

**4.10.390 DISRUPTION OF PRODUCTION.**

(a) No person, after first being warned to cease the conduct, shall engage in conduct intentionally designed to disrupt motion picture or television production undertaken pursuant to a license issued under the authority of this chapter.

(b) For purposes of this section conduct which disrupts motion picture or television production includes, but is not limited to:

(1) Creating or causing audible interference to the recording of sound;

(2) Interfering with the ability of a production to achieve consistent light levels by shining or reflecting light onto a set or at a camera or by utilizing some other artificial means to adversely affect lighting;

- (3) Interfering with the entrance or egress of production equipment or personnel;
- (4) Placing any obstacles at any location where production is occurring.

#### **Article 4 Itinerant Food Vendors**

**4.10.400 LICENSE REQUIRED.** No person shall operate lunch wagons, ice cream wagons or any other vehicle for the sale of food upon the streets within the City for the purpose of selling food within residential neighborhoods or commercial centers, unless under and by authority of a valid, unexpired and unrevoked Special Business License authorizing such activity issued pursuant to the provisions of this Chapter and this Article.

Licensees shall comply with the prohibitions contained in Section 4.54.020.

**4.10.405 DEFINITION – “ITINERANT FOOD VENDOR”.** An itinerant food vendor is any person who sells food from a lunch or ice cream wagon, cart, or other vehicle while parked in residential neighborhoods or commercial centers.

**4.10.410 EMPLOYEE PERMIT REQUIRED.** No person shall, as an employee or other person performing services for an owner or proprietor, engage in Itinerant Food Vending without possessing a valid, unexpired and unrevoked Employee Permit issued pursuant to the provisions of this Chapter and this Article.

**4.10.415 APPLICATION FOR PERMIT.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to provide services identified by Section 4.10.400 shall contain a list of each conviction of the applicant, plea of guilty or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged and the offense of which the applicant was convicted.

**4.10.420 ISSUANCE OF PERMIT.** Upon receipt of an application for an Employee Permit to perform services as an Itinerant Food Vendor, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit unless he or she finds pursuant to Section 4.10.090 any of the following:

- (a) That the application fails to contain information required by the Chief of Police or Section 4.10.415, or is otherwise incomplete;
- (b) That information contained in the application is false or otherwise inaccurate; or
- (c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the

imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would not perform his or her duties in a law-abiding manner or in a manner which does not subject patrons to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 482(a).

**4.10.425 REVOCATION OF PERMITS.** An Employee Permit may be suspended or revoked pursuant to Section 4.10.140 upon any of the following grounds:

- (a) Violation of any of the duties, requirements or prohibitions contained in this Article;
- (b) Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to Section 4.02.085;
- (c) Misrepresentation of a material fact contained in the application; or
- (d) That since issuance or renewal of the Permit the Chief of Police has acquired information supporting a finding under Section 4.10.420(c) in relation to the holder of the Permit.

## CHAPTER 4.15

### TAXICABS

#### Sections:

- 4.15.000 Purposes.
- 4.15.005 Definitions.
- 4.15.010 Application of Chapter.
- 4.15.015 Licenses and Permits Required.
- 4.15.020 Owner Operators.
- 4.15.025 Term of License.
- 4.15.030 Equipment Standards, Certificate, and Inspection.
- 4.15.035 Taximeter Accuracy and Certificate.
- 4.15.040 Rates and Charges.
- 4.15.045 Displays within Taxicabs.
- 4.15.050 Taxicab Markings and Identification.
- 4.15.055 Taxicab Equipment.
- 4.15.060 Passenger Services.
- 4.15.065 Administrative Regulation of Practices.
- 4.15.070 Duties of Special Business License Holders.
- 4.15.075 Specific Requirements for Taxicab Business -  
Special Business License.
- 4.15.080 Applications for Special Business Licenses.
- 4.15.082 Issuance or Renewal of Special Business Licenses.
- 4.15.085 Contents of Licenses - Supplementary Information.
- 4.15.090 Applications for Employee Permits.
- 4.15.095 Issuance or Renewal of Employee Permit.
- 4.15.097 Employee Permit Void Upon Termination of  
Employment.
- 4.15.099 Employee Permit - Controlled Substance and Alcohol  
Testing, Reporting Test Results.
- 4.15.100 Revocation or Suspension of Special Business  
Licenses.
- 4.15.105 Revocation or Suspension of Employee Permits.

**4.15.000 PURPOSES.** Taxis are an integral component of the public transportation system within the City of Elk Grove. They provide vital and necessary transportation services to the local and traveling business community, tourists, the elderly and handicapped, and others. Unethical business practices, deception of the traveling public, criminal conduct, or conditions which threaten the safety of passengers would damage the image of the City, impair tourism and harm the economic development and well being, deprive the public of vitally necessary transportation, require the commitment of inordinate financial resources to law enforcement, and otherwise be detrimental to the health, safety and welfare of the residents of the City.

Pursuant to the provisions of Section 5353(g) of the Public Utilities Code and Section 53075.5 of the Government Code, the purposes of this Chapter are to insure that the taxi industry delivers transportation services to the public in a lawful, ethical, safe and convenient manner for the protection and promotion of the health, safety, welfare and convenience of the residents of the City.

**4.15.005 DEFINITIONS.** Unless the provision or the context otherwise requires, the definitions set forth in this Section govern the construction of this Chapter 4.14.

(a) "Taxicab" -- shall mean every motor-propelled vehicle, except sight-seeing and inter-urban buses, which is designed for carrying not more than eight persons excluding the driver, which is used solely or mainly for the transportation of passengers for compensation over the public streets of the City, irrespective of whether the operations extend beyond the boundaries of the City, and between such points and over such route as may be directed by the passenger.

(b) "Taximeter" -- shall mean and embrace any instrument or device attached to a vehicle and designed or intended to measure mechanically the distance traveled by such vehicle, to record the time the vehicle is in waiting, and to indicate upon such record by figures or designs the fare to be charged in dollars and cents.

(c) "Taxicab Business" -- shall mean the practice of owning or possessing an ownership interest in one or more taxicabs or providing direction, management or control, for the purpose of providing, assisting in the provision of, or coordinating the provision of taxicab services to members of the general public.

**4.15.010 APPLICATION OF CHAPTER.** Except as otherwise specifically provided, the provisions of this Chapter and Chapter 4.10 shall not apply to the operation of taxicabs transporting passengers: (i) from a point outside the City to a destination within the City; or, (ii) en route from a point outside the City to a destination outside the City.

**4.15.015 LICENSES AND PERMITS REQUIRED.** Except as provided by Section 4.15.010, within the City: no person shall operate or conduct a Taxicab

Business unless under and by authority of a valid, unexpired, and unrevoked Special Business License authorizing such Taxicab Business issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.15; and, no person shall operate a taxicab without a valid, unexpired, and unrevoked Employee Permit issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.15.

**4.15.020 OWNER OPERATORS.** A person who owns or leases as lessee or possesses another ownership interest in a taxicab and who operates the taxicab, shall be required to qualify for and obtain an Employee Permit, and, unless the taxicab is covered by a Special Business License issued to another person, a Special Business License.

**4.15.025 TERM OF LICENSE.** The term of a Special Business License authorizing a Taxicab Business, and an Employee Permit, shall be as provided in Section 4.02.080.

**4.15.030 EQUIPMENT STANDARDS, CERTIFICATE, AND INSPECTION.**

(a) A taxicab shall be in compliance with applicable equipment standards provisions of the California Vehicle Code or any administrative regulations pertaining to safety issued by the Chief of Police pursuant to the provisions of Section 4.02.085.

(b) The holder of a Special Business License shall provide to the Chief of Police for each taxicab a State of California certificate of compliance or other writing, issued by a State of California certified examiner or examiners, dated not more than twelve months preceding the date of application or renewal of the License, whichever is applicable, and evidencing that the taxicab complies with prevailing lamp and brake equipment standards as provided in paragraph (a) of this Section. The certificate shall be maintained within the taxicab and shall be available for inspection upon request by any authorized representative of the City at any time. The Chief of Police shall accept (in lieu of a State of California certificate of compliance or other writing, issued by a State of California certified examiner or examiners), a certificate or other writing issued by the City or County of Sacramento, dated not more than twelve months preceding the date of application or renewal of the Special Business License, whichever is applicable, verifying compliance with any and all vehicle safety standards enforced by the City or County of Sacramento which are also enforced by the City of Elk Grove.

(c) It shall be unlawful for the holder of an Employee Permit to operate, and unlawful for the holder of a Special Business License to authorize, direct or otherwise allow operation of a taxicab which is not in compliance with paragraph (a) of this Section; or, which is not covered by an unexpired certificate required by paragraph (b) of this Section. When in possession and control of a taxicab, it shall be unlawful for the operator to fail to provide, upon request, to an authorized representative of the City an unexpired certificate as required by this paragraph (b) of this Section.

(d) The Chief of Police shall, in the Chief of Police's sole discretion, have the authority to require inspections of taximeters, lamps, brakes, and emission control, or other vehicle equipment, to verify compliance of the taxicab with applicable provisions of the California Vehicle Code, this Chapter, or any administrative regulation pertaining to safety issued by the Chief of Police pursuant to the provisions of Section 4.02.085. If it is found that the taxicab or equipment is in such condition that its operation is in violation of the State Vehicle Code, the Chief of Police shall, in accordance with Section 24004 of the State Vehicle Code, prohibit the use of such taxicab, and the holder of the Special Business License Permit and the holder of the Employee Permit shall not use such taxicab, until such time as it has been brought into compliance with the State Vehicle Code. Continued use of the vehicle while in such violation of the State Vehicle Code shall be grounds for suspension and revocation of the Special Business License.

#### **4.15.035 TAXIMETER ACCURACY AND CERTIFICATE.**

(a) Each taximeter utilized in a taxicab shall at all times be of a type authorized by, comply in relation to accuracy with, and be operated and maintained in compliance with any and all statutes and administrative regulations of the State and any administrative regulations issued by the Chief of Police pursuant to the provisions of Section 4.02.085 and Section 4.15.065. The City will accept a certificate of inspection and testing of taximeters performed by the City or County of Sacramento and may demand a copy of such current inspection certificate. However, taximeters utilized in a taxicab shall, at any time, be subject to inspection and testing by the City or its delegate to determine compliance with the requirements of this Section.

(b) It shall be unlawful for any person holding an Employee Permit to operate a taxicab, and unlawful for any person holding a Special Business License to authorize, direct or otherwise allow operation of a taxicab, containing a taximeter which is not in compliance with or is utilized in violation of any and all statutes and administrative regulations of the State and any administrative regulations issued by the Chief of Police.

(c) The holder of a Special Business License shall provide to the Chief of Police for each taxicab a certificate or other written evidence issued by Sacramento County Department of Weights and Measures, or issued by a State of California registered device repairman, indicating that the taximeter has been tested not more than twelve months preceding the Special Business License application or renewal date, whichever is applicable, and certifying the accuracy of the taximeter attached to the taxicab.

**4.15.040 RATES AND CHARGES.** Each person holding a Special Business License shall file with the Chief of Police a written schedule, as prescribed by the Chief of Police, showing all rates and charges to be imposed in connection with services offered by taxicabs covered by the License. No rate or charge shown on such a filed schedule shall be increased, and no rate or charge not shown on such

schedule shall be imposed, earlier than the day following the date upon which a new schedule of rates and charges showing the increase or additional rate or charge is filed with the Chief of Police. No rate or charge not shown on such schedule shall be imposed. Each change in a rate or charge shall be the subject of a new schedule which comprehensively shows all rates and charges, and the filing of supplementary schedules or amendments to schedules which do not show all rates and charges shall not constitute compliance with the requirements of this Section.

Each person holding a Special Business License or Employee Permit shall file with the Chief of Police, within ten calendar days following the receipt of written request by the Chief of Police, such written explanation of rates and charges identified in a filed schedule as is requested by the Chief of Police.

It shall be unlawful for any holder of an Employee Permit to charge or impose, and unlawful for the holder of any Special Business License to authorize, direct, or otherwise allow the charging or imposition of, a rate or charge for service in excess of those prescribed by or of a type which is not shown on a schedule which has been filed with the Chief of Police, and to charge or impose any rate from that schedule prior to the day after such schedule has been filed with the Chief of Police.

**4.15.045 DISPLAYS WITHIN TAXICABS.** It shall be unlawful for any person holding an Employee Permit to operate a taxicab, and unlawful for any person holding a Special Business License to authorize, direct, or otherwise allow operation of a taxicab, unless there is displayed within the taxicab in a location which may be viewed by any and all passengers, the following:

- (a) A copy of the valid, unexpired and unrevoked Employee Permit held by the operator of the taxicab;
- (b) A rate schedule identical to the rate schedule filed with the Chief of Police pursuant to Section 4.15.040 showing all rates and charges which may lawfully be levied or imposed; and
- (c) The register display of any taximeter which is utilized.

**4.15.050 TAXICAB MARKINGS AND IDENTIFICATION.**

(a) Each taxicab shall be equipped with a top light containing light or lights which are affixed to the roof of the taxicab. The top light shall be illuminated in non-daylight hours when the taxicab is available for hire. The word "taxicab", "taxi", "cab", the business name of the owner, or the words identifying the vehicle as a taxicab shall be visible on the top light.

(b) Each taxicab covered by a Special Business License shall be painted with a uniform color scheme applicable to all taxicabs covered by the License and a business shall have the exclusive right to the color scheme used by its taxicabs in the jurisdiction of the County of Sacramento. The Chief of Police can review and require changes to any color scheme if he or she finds that such color scheme is too

similar to that of another taxicab business and is likely to mislead or confuse the public as to the proper operator of a taxicab.

(c) There shall be displayed on each exterior side of a taxicab in full view of prospective customers the following:

(1) The business name and telephone number of the holder of the Special Business License for the taxicab, in letters not less than two inches in height and width; and

(2) A rate schedule in the following format:

FIRST MILE: (fee)\*

ADD'L MILES: (fee/mi.)\*

\*Subject to time clock

All letters and numbers in the first two lines of the above format shall be not less than one-and-one-half inches in height and width. The third line of the above format shall be in letters not less than three-quarters of an inch in height and width. In letters not less than one-and-one-half inches in height and width and adjacent to the schedule required above, any additional types of fees to be charged and the amount of such fees, may be stated. The fees shall be identical to the ones filed with the Chief of Police pursuant to Section 4.15.040.

(d) It shall be unlawful for the holder of any Employee Permit to operate a taxicab, and unlawful for the holder of a Special Business License to authorize, direct, or otherwise allow the operation of a taxicab, which does not comply with the requirements of this Section .

#### **4.15.055 TAXICAB EQUIPMENT.**

(a) Each taxicab shall be equipped with an operative two-way radio dispatch system approved by the Federal Communications Commission for commercial use; and, an operative taximeter which is in compliance with the requirements of Section 4.15.035.

(b) It shall be unlawful for the holder of any Employee Permit to operate a taxicab, and unlawful for any holder of a Special Business License to authorize, direct, or otherwise allow operation of a taxicab, which does not contain an operative radio dispatch system, and a taximeter, as required above in paragraph (a) of this Section.

**4.15.060 PASSENGER SERVICES.** It shall be unlawful for any person who holds an Employee Permit to do, and unlawful for any person who holds a Special Business License to authorize, direct, or otherwise allow the operator of a taxicab to do, any of the following:

- (a) Transport a greater number of passengers in a taxicab than the rated seat capacity of the taxicab;
- (b) Fail to answer all calls received for taxicab services in the order of receipt of the calls;
- (c) Refuse, upon request, to give a passenger of a taxicab a written receipt showing the fare due, and the miles and minutes employed;
- (d) Drive passengers of a taxicab via indirect or circuitous routes for the primary purpose of obtaining higher fares or fees;
- (e) Refuse to provide taxicab service on the basis of the short length of the prospective ride;
- (f) Pick up additional passengers without the prior consent of any passenger who is already in the taxicab;
- (g) Knowingly fail to report to the holder of the Special Business License for the taxicab all property of value left by a passenger in the taxicab within twenty-four hours of discovery of such property;
- (h) Fail to throw the flag of the taxicab's taximeter to the non-recording position at the termination of each and every service;
- (i) Fail to call attention of the passenger of a taxicab to the amount registered on a taximeter at the termination of each and every service; or,
- (j) Throw the flag of a taximeter in a recording position when the taxicab is not actually engaged.

**4.15.065 ADMINISTRATIVE REGULATION OF PRACTICES.** Pursuant to administrative regulations issued under the provisions of Section 4.02.085, the Chief of Police shall be authorized to prohibit specified types and methods of calculating fees or other business practices in connection with the provision of taxicab services, and impose specific duties, obligations or prohibitions in connection with the provision of taxicab services, when the Chief of Police determines that such regulations are necessary to protect the public against deceptive, fraudulent, misleading, discriminatory, or other similar detrimental acts or omissions associated with the delivery of taxicab services.

**4.15.070 DUTIES OF SPECIAL BUSINESS LICENSE HOLDERS.** It shall be the duty and responsibility of each person who holds a Special Business License to:

- (a) Fully advise and inform all operators of taxicabs covered by the License of the provisions of this Chapter, any and all administrative regulations issued hereunder, and any and all conditions upon which the Special Business

License is issued; and,

(b) Direct, control and supervise operators of taxicabs covered by the License for the purpose of identifying, correcting and prohibiting future or repeated violations of the provisions of this Chapter, any administrative regulations issued hereunder, or any conditions upon which the Special Business License is issued.

**4.15.075 SPECIFIC REQUIREMENTS FOR TAXICAB BUSINESS - SPECIAL BUSINESS LICENSES.** Each person who holds a Special Business License shall during the entire term of the License:

(a) Maintain or be associated with an office situated within the geographical boundaries of the City where some person in charge can be contacted in person or by telephone weekdays from 8:00 a.m. to 5:00 p.m.;

(b) Maintain a two-way radio dispatch system approved by the Federal Communications Commission for commercial use which is in contact with all taxicabs covered by the License during all times the taxicabs are in service;

(c) Maintain in full force and effect at no cost to the City a comprehensive automobile and general liability insurance policy in an amount no less than \$350,000 single limit per occurrence; issued by an insurer rated A-VII or better by the A.M. Best's Insurance Guide, or an insurer approved by the City's Risk Manager; naming the City, and in their capacities as such its officers, employees and agents as insureds; covering all losses and damages as specified in this paragraph ; stipulating that the policy will operate as primary insurance and that no other insurance effected by the City or other named insured will be called on to contribute to a loss covered thereunder; and providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the License, without thirty (30) days written notice to the City's Risk Manager from the insurance company prior to the effective date of such cancellation or change in coverage. Such service shall be by registered mail.

Notwithstanding the provisions of Section 4.02.100, violation of this paragraph by the holder of a Special Business License shall constitute a misdemeanor as provided by Section 1.01.190;

(d) Assume the defense of, and indemnify and hold harmless, the City and in their capacities as such, its officers, employees and agents from and against all actions, claims, losses, damages, liability, costs and expenses of every type and description, including, but not limited to, attorney's fees, to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, in whole or in part, the acts or omissions of the Licensee or the Licensee's agents, officers or employees, directly or indirectly arising from the operation of a taxicab. The foregoing is not intended to and shall not be construed to limit any responsibility or liability to which the Licensee may be subjected to under other laws;

(e) In the event of cancellation, expiration, or change in insurance

coverage resulting in non-compliance with paragraph (c) of this Section, the Licensee shall notify the City of the cancellation, expiration, or change within three (3) days after its effective date by submitting a written notice to the City's Risk Manager. The giving of notice as provided herein shall not stay the temporary suspension of the Special Business License pursuant to Section 4.15.100(b), which suspension shall remain in effect until required insurance is reinstated, or as otherwise provided in Section 4.15.100.

In addition to any other requirements of this Chapter and Chapters 4.02 or 4.10, a Special Business License shall not be issued to any person who fails to demonstrate to the satisfaction of the City's Risk Manager fulfillment of the requirements specified in this Section.

**4.15.080 APPLICATIONS FOR SPECIAL BUSINESS LICENSES.** In addition to the matters prescribed by Section 4.10.030 or 4.10.060, as applicable, an application for a Special Business License, or an application for the renewal of a Special Business License, to engage in the Taxicab Business shall contain the following:

(a) The name, business address and telephone number of the applicant, and if the applicant is not a natural person, a copy of the articles of incorporation, by-laws, partnership agreement or other written instrument by which the entity is established;

(b) A description of the manufacturer, model and model year, the vehicle identification number, the state vehicle license number, and the name and address of each person who is a registered owner, possessor of a leasehold interest, and possessor of any other ownership or security interest in each taxicab to be covered by the License;

(c) The serial number of each taximeter to be utilized in a taxicab, as required by Section 4.15.055(a), together with the State vehicle license number of the taxicab to which the taximeter is assigned;

(d) The serial number of each radio system to be utilized in a taxicab, as required by Section 4.15.055(a);

(e) A description of the color scheme by which each taxicab will be identified, as required by Section 4.15.050(b);

(f) A copy of certificates or other writings as required by Sections 4.15.030 and 4.15.035;

(g) A copy of the policy or policies of insurance required by Section 4.15.075(c);

(h) The written schedule of all rates and charges for hire of the taxicab as required by Section 4.15.040;

(i) The address and telephone number, and name of the person responsible for operation of the business office required by Section 4.15.075(a);

(j) The address and telephone number, and name of the person responsible for operation of the radio dispatch system required by Section 4.15.075(b).

**4.15.082 ISSUANCE OR RENEWAL OF SPECIAL BUSINESS LICENSES.**

Upon receipt of an application for a Special Business License, or an application for the renewal of a Special Business License, the Chief of Police shall conduct such investigation pursuant to Section 4.10.035 or 4.10.060 as applicable, and as deemed necessary. The Chief of Police shall issue a Special Business License, or renewal, unless the Chief of Police finds pursuant to Sections 4.10.040 or 4.10.060, as applicable, or unless the Chief of Police finds in writing any of the following:

(a) The applicant or license holder has failed to comply with the requirements specified in Sections 4.14.030; 4.15.035, 4.15.040, 4.15.045, 4.15.050, or 4.15.055;

(b) The applicant or license holder has failed to comply with the requirements specified in Section 4.15.075;

(c) The license holder or applicant has authorized, directed, or otherwise allowed operation of a taxicab for which the insurance coverage required by Section 4.15.075 is not in effect;

(d) The applicant or holder of a license has submitted a false declaration regarding testing for a controlled substance, alcohol, or both, required by this Chapter;

(e) The applicant or license holder has failed to notify the Chief of Police of the termination of employment of the holder of an Employee Permit within three (3) days of such termination;

(f) The applicant or license holder has authorized, directed, or otherwise allowed a person or employee without a valid Employee Permit to operate a taxicab;

(g) The applicant or license holder has failed to comply with any condition, requirement, or prohibition of this Chapter; or that there exists any basis established by Chapters 4.02, 4.10 or this Chapter for the denial or revocation of a Special Business License application or renewal, as applicable.

**4.15.085 CONTENTS OF LICENSES - SUPPLEMENTARY INFORMATION.**

Each Special Business License shall consist of a certificate which identifies the name and address of the applicant, the date of issuance and the date of expiration. Each such License shall have attached thereto a listing of the state vehicle license number, manufacturer, model, model year, vehicle identification number, of each taxicab which the License covers, and the serial number of each taximeter which the

License covers.

During the term of any such License, the holder thereof shall immediately provide in writing to the Chief of Police changes in vehicles and taximeters to be covered by the License.

**4.15.090 APPLICATIONS FOR EMPLOYEE PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to operate a taxicab shall contain the following:

- (a) The number of a valid California driver's license issued to the applicant, and the date of license expiration;
- (b) A statement of whether the applicant's California driver's license has ever been revoked or suspended, and, if so, the reason or reasons for such revocation or suspension;
- (c) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;
- (d) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control of a motor vehicle;
- (e) A declaration by a taxicab employer that the applicant is employed by or has an offer of employment by that employer to operate a taxicab, or a declaration that the applicant is a self-employed independent driver;
- (f) A declaration by a taxicab employer that the applicant who is employed by or has an offer of employment with the employer, or by the applicant if the applicant is a self-employed independent driver, that the applicant has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;
- (g) If the applicant is a self-employed independent driver, test results from the controlled substance (and alcohol for permit renewal) test shall be reported to the Chief of Police in accordance with Government Code section 53075.5 and are to be made a part of the application;
- (h) The name of the taxicab business which the applicant is employed by or has an offer of employment from, or if the applicant is a self-employed independent driver, the name of the taxicab business the applicant is doing business as or leases the taxicab vehicle from;

(i) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

(j) A list of all prescription medicine which the applicant takes on a regular or episodic basis;

(k) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10.

**4.15.095 ISSUANCE OR RENEWAL OF EMPLOYEE PERMIT.** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit or renewal of the Permit pursuant to Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.15.090, or is otherwise incomplete;

(b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;

(c) That information contained in the application is false or otherwise inaccurate;

(d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, the applicant would not operate the taxicab in a law abiding manner or in a manner which does not subject members of the traveling public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a Permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic

violation conviction the applicant would not operate the taxicab in a law abiding manner or in a manner which does not subject members of the traveling public to risk of harm;

(e) That the applicant's California driver's license has been revoked or suspended;

(f) That the applicant is not employed, or has no offer of employment as a taxicab driver, or is not a self-employed independent taxicab driver;

(g) That the applicant has tested positive for controlled substances, (or for permit renewal, controlled substances and alcohol), in accordance with Government Code section 53075.5;

(h) That the applicant refuses or fails to submit to a controlled substance, alcohol test, or both, as required by Government Code section 53075.5; or,

(i) One or more of the grounds for Permit revocation or suspension exists pursuant to Section 4.15.100.

**4.15.097 EMPLOYEE PERMIT VOID UPON TERMINATION OF EMPLOYMENT.** The Employee Permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. If the holder of the Employee Permit is a self-employed independent operator, the Employee Permit shall become void on the date upon which the holder of the Permit no longer owns, or has a leasehold interest in a taxicab vehicle, or when the taxicab operated by the holder of the Permit is no longer covered by the holder of the Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after the occurrence of any of the events described above in this paragraph of Section 4.15.097.

The holder of the Special Business License employing the holder of the Employee Permit, if applicable, shall notify the Chief of Police within three (3) days upon termination of the holder's employment.

**4.15.099 EMPLOYEE PERMIT - CONTROLLED SUBSTANCE AND ALCOHOL TESTING, REPORTING TEST RESULTS.**

(a) (1) All applicants for an Employee Permit shall take and pass with negative test results a controlled substance test, and a controlled substance test and an alcohol test upon renewal of the Employee Permit, and as otherwise required, by this Chapter or Government Code section 53075.5. The test or tests, as applicable, for an Employee Permit shall be taken no more than thirty days preceding the date the application for the Employee Permit is filed, or the date the application for renewal is filed, or the date the application for the renewal is filed if the Employee Permit was allowed to expire.

(2) When test results of a self-employed independent applicant or holder of an Employee Permit are positive for alcohol, a controlled substance, or both, the Chief of Police shall report such results to the taxicab leasing company, if any, on record with the Chief of Police. When test results of an applicant or holder of an Employee Permit, who is employed by or has an offer of employment by a taxicab employer, are positive for alcohol, a controlled substance, or both, the employer shall report such results to the Chief of Police.

(3) Any holder of an Employee Permit whose Employee Permit has been suspended or revoked for positive test results of a controlled substance, alcohol, or both, for a test required by this Chapter or Government Code section 53075.5, shall not be reinstated as a driver of a taxicab or as a Permit holder, nor shall a new Permit be issued, until the requirements for rehabilitation and return-to-duty in accordance with Government Code section 53075.5 are satisfied.

(b) The Chief of Police, upon reasonable suspicion to believe that the holder of an Employee Permit has violated the prohibitions of Government Code section 53075.5 for alcohol, a controlled substance, or both, shall require the holder of such Permit to take a controlled substance, alcohol test, or both, in accordance with Government Code Section 53075.5. Such reasonable suspicion shall be based upon specific, contemporaneous, articulable observations concerning appearance, behavior, speech or body odors of the holder. The observations may include indications of the chronic and withdrawal effects of controlled substances. Alcohol testing may be required if such observations are made during, just preceding, or just after the period of the day that the holder is required to operate the taxicab.

Such reasonable suspicion testing as is required by the Chief of Police shall be taken by the holder of the Permit within five (5) days after the Chief of Police gives notice of the requirement. Notice shall be given to the holder of the Permit, and to the holder's employer if the holder is not self-employed. Notice shall be deemed effective upon depositing the notice in the United States mail, first class, postage pre-paid, and addressed to the holder of the Permit and the holder's employer, if applicable, at the last address on record with the Chief of Police. Notwithstanding the provision of Section 4.10.145 to the contrary, the Chief of Police shall temporarily suspend an Employee Permit effective upon the Chief of Police making a finding in writing pursuant to this Section requiring reasonable suspicion testing and the holder of the Permit fails to take the test. The prior 24 hour notice provision of Section 4.10.145, to the holder of the Employee Permit, shall not be required prior to such temporary suspension. The Chief of Police shall within 24 hours of the commencement of such temporary suspension serve the notice in the manner and as otherwise required by Section 4.10.145 and shall thereafter permit the holder of the Permit to respond to the Chief of Police as required by Section 4.10.145. The temporary suspension shall continue until the holder of the Employee Permit submits to such required testing, or pending expiration of the time for appeal or exhaustion of an appeal pursuant to the commencement of a proceeding for the suspension or revocation of the Permit, whichever occurs first.

#### **4.15.100 REVOCATION OR SUSPENSION OF SPECIAL BUSINESS**

**LICENSES.** A Special Business License shall be revoked or suspended pursuant to the grounds set forth in Section 4.10.135 or upon a finding in writing of one or more of the following grounds: (a) Upon receipt by the Chief of Police of written notice from an insurer of cancellation, expiration or change in insurance coverage resulting in non compliance with Section 4.15.075(c), or, upon receipt of notice from the holder of the Special Business License pursuant to section 4.15.075(e), whichever occurs first; or, that the holder of a Special Business License has operated a taxicab for which the insurance coverage as required by Section 4.15.075(c) was not in effect.

Notwithstanding the provision of Section 4.10.145 to the contrary, the Chief of Police shall temporarily suspend a Special Business License effective upon the Chief of Police making a finding pursuant to this Section 4.15.100(a) in writing. The prior 24 hour notice provision of Section 4.10.145, to the holder of the Special Business License and the place of business thereof, shall not be required prior to such temporary suspension. The Chief of Police shall within 24 hours of the commencement of such temporary suspension serve the notice in the manner and as otherwise required by Section 4.10.145 and shall thereafter permit the holder of the License to respond to the Chief of Police as required by Section 4.10.145. Such temporary suspension shall continue until the Chief of Police receives written notice from an insurer indicating compliance with the requirements of Section 4.15.075(c); or, pending expiration of the time for appeal or exhaustion of an appeal pursuant to a proceeding for the suspension or revocation of the License; whichever occurs first;

(b) The holder of a Special Business License has failed to notify the Chief of Police of cancellation, expiration, or change of insurance as required by Section 4.15.075(e);

(c) The holder of a Special Business License has submitted a false declaration regarding controlled substance, alcohol testing, or both, required by this Chapter;

(d) The holder of a Special Business License has allowed a person, an employee, or holder of an Employee Permit to operate a taxicab knowing that the operator tests positive, as required by Government Code section 53075.5 or this Chapter, for a controlled substance, alcohol, or both;

(e) The holder of a Special Business License has allowed a person or an employee without a valid Employee Permit to operate a taxicab;

(f) The holder of a Special Business License has failed to notify the Chief of Police of the termination of an employee holding an Employee Permit pursuant to Section 4.15.097; or,

(g) Any other failure of the holder of a Special Business License to comply with any condition, requirement, or prohibition of this Chapter or Chapters 4.02 or

4.10; or, a finding of grounds for denial of the License, or the denial of a renewal, pursuant to Section 4.10.100; or, a finding made pursuant to Section 4.15.082.

**4.15.105 REVOCATION OR SUSPENSION OF EMPLOYEE PERMITS.** An Employee Permit shall be revoked or suspended pursuant to Section 4.10.140 upon any of the following findings in writing:

(a) The holder of the Employee Permit has violated any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to Section 4.02.085 or 4.15.065;

(b) The holder of the Employee Permit has misrepresented a material fact contained in the application for the Permit, or renewal;

(c) That since issuance of the Permit, or renewal, the Chief of Police has acquired information supporting a finding prescribed by Section 4.15.095(d) in relation to the holder of the Employee Permit;

(d) That the holder of the Employee Permit operated a taxicab with an invalid, suspended or revoked California driver's license;

(e) That the holder of the Employee Permit has tested positive for any controlled substance, or alcohol, or both, pursuant to a test taken in accordance with Government Code section 53075.5;

(f) That the holder of the Employee Permit, or his or her employer, has submitted a false declaration regarding testing for a controlled substance, or alcohol, or both, pursuant to a test required by Government Code section 53705.5;

(g) The holder of the Employee Permit has operated a taxicab in an unsafe manner without regard for the safety and welfare of passengers, pedestrians, other drivers, or property. Factors to be considered in reaching this finding are that the holder of the Employee Permit has suffered a conviction of one or more moving violations of the California Vehicle Code, or, by conduct which has placed any passenger, motorist, pedestrian, or property at unreasonable or unnecessary risk for physical harm, damage to property, or deceitful or fraudulent practices.

(h) That the holder of the Employee Permit refuses or fails to submit to testing for a controlled substance, alcohol, or both, as required by Government Code section 53075.5 or this Chapter; or,

(i) Any other failure of the holder of the Employee Permit to comply with any duty, condition, requirement, or prohibition of this Chapter or Chapters 4.02 or 4.10; or, a finding made pursuant to section 4.15.095.

## **CHAPTER 4.16**

### **MEDICAL CANNABIS DISPENSARIES**

Sections:

- 4.16.000 Purpose.
- 4.16.010 Special Business License and Employee Permit Required.
- 4.16.015 Notice to Community of Application for Business License.
- 4.16.020 Conditional Use Permit Required.
- 4.16.025 Business Hours of Dispensaries.
- 4.16.030 Prohibited Ancillary Activities.
- 4.16.035 Prompt Removal of Solid Wastes.
- 4.16.040 Required Certifications and Plans.
- 4.16.045 Maintenance of Certifications and Plans
- 4.16.050 Confidentiality of Plans.
- 4.16.055 Applications for Employee Permits.
- 4.16.060 Issuance or Renewal of Employee Permit.
- 4.16.065 Employee Permit Void on Termination.
- 4.16.100 Suspension or Revocation.

**4.16.000 PURPOSE.** The People of the State of California passed Proposition 215, The Compassionate Use Act of 1996, which protects patients and physicians who prescribe marijuana for medical treatment. The Legislature of the State of California passed SB 402 which was designed to provide greater certainty regarding the medical use of marijuana and establishes use procedures and voluntary identification/registration cards to qualified patients. The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the People of the State of California by passing Proposition 215, and the Legislature of the State of California by passing SB 402, have provided for the medical use of marijuana, and with that in mind, the City Council wishes to insure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove. On March 25, 2004, the Elk Grove Planning Commission held public hearings on the proposed amendment to the City Code, and recommended that the City Council approve the proposed amendment. On April 7, 2004, the City Council held a public hearing on the proposed amendment to the City Code, at which time public testimony was taken and duly considered. The City Council finds that the revised Code is consistent with the goals, policies, implementation programs and land use designations specified in the City's General Plan, as required by Government Code Section 65860. The establishment of Medical Cannabis Dispensaries is contemplated by Health & Safety Code sections 11362.5 et seq. Medical Cannabis Dispensaries create adverse secondary effects, including but not limited to, an increase in driving under the influence of marijuana in the community in which they exist, increase illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

**4.16.005 DEFINITIONS.**

(a) "Medical Cannabis Dispensary" means a business enterprise where Qualified Patients or Primary Care Givers receive dispensation of limited doses of medical grade cannabis to use in the alleviation of pain and suffering associated with certain illness.

(b) "Qualified Patient" means a person whose primary care provider has issued a prescription to allow the person to purchase medical grade cannabis for consumption for the principal purpose of alleviating pain and suffering associated with certain serious illness.

(c) "Primary Caregiver" means family member of paid caregiver for a Qualified Patient who is authorized to receive medical cannabis for the purpose of giving doses to the Qualified Patient.

(d) "Confidentiality Plan" means an approved written plan containing policies and procedures of a Medical Cannabis Dispensary intended to assure maintenance of the privacy of Qualified Patients and Primary Caregivers.

(e) "Security Plan" means an approved written plan containing policies and procedures of a Medical Cannabis Dispensary intended to assure the secure handling and storage of cannabis.

**4.16.010 SPECIAL BUSINESS LICENSE AND EMPLOYEE PERMIT REQUIRED.** No person shall operate or conduct a Medical Cannabis Dispensary unless under and by authority of a valid, unexpired, and unrevoked Special Business License authorizing such Medical Cannabis Dispensary issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.16; and, no person shall be employed by a Medical Cannabis Dispensary without a valid, unexpired, and unrevoked Employee Permit issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.16.

**4.16.015 NOTICE TO COMMUNITY OF APPLICATION FOR BUSINESS LICENSE.** At least thirty (30) days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. mail of the applicant's intent to open such a business.

**4.16.020 CONDITIONAL USE PERMIT REQUIRED.** In addition to the general and special business licensing requirements of this Title, each applicant for a Special Business License for a Medical Cannabis Dispensary shall be required to obtain a conditional use permit from the Elk Grove Planning Commission as provided in the City of Elk Grove Zoning Code.

**4.16.025 BUSINESS HOURS OF DISPENSARIES.** The City Council finds that it is not in the public interest for a Medical Cannabis Dispensary to operate before or after normal school hours. A Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.

**4.16.030 PROHIBITED ANCILLARY ACTIVITIES.**

(a) No licensee for a Medical Cannabis Dispensary shall allow any of the following ancillary activities to take place on-site:

(1) The use of cannabis by any person;

(2) The cultivation of cannabis anywhere on the property;

(3) The sale and/or display of drug paraphernalia or any implement that may be used to administer medical cannabis. The licensee shall maintain full compliance with Health & Safety Code sections 11014.5 and 11364 et seq. and Sections 4.54.200 et seq. of this Code.

(4) Alcohol shall not be provided, stored, kept, located, sold, dispensed or used anywhere on the property.

(b) In addition to any other conditions imposed by City Staff in the Conditional Use Permit for the Medical Cannabis Dispensary, the foregoing prohibitions shall also be included in the Conditional Use Permit.

**4.16.035 PROMPT REMOVAL OF SOLID WASTES.** The City Council finds that the conduct of a Medical Cannabis Dispensary generates solid waste in which there is a risk of the presence of cannabis in the waste stream. Every licensee of a Medical Cannabis Dispensary shall provide for removal of all solid waste from the property at least twice each day the dispensary is in operation at times at least three (3) hours apart. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.

**4.16.040 REQUIRED CERTIFICATIONS AND PLANS.** In addition to the requirements of Section 4.10.030 for an application for a Special Business License, an application for a Medical Cannabis Dispensary shall include all of the following additional certifications and plans a copy of which shall be maintained by the City:

(a) List of Cannabis Suppliers: The applicant shall list the names and addresses of all suppliers of cannabis products;

(b) Certification of No Interstate Commerce: The applicant shall certify that cannabis dispensed for medical purposes is produced within the State of California and has not crossed state lines;

(c) Safety and Security Plan: The applicant shall submit for approval from the Chief of Police a written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.;

(d) Confidentiality Plan: The applicant shall submit for approval from the Chief of Police a written Confidentiality Plan for preserving the confidentiality of all Qualified Patients, and Primary Care Givers to whom medical cannabis is dispensed by the licensee.

**4.16.045 MAINTENANCE OF CERTIFICATIONS AND PLANS.**

(a) Copies of Certifications and Plans: During the term of a Special Business License for a Medical Cannabis Dispensary, the licensee shall maintain on the premises a current copy of the approved List of Cannabis Suppliers, the Certification of No Interstate Commerce, the Safety and Security Plan, and the Confidentiality Plan and they shall be made available for inspection by representatives of the City on demand during business hours.

(b) Amendment of Certifications or Plans: At any time during the term of a Special Business License for a Medical Cannabis Dispensary, should there be a proposed change in suppliers of cannabis or a change in any element of the Safety and Security or Confidentiality Plans, the licensee shall file a request with the Chief of Police for an amendment of the license to allow the new or different cannabis

supplier or change in a plan. Upon investigation by the Chief of Police pursuant to Section 4.10.035, the proposed amendments may be granted or denied by the Chief of Police stating in writing the reasons thereof. The approved amended list of suppliers or plans shall be kept on file with the Chief of Police. Appeal of the denial of any proposed amendment of the license will be pursuant to same procedure specified for the denial of an initial application or renewal of a special business license pursuant to Sections 4.10.110 to 4.10.130.

#### **4.16.050 CONFIDENTIALITY OF PLANS.**

The City Council finds that the public interest served in preserving the confidentiality of a Safety and Security Plan for a Medical Cannabis Dispensary and not disclosing the plan to the general public far outweighs the public's interest in disclosure of such Safety and Security Plan.

The City Council finds that there is an important security public interest served in preserving the confidentiality of a Confidentiality Plan for a Medical Cannabis Dispensary by not disclosing the Plan to the general public that far outweighs the public's interest in disclosure of such Confidentiality Plan. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

**4.16.055 APPLICATIONS FOR EMPLOYEE PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to work in a Medical Cannabis Dispensary, shall contain the following:

(a) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;

(b) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control regulated substances;

(c) A declaration by a Medical Cannabis Dispensary employer that the applicant is employed by or has an offer of employment by that employer to work in the Medical Cannabis Dispensary;

(d) A declaration by the Medical Cannabis Dispensary employer that the applicant, who is employed by or has an offer of employment with the employer, has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;

(e) The name of the Medical Cannabis Dispensary business which the applicant is employed by or has an offer of employment from;

(f) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

(g) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10.

**4.16.060 ISSUANCE OR RENEWAL OF EMPLOYEE PERMIT.** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct investigation pursuant to Section 4.10.085. The Chief of Police shall issue the permit or renewal of the permit pursuant to Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.10.045(a), or is otherwise incomplete;

(b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;

(c) That information contained in the application is false or otherwise inaccurate;

(d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, there is a substantial risk that the applicant would not work in a Medical Cannabis Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code sections 4852.01,

et seq.; Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction the applicant would not work in the Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm; or

(e) One or more of the grounds for permit revocation or suspension exists pursuant to this Chapter.

**14.16.065 EMPLOYEE PERMIT VOID ON TERMINATION.** The Employee permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after termination of employment.

The holder of the Special Business License employing the holder of the Employee Permit shall notify the Chief of Police within three (3) days upon termination of the holder's employment.

**4.16.100 SUSPENSION OR REVOCATION.** Failure to comply with any of the requirements of this Chapter or with any condition set forth in the conditional use permit for the property shall be grounds for the suspension or revocation of the license under Sections 4.10.145 to 4.10.155.

## CHAPTER 4.20

### CARDROOMS

#### Sections:

- 4.20.000 Statement of Purpose.
- 4.20.005 Definition - Cardroom.
- 4.20.010 Definition - Gaming or Gambling.
- 4.20.015 License Required.
- 4.20.020 Qualifications - Use.
- 4.20.025 Number of Licenses Limited.
- 4.20.030 Employee Permits.
- 4.20.035 Application for Permits.
- 4.20.040 Issuance of Permit.
- 4.20.045 Suspension and Revocation of Permits.
- 4.20.050 Bond.
- 4.20.055 Responsibility of Licensee.
- 4.20.060 Records and Audit.
- 4.20.065 Temporary Suspension.
- 4.20.070 Temporary Suspension - Notice of Suspension and Appeal.
- 4.20.075 Conducting a Cardroom or Operating as a Cardroom Manager or Dealer After Temporary Suspension.
- 4.20.085 Table Operation Fee.
- 4.20.090 Hours of Operation.
- 4.20.095 Games Permitted.
- 4.20.100 Equipment - Separation.
- 4.20.105 Minors Prohibited.
- 4.20.110 Bets Limited - Notice.
- 4.20.115 Notice of Table Rent.
- 4.20.120 Credit Prohibited.
- 4.20.125 Display of Licenses and Permits.
- 4.20.130 Protection of Patrons.
- 4.20.135 Exclusion or Ejection from a Cardroom.
- 4.20.140 Conflicts.
- 4.20.145 Severability.

**4.20.000 STATEMENT OF PURPOSE.** The regulatory provisions of Sections 4.20.020 and 4.20.025 are necessary to ensure that cardrooms are operated reasonably for the protection of public health, safety, and welfare and to conform to State mandated requirements set by The Gaming Registration Act found in the Business and Professions Code commencing with Section 19800, et seq. The more liberalized regulations now provided Chapter 4.20 permit cardrooms to operate more card tables, operate for longer hours, play a wider range of card games, double the monetary limit on the amount of wagers, allow a greater number of players; and thus, provide for more gambling. With such liberalization of gaming regulations, the City's ability to enforce state and local law is compromised because City time, effort, and expense increases due to an increased opportunity for dishonesty and criminal conduct. Although many operators are highly reputable, others are creative in avoiding the letter of the law. Gaming brings with it the elements of enjoyment and entertainment for its patrons but also undesirable elements such as compulsive gambling, cheating, dishonesty, and other possible criminal violations and peace disturbances.

If all licensees were reputable and vigilant, regulatory supervision would be almost perfunctory. Such is the case with many existing licensees. Others, however, require exhaustive monitoring and enforcement. Integrity is a difficult commodity to ascertain in advance of licensure. Thorough screening of applicants prior to licensure is desirable. Pursuant to Sections 4.10.035 and 4.10.040, the Chief of Police conducts a thorough investigation into the background of applicants and their entities in order to assure that licensure will not set the stage for fraud or deceit. Such investigation is particularly difficult when applicants have no local track record. Accordingly, two years residence or two years business operation within this City is required before an applicant is eligible to apply for a cardroom license and this requirement is found in Section 4.20.020. A two year period for the observation of an individual's or business entity's ethical practices or lack thereof is a more realistic period of time for such assessment as opposed to a one year residency requirement.

Section 4.20.025 would limit the number of cardroom licenses issued to one for each 75,000 residents of the City thus limiting the expansion of gambling within this community to a level where such gambling will be a source of local entertainment and recreation for local citizens while preventing this community and City from becoming a mecca for professional gamblers and gamblers from other jurisdictions. A "casino" type atmosphere where gambling becomes the major industry or attraction of a community or mecca for gamblers from all jurisdictions is detrimental to the development of this community as such increased and unrestrained gambling creates greater law enforcement problems compromising the ability of law enforcement to totally control the criminal and peace disturbance effects thereof. Limiting the number of licenses and cardrooms to one for each 75,000 residents assists in the accomplishment of these goals as opposed to permitting a greater number of licenses with a limitless number of cardrooms that may be operated per license.

The two year residency requirement and the restriction in the number of cardroom licenses available would allow City energies to be more efficiently allocated. Pre-license screening would be supplemented with the objective track record of each applicant. The number of cardrooms would remain at a manageable level for the Chief of Police without creating a monopoly for existing cardrooms. The volume of unstable or illegally run cardroom operations would be more effectively curtailed.

Accordingly, City Council finds that a two year residence or operation prerequisite for a Special Business License and a limitation of one cardroom per 75,000 residents of the City will eliminate many of the above-mentioned problems without undue burden on stable and reputable cardrooms. The purpose therefore of Sections 4.20.020 and 4.20.025 is to protect the health, safety, and welfare of the citizens within the City, to assure that City expenditure is efficiently allocated, and to provide legitimate cardrooms where citizens of this City can safely enjoy the entertainment provided by reputable cardrooms.

**4.20.005 DEFINITION - CARDROOM.** As used in this Chapter the term "Cardroom" means any place where gaming is conducted and to which the public is invited to participate.

**4.20.010 DEFINITION - GAMING OR GAMBLING.**

(a) As used in this Chapter the term "Gaming" or "Gambling" means any game of chance played with cards, dice, or any device for currency, money, check, credit, or other thing of value which is not prohibited and made unlawful by Penal Code Chapter 9 (commencing with Section 319) or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code or by this Chapter.

(b) "Gaming" or "Gambling" for purposes of this Chapter does not mean the following:

(1) The game of bingo conducted pursuant to and regulated by Chapters 4.21, 4.22, and 4.23;

(2) Any lottery game conducted and regulated by the California State Lottery;

(3) Parimutuel wagering on horseraces regulated by the California Horse Racing Board;

(4) Games played with cards in private homes or residences in which no person makes money for operating the game, except as a player.

**4.20.015 LICENSE REQUIRED.** No person shall operate or conduct a cardroom in the City unless under and by authority of a valid, unexpired, and

unrevoked Special Business License authorizing a Cardroom issued pursuant to the provisions of Chapter 4.10 and this Chapter.

#### **4.20.020 QUALIFICATIONS - USE.**

(a) If the applicant for a Special Business License to operate a Cardroom is a sole proprietor, the proprietor shall have been a resident of the City for at least two (2) years immediately preceding the filing of an application for the License and shall have met the requirements set by the State Department of Justice pursuant to The Gaming Registration Act (commencing with Business and Professions Code Section 19800, et seq.) prior to filing the application for the license. If the applicant is a partnership, corporation, or other business entity owned by more than one individual, the business entity shall have engaged in a business within the City continuously for at least two years immediately preceding the filing of the application and shall have met the requirements set by the State Department of Justice pursuant to The Gaming Registration Act (commencing with Business and Professions Code Section 19800, et seq.) prior to filing an application for a license.

(b) The Special Business License issued pursuant to this Chapter shall be placed in use at the designated location no later than ninety (90) days following the issuance thereof and the Special Business License shall remain in use thereafter for the term of the License. Failure to place such license in use at the designated location within the ninety (90) day period provided herein, or to maintain the License in use during the term of the License, shall be grounds for revocation of the License by the Chief of Police. For purposes of this Subdivision of this Section "in use" shall mean that at the location designated in the License the business of a Cardroom shall be in operation and that games as provided in Section 4.20.095 shall be conducted therein.

For purposes of revocation under this Subdivision of this Section, temporary closure of the Cardroom for necessary remodeling, rebuilding, repair, improvements, or other necessary and reasonable activity required to operate or improve the operation of the Cardroom when such activities are undertaken by the Licensee in a good faith effort to complete the activity within a reasonable period of time, shall not be grounds for revocation.

The Licensee shall cooperate with the Chief of Police by providing the Chief of Police the necessary information and documentation upon demand by the Chief of Police in order for the Chief of Police to determine whether the Licensee comes under the provisions of this Subdivision of this Section requiring revocation of the License. Failure of the Licensee to cooperate with the Chief of Police pursuant to the provision of this Subdivision of this Section shall be grounds for the revocation of the Special Business License to operate the Cardroom. The procedure for notice of revocation, revocation, and appeal of revocation shall be the same as is provided in Chapter 4.10 for the revocation of Special Business Licenses.

#### **4.20.025 NUMBER OF LICENSES LIMITED.**

(a) The number of licenses issued shall be limited to one for each 75,000, or fraction thereof, residents of the City, as determined by the last Federal Census or as determined by the latest population estimate of the Department of Finance of the State of California.

(b) In the event there are more applications for Special Business Licenses to operate Cardrooms than the limitation in subdivision (a) of this Section allows, the qualified applicant or applicants to whom a License is issued shall be selected by the Chief of Police in the order the applications were filed with the City Manager. Once all available number of licenses are issued, no applications will be accepted or considered until such time as an additional license becomes available. When the additional license becomes available, applications will then be taken and will be considered as provided herein upon the timely filing of a new application therefor. For purposes of this subdivision of this Section, the unrevoked, valid, and unexpired License of a Cardroom Licensee who has filed a timely application for renewal of the License is not considered an additional license available for issuance until the license renewal application has been denied and the appeal thereof, if any, has become final.

(c) Notwithstanding the provisions of Section 4.10.010, a Licensee shall operate no more than one Cardroom in the City and shall hold no more than one Special Business License issued pursuant to this Chapter to operate that Cardroom; and no more than one Cardroom shall be located within a single structure or at a single location.

#### **4.20.030 EMPLOYEE PERMITS.**

(a) No person shall work in a Cardroom as a manager or cardroom dealer, and no person who holds a Special Business License authorizing operation of a Cardroom shall employ any person as a cardroom manager or cardroom dealer unless such person possesses a valid Employee Permit issued pursuant to the provisions of Chapter 4.10 and this Chapter.

(b) Notwithstanding the provisions of Section 4.10.095, an Employee Permit as a cardroom manager or cardroom dealer shall authorize the permittee to operate as a cardroom manager or cardroom dealer in any Cardroom possessing an unrevoked, unexpired, and valid Special Business License issued pursuant to this Chapter authorizing the operation of such Cardroom within the City. Notwithstanding the provisions of Section 4.10.095, the Employee Permit shall not include the name and address of the Cardroom for which the Employee Permit is issued as the Employee Permit authorizes the permittee to operate within any Cardroom as indicated above.

(c) Upon demand by the Chief of Police, the Cardroom shall provide the Chief of Police with the full name and the residence address of persons operating as cardroom managers or cardroom dealers in the Cardroom.

**4.20.035 APPLICATION FOR PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to serve as a cardroom manager or cardroom dealer shall contain a list of each criminal conviction of the applicant, pleas of guilty, or pleas of nolo contendere. The list shall, for each such conviction or pleas, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted.

**4.20.040 ISSUANCE OF PERMIT.** Upon receipt of an application for an Employee Permit to serve as a cardroom manager or cardroom dealer, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as he or she deems necessary. The Chief of Police shall issue the permit unless he or she finds pursuant to Section 4.10.090 any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.20.035, or is otherwise incomplete;

(b) That information contained in the application is false or otherwise inaccurate;

(c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would perform his or her duties as a cardroom manager or dealer in an unlawful manner or in a manner which subjects patrons of the Cardroom to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01, et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.05, or;

(d) That the applicant has violated or is in noncompliance with any of the provisions and requirements of this Chapter or other applicable law or administrative rule or regulation.

(e) That the applicant is disqualified from holding a state gambling license for any of the reasons specified in the Gambling Control Act, Business & Professions Code Sections 19850 and 19914.

(f) That the State of California objects to the issuance of the permit pursuant to the Gambling Control Act, Business and Professions Code sections 19850 and 19912.

#### **4.20.045 SUSPENSION AND REVOCATION OF PERMITS.**

(a) An Employee Permit may be revoked or suspended pursuant to Section 4.10.140 upon any of the following grounds:

(1) Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to this Chapter, Chapter 4.02 or 4.10;

(2) Misrepresentation of a material fact contained in the application for the permit;

(3) The Chief of Police has acquired information supporting a finding prescribed by Section 4.20.040(c) in relation to the holder of the permit; or

(4) The holder of the permit has violated any term, condition or requirement or prohibition established by this Chapter which is applicable to the holder of the permit.

(b) An Employee Permit may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal pursuant to Section 4.10.145, as applicable.

**4.20.050 BOND.** Before issuing a Special Business License under the provisions of this Chapter, the City Council shall require the applicant, as a condition to the issuance of the Special Business License, to post with the City a cash bond in the sum of Two Thousand Dollars (\$2,000) or a surety bond in the same amount furnished by a corporate surety authorized to do business in the State payable to the City. The bond shall guarantee that the Licensee shall redeem all chips for cash, and the bond shall be kept in full force and effect by the Licensee throughout the term of the License.

The provisions of this Section shall not be applicable to card games played or held by fraternal and veterans organizations, benefit associations, churches and other non-profit organizations operating the games for charitable purposes for participation by their members or bona fide guests.

**4.20.055 RESPONSIBILITY OF LICENSEE.** The holder of a Special Business License issued pursuant to this Chapter and Chapter 4.10 shall be financially and otherwise responsible for the operation of the Cardroom and for the conduct of any manager or other employee connected with the operation of the Cardroom. All employees of the Cardroom shall be identified by a name tag measuring no smaller than one inch by three inches and the tag shall be worn in plain view on the upper body of the employee.

**4.22.060 RECORDS AND AUDIT.**

(a) The Licensee shall keep full and accurate records of the income and expenses received and disbursed in connection with the operation, conduct, promotion, suspension, and any other phase of the Cardroom enterprise and card games which are authorized by this Chapter. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police. Upon demand, the Chief of Police or any other authorized representative of the City shall have the right to examine and audit such records at any reasonable time and the license holder shall fully cooperate by making such records available.

(b) The records described in subdivision (a) of this Section shall be subject to disclosure only pursuant to any suspension, revocation, or other proceedings conducted under this Chapter, Chapter 4.02 or 4.10; any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Counsel. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

**4.20.065 TEMPORARY SUSPENSION.**

(a) The Chief of Police shall have the authority to temporarily suspend the Special Business License and to order the Licensee to immediately cease and desist any further operation of the Cardroom pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the License and one of the following occurs:

(1) The Licensee is operating the Cardroom in a manner which is a serious and immediate threat to the health or safety of the public;

(2) The Licensee is in violation of any of the provisions of this Chapter, Chapter 4.02, Chapter 4.06, Chapter 4.10, administrative regulations adopted pursuant to those Chapters, the Penal Code of the State of California, or any applicable law, rule or regulation; or,

(3) The Chief of Police makes a finding pursuant to Section 4.10.040(c) and that by reason of the crime or act the patrons of the Cardroom and the public are subject to the immediate risk of harm or criminal, deceitful or otherwise unethical practices.

**4.20.070 TEMPORARY SUSPENSION - NOTICE OF SUSPENSION AND APPEAL.**

(a) The temporary suspension shall be effective no sooner than 24 hours following the time and date of delivery of the notice thereof as provided in Section

4.10.145. The procedures for notice, for service of such notice, and for response by the Licensee prior to the commencement of the temporary suspension shall be as prescribed in Section 4.10.145.

(b) The appeal by the holder of a Special Business License of the revocation or suspension of its license pursuant to Section 4.10.135, whose license has been temporarily suspended, shall be as provided in Section 4.10.150.

**4.20.075 CONDUCTING A CARDROOM OR OPERATING AS A CARDROOM MANAGER OR DEALER AFTER TEMPORARY SUSPENSION.** It shall be unlawful for the holder of a Special Business License to operate a Cardroom after temporary suspension of the Special Business License pursuant to Sections 4.20.065 and 4.20.070, and it shall be unlawful for the holder of a Cardroom Employee Permit to operate as a cardroom manager or dealer in a Cardroom after temporary suspension pursuant to Section 4.20.045 and Section 4.10.145 and such violation shall be punishable as a misdemeanor.

**4.20.085 TABLE OPERATION FEE.**

(a) In addition to any application or renewal license fees imposed by the City pursuant to Chapters 4.06 and 4.10 upon the business of a Cardroom, such Cardroom shall be charged a quarterly table operation fee for each card table operated by the Licensee or to be operated by the applicant. The amount of this quarterly fee shall be as prescribed from time to time by resolution of the City Council and shall be based upon the cost to the City of enforcement and administration of this Chapter as provided by Section 4.02.060.

Exempted from this quarterly fee are additional tables used for promotional or tournament play except that pursuant to Section 4.20.100(a) the total number of regular tables and promotional or tournament tables in use shall not exceed seven (7) tables. Such promotional or tournament play and the use of such additional tables for such promotions and tournaments shall not exceed four days in any calendar month. The Chief of Police shall be notified seven days in advance of the promotional or tournament events and shall be notified of the duration and dates of such events.

(b) The quarterly table operation fee shall be paid quarterly by the applicant or Licensee to the City Manager. The first quarterly fee shall be due at the filing of the initial application for a Special Business License to conduct a Cardroom. Thereafter, the quarterly due dates for payment of the quarterly table operation fee shall be on January 1, April 1, June 1, and September 1; except, if any of these days falls on a Sunday or a City holiday, the quarterly due date for payment shall be the day after such Sunday or City holiday. The quarterly table operation fee shall be delinquent if not received or postmarked on or before the quarterly due date for payment as such quarterly due date is defined above. Prior to the beginning of each quarter, the Licensee shall notify the Chief of Police as to the number of tables to be operated for that new quarter and shall pay to the City Manager the table operation

fee accordingly. In the event that the Licensee reduces the number of tables in operation during a quarter, the City shall not rebate any of the previously paid table operation fee for that quarter. In the event that the Licensee desires to increase the number of tables in operation during a quarter, the Licensee shall pay to the City Manager the appropriate table operation fee for that entire quarter regardless of when the additional table(s) are added.

(c) On the denial by the Chief of Police of an application or a renewal of a Special Business License to conduct a Cardroom the quarterly table operation fee paid by the applicant or Licensee at the time of filing the initial application or the renewal shall be rebated to the applicant or Licensee by the City Manager. The rebate shall not be made by the City Manager until the appeal period on the denial has elapsed or, if an appeal is filed, until a final decision upholding the denial has been made and the appeal has become final in the administrative or judicial process, whichever is applicable.

If the applicant's or Licensee's appeal of the denial is granted, the applicant or Licensee shall owe and pay the appropriate table operation fee to the City Manager prior to the issuance of the Special Business License.

#### **4.20.090 HOURS OF OPERATION.**

(a) Except as otherwise provided hereinafter in subdivision (b) of this section, the Licensee may operate a Cardroom twenty-four (24) hours a day and seven (7) days a week.

(b) Applicants for a Cardroom license to operate a Cardroom after the effective date of this ordinance, shall be required to secure a use permit as approved by the appropriate authority in accordance with the requirements of the Zoning Code of the City of Elk Grove. Operation of the Cardroom shall thereafter be in accordance with the hours set by the use permit.

#### **4.20.095 GAMES PERMITTED.**

(a) The only gambling permitted in a Cardroom in the City is Draw Poker, Lowball, Panguingue, Hold'em, and Seven Card Stud. The permitted games shall be played only in the following manner:

(1) "Draw Poker" and "Lowball" are played with a standard 52 card deck, with joker options. Each player is dealt five cards face down, prior to any betting. After receiving their cards, players determine whether to stop playing that hand (fold) or to place their bets. Following the first round of betting, players have the option of keeping their originally dealt cards or discarding non-desired cards and replacing them with a like number of cards drawn from the deck (the "draw"). Following the "draw," there is a second round of betting. The goal in "Draw Poker" is to garner the betting pool or common pot with the highest ranking poker hand. The goal in "Lowball" is to garner the betting pool or common pot with the lowest ranking poker hand. Acceptable variations of "Draw Poker" include the dealing of seven

cards instead of five and the splitting of the pot between the player holding the highest ranking hand and the player holding the lowest ranking hand.

(2) "Panguingue" is played with 6 to 12 decks of cards with the eights, nines, tens, and jokers removed. Each player is dealt 10 cards and the purpose of the game is to meld sets and sequences of cards with certain cards having special values. Each player, in turn, draws either a card from the top of the remaining deck or from the top of an adjacent discard pile. This sequence of play continues until one player goes out with a total meld of eleven cards, including the card just drawn.

(3) "Hold'em" is played with one standard deck of cards. Each player is dealt a pre-determined number of "hole" cards face down. After the initial deal, there is a round of betting. Then three "community" cards are dealt face up in the center of the table. There is another round of betting. A fourth card is dealt face up in the center of the table. There is a third round of betting. Then a fifth card is dealt face up in the center of the table. There is a final round of betting. Players use any of the five "community" cards and a pre-determined minimum number of their "hole" cards to make the best five card poker hand. Acceptable variations of "Hold'em" include the low and high/low versions.

(4) "Seven Card Stud" is played with one standard deck of cards. Each player is dealt two cards face down and one card face up. There is a round of betting. Players are dealt one up card followed by a round of betting. Players are again dealt one up card followed by a third round of betting. Those players electing to remain in the game are dealt another up card followed by a fourth round of betting. Finally, the remaining players are dealt one down card for a total of seven cards--three down and four up. A fifth and final round of betting occurs. Each remaining player selects five of his seven cards to form the best five card hand. Acceptable variations of "Seven Card Stud" include the low and high/low versions.

(b) Written rules for each card game offered by a Cardroom pursuant to subdivision (a) of this Section shall be provided to any patron upon request. The Licensee shall file with the Chief of Police a written copy of the rules to each card game played in the Cardroom within thirty (30) days of the effective date of this ordinance. Any deviation or change in the rules of any card game or any new card game from that on file with the Chief of Police shall require the approval of the Chief of Police prior to offering the card game to patrons. The Chief of Police shall review the new card game or any deviation or change in the rules and shall within ninety (90) days approve the game provided it conforms with the requirements of subdivision (a) of this Section and this Chapter; and, if the game is patented, the Licensee shall obtain written permission from the patent-owner prior to offering the game to patrons and prior to acquiring the approval of the Chief of Police to conduct the game.

(c) Except as provided in subdivision (a) of this Section, all other gaming (including, but not limited to, gaming played with cards, dice, or any device for

money) not otherwise prohibited by the California Penal Code is prohibited. Nothing herein contained in this Chapter shall be construed to permit the licensing of any gambling declared illegal by the Penal Code.

#### **4.20.100 EQUIPMENT - SEPARATION.**

(a) No Cardroom shall maintain more than seven card tables. Chairs shall be provided for all card players. No more than twelve players shall be permitted to play at any time at any one table. Authorized games shall not utilize dominoes, tiles, dice, spinning wheels, electronic player-controlled machines or any other device other than the standard decks of playing cards traditionally used for playing such games, poker chips, and the optional dealer shoes.

(b) Each licensed Cardroom shall be maintained separate and apart from any other room or business operated in the building, but may be connected by a door.

**4.20.105 MINORS PROHIBITED.** No person under the age of twenty-one (21) years shall be permitted to frequent a Cardroom or to engage in any card game conducted therein.

**4.20.110 BETS LIMITED - NOTICE.** No player shall be permitted to wager or raise a wager more than Forty Dollars (\$40). Other than seated players actively participating in the game, no person shall be permitted to place a wager on any card game, and a player shall only place a wager on his or her own card hand. Back-line betting or side-betting is prohibited. No player shall be permitted to bet with cash money, markers, or anything other than poker chips. Notice of all the provisions and restrictions provided in this Section shall be posted in a conspicuous place in the Cardroom.

**4.20.115 NOTICE OF TABLE RENT.** The Licensee shall post in a conspicuous place in the Cardroom notice of the amount of table rent to be charged for each table and notice of the total number of tables permitted to be in operation during the particular quarter.

**4.20.120 CREDIT PROHIBITED.** No Cardroom shall extend credit to any patron in order for the patron to participate in a card game.

**4.20.125 DISPLAY OF LICENSES AND PERMITS.** A copy of the Special Business License applicable to the Cardroom premises and the Employee Permit of any person employed as a manager or dealer shall be posted and exhibited while in force in some conspicuous place on the Cardroom premises.

#### **4.20.130 PROTECTION OF PATRONS.**

(a) Whenever it appears to the Chief of Police that security personnel are necessary to protect the health and safety of the public, the Chief of Police shall have the authority to require that a Cardroom provide uniformed security personnel

on the premises and the parking lot used by the Cardroom for its patrons and employees. The Chief of Police shall determine the necessity for the requirement for security personnel based on the propensity for peace disturbances or criminal activity in the geographic area in which the Cardroom is located, based upon criminal activity or peace disturbances on Cardroom premises, based upon the particular time of day, or any other factors which affect the health and safety of the public and Cardroom patrons. The Chief of Police shall notify the Licensee, in writing, as to time periods, days of the week during which security is required, the number of security officers, and the location where such officers are to be provided (whether in the parking lot or on the premises). Upon receiving the written notice of security requirements, the Licensee shall conform to those requirements within forty-eight (48) hours of service thereof and shall maintain those requirements in full force and effect until such time as the Chief of Police deems they are no longer necessary.

(b) Between the hours of 2:00 a.m. and 6:00 a.m., the Licensee shall not knowingly permit the consumption of alcoholic beverages on the premises or in the parking lot which the Cardroom uses for its patrons.

(c) The Licensee shall not knowingly permit any obviously intoxicated person to participate in any card game.

(d) The Licensee shall not knowingly permit any illegal activity to occur on the premises or in the parking lot used by the Cardroom for its patrons or employees. Illegal activity includes, but is not limited to, narcotics violations, bookmaking, illegal gambling, loansharking, receiving stolen property, or prostitution.

(e) The Licensee shall permit the Chief of Police, the County Health Department, Fire Department or any other authorized public official to inspect the premises at any time during the hours of operation.

#### **4.20.135 EXCLUSION OR EJECTION FROM A CARDROOM.**

(a) Pursuant to Business and Professions Code Section 19845, the Licensee shall be permitted to exclude or eject from the Licensee's Cardroom, any individual who has engaged in or been convicted of bookmaking, sale of controlled substances, or illegal gambling activities, or whose presence in or about the Cardroom would be inimical to the interests of legitimate gaming. The Licensee shall not exclude or eject any person on the grounds of any protected class under state law including, but not limited to, race, color, creed or sex. Any individual who is excluded or ejected from any Cardroom and who refuses to leave the premises is subject to arrest for trespassing under Section 9.80.010.

(b) Pursuant to Section 19844 of the Business and Professions Code, any individual who is excluded or ejected from any Cardroom may apply to the Chief of Police for a hearing on the question of whether subdivision (a) of this Section is applicable. The hearing shall be held within 30 days after filing of the request for

hearing with the Chief of Police or at such time as the applicant and Chief of Police may agree. If, upon the hearing, the Chief of Police determines that the rule of exclusion or ejection as provided in subdivision (a) of this Section does not or should not apply to the applicant, the Chief of Police shall notify all Cardrooms licensed by the City pursuant to this Chapter of such determination. If the Chief of Police determines that such exclusion or ejection was proper, the Chief of Police shall make an order to that effect which shall be a final administrative order. Such order shall be subject to review by any court of competent jurisdiction in accordance with law.

(c) Pursuant to Section 19846 of the Business and Professions Code, notwithstanding any other provision of law, no Cardroom which ejects or excludes any individual based upon the provisions of subdivision (a) of this Section shall be subject to civil liability if such ejection or exclusion was based upon a reasonable and good faith belief that subdivision (a) of this Section applied to the individual in question.

#### **4.20.140 CONFLICTS.**

(a) If any section, subdivision, clause, phrase or portion of this Chapter conflicts with any section, subdivision, clause, phrase or portion of an express provision of the City of Elk Grove Zoning Code, or conditions of a use permit of the Zoning Code, or other administrative approvals issued under the Zoning Code, then the City of Elk Grove Zoning Code, conditions of the use permit under the Zoning Code, or the administrative approvals issued under the Zoning Code shall prevail.

(b) If any section, subdivision, clause, phrase or portion of this Chapter conflicts with any section, subdivision, clause, phrase or portion of The Gaming Registration Act (Business and Professions Code commencing with Section 19800, et seq.) as required by the State of California, then The Gaming Registration Act shall prevail.

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

## CHAPTER 4.21

### BINGO GAMES

#### Sections:

- 4.21.000 Statement of Purpose.
- 4.21.005 Bingo Prohibition.
- 4.21.010 Definition of "Bingo".
- 4.21.015 Definition of "Bingo Game".
- 4.21.017 Definition of a "Bingo Session".
- 4.21.020 Definition of "Security".
- 4.21.025 Definition of "Member".
- 4.21.027 Prohibition of Member Participation in Staffing  
Bingo Games.
- 4.21.030 Chief of Police.
- 4.21.035 Organizations Eligible For License.
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- 4.21.180 Discontinuance of Bingo Games.

**4.21.000 STATEMENT OF PURPOSE.** Past enforcement experience in other jurisdictions has demonstrated the following:

(a) City time, effort and expense are increasing significantly. State and City statutes demand a technical accounting of proceeds. As volume increases, the City's ability to audit, and enforce state and local law is compromised. Although many operators are highly efficient and reputable, others are inefficient and creative in avoiding the letter of the law.

(b) If all licensees were efficient and reputable, regulatory supervision would be almost perfunctory. Such is the case with many existing licensees. Others, however, require exhaustive monitoring and enforcement. Integrity is a difficult commodity to ascertain in advance of licensure. Thorough screening of applicants prior to licensure is desirable. Pursuant to Sections 4.10.035 and 4.10.040, the Chief of Police conducts a thorough investigation into the background of applicants, and their organizations, in order to assure that licensure would not set the stage for fraud and deceit. Such investigation is particularly difficult when applicants have no local track record.

(c) Both newly chartered and out of the jurisdiction charities have proven to be problematic. Several have folded within months of licensure due to financial collapse. While some financial failure may be innocently explained, others are clearly bankrupted by the misappropriation of charitable proceeds. Whether innocent or criminal causes underlie these failures, short-lived charities monopolize an inordinate amount of City expense, which never ripens to benefit any charity.

A one year operational prerequisite would allow City energies to be more efficiently allocated. Pre-license screening would be supplemented with the objective track record of each applicant. The number of unstable or pretextual organizations would be reduced.

Accordingly, it is the finding of the City Council that a twelve month operational prerequisite would eliminate many of the above problems, without undue burden to stable and reputable charities. The purposes of this Chapter are to protect the health, safety and welfare of the citizens within the City, to assure that City expenditure is efficiently allocated, and to safeguard legitimate charitable purposes.

The purpose for allowing an eligible organization to conduct bingo games in the City is to provide that organization an additional source of revenue to further the purpose for which that organization was created. A licensee organization conducting bingo games without generating a profit from those games does not fulfill the purpose for which bingo is permitted.

Organizations with a proven track record demonstrating that the game can produce a certain level of profits for charitable purposes, as opposed to proceeds going largely to overhead expenses of the game, should be allowed to conduct further games on various days of the week.

The purpose of requiring a separate license for separate functions of bingo operations, such as a bingo parlor license, a bingo supplier license, and a license for the actual conduct of the games, is to ensure that each function is conducted by a separate and independent person or entity. Such regulation aids in assuring the integrity of the game and in minimizing the problems of undue influence being used against an organization that is licensed to conduct bingo. Recent history has shown that nonprofit organizations are not beyond exercising undue influence against smaller organizations and channeling some of the monies meant for charitable purposes into the private accounts of dishonest members. Further, requiring separation of functions lessens the opportunity for fraud, collusion, and self-dealing.

The purpose of requiring those organizations licensed to conduct bingo games to pay amounts owed to the bingo parlor before the next day of bingo operation and to pay the bingo supplier within thirty days of the invoice date or ten days of the statement date, whichever occurs later, is a direct effort to preclude the parlor or the supplier from acquiring a financial interest in the games. The existence of a debtor-creditor relationship is inimical to the integrity of the bingo games. In the realm of gaming, and bingo is gaming, debts owed to the parlor or supplier by the organization licensed to conduct bingo can be used by the parlor or supplier to exert undue influence on the conduct of the games, and to increase the overhead expenses charged to these organizations. Organizations indebted to the parlor or supplier are thus placed in a position of sharing profits with the parlor or supplier to the detriment of the charitable purpose.

**4.21.005 BINGO PROHIBITION.** No person shall operate a bingo game in the City without possessing a valid, unrevoked and unexpired Special Business License issued pursuant to the provisions of this Chapter and City Regulations adopted pursuant to this Chapter, and except in conformance with Section 326.5 of the California Penal Code, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.21.010 DEFINITION OF "BINGO".** As used in this Chapter, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. The game of bingo shall include cards having numbers or symbols that are concealed and preprinted in a manner providing for the distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend as follows: "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." Although "cards" colloquially may refer to a cardBoard card, it is permissible for a "card" to be a sheet of paper with multiple card faces preprinted on it and is included herein within the definition of "card."

The game of bingo includes the use of an electronic bingo aid in conjunction with bingo cards to assist a bingo player participating in bingo games to identify a winning card, when used under the conditions set forth in Section 4.21.167(b). The term "electronic bingo aid" is defined as any mechanical, electronic, or computerized

aid, (including related hardware and software), that is interfaced with or connected to equipment that allows a player to store, display, and mark bingo card faces programmed into the device. This definition of electronic bingo aid includes the individual hand held or table top unit or component used by a player, the related equipment and system with which the hand held or table top unit is interfaced with, and all other related systems, equipment, software, hardware, and circuitry, that together comprise the electronic bingo aid.

Definitions, powers, conditions and restrictions set forth in this Chapter are intended to comply with and implement applicable California Constitution and Penal Code provisions. To the extent that any provision of this Chapter is substantially the same as that contained in Section 326.5 of the Penal Code, and violation thereof is a violation of that Penal Code section and punishable thereunder, such provision of this Chapter is explanatory only.

#### **4.21.015 DEFINITION OF "BINGO GAME".**

(a) The total value of prizes awarded during the conduct of any bingo game shall not exceed \$250 in cash or kind, or both, for each separate game which is held. A bingo game starts when the first ball or number symbol is called and ends when the first ball and all succeeding balls or number symbols are returned to the cage or blower. Each progressive play in a series which continues to utilize and count any number symbols called and utilized in a previous part of said progression shall be deemed part of the same bingo game, even if a separate prize is awarded for each part of said progression. The cumulative prizes awarded for a "progressive" or other similar bingo game shall not exceed \$250 in cash or kind or both.

(b) It shall be unlawful for any person to establish, provide or authorize the establishment or provision of a prize or prizes in violation of the provisions of this Section, and a violation of the provisions of this Section shall constitute grounds for revocation of a Special Business License authorizing the operation of bingo games issued pursuant to the provisions of this Chapter and Chapter 4.10.

**4.21.017 DEFINITION OF A "BINGO SESSION".** A bingo session shall not exceed six (6) hours in duration. A session begins when the first game starts.

**4.21.020 DEFINITION OF "SECURITY."** Security shall mean the person(s) who protects bingo players, bingo licensees, and volunteers from exposure to danger. The security person(s) shall be prohibited from the sale or the distribution of bingo materials or otherwise participating in non-security activities before, during, and after the bingo session. However, this provision does not preclude security from accompanying the licensee with the session's net proceeds to a night depository immediately after the session.

#### **4.21.025 DEFINITION OF "MEMBER".**

(a) Each licensee shall have written policies incorporated in its constitution, articles, by-laws, or other regulations setting forth the manner in which a person may

become a bona fide member of the organization. Absent any such written policies, it shall be presumed that the organization has no members who may operate or staff bingo games within the meaning of Section 326.5 of the Penal Code.

(b) The licensee shall keep a full and accurate list of its members. The Chief of Police or any other authorized representative of the City is entitled to examine and investigate such list at any reasonable time, and the licensee shall cooperate in making such records available upon demand of the Chief of Police.

**4.21.027 PROHIBITION OF MEMBER PARTICIPATION IN STAFFING BINGO GAMES.** A volunteer or member shall not participate in the staffing of bingo games if the Chief of Police makes a finding that such volunteer or member:

(a) Has violated any applicable prohibition or requirement of this Chapter or Title or applicable administrative regulations adopted pursuant to this Chapter or Title; or has been convicted of a crime, and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or,

(b) Has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or her or another, or substantially injure another;

(c) And, that by reason of the violation, crime, or act, the member may perform his or her duties of staffing the bingo game in an unlawful manner or in a manner which subjects patrons of the bingo game to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, a member shall not be prohibited from staffing a bingo game solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Section 4852.05.

**4.21.030 CHIEF OF POLICE.** The Chief of Police is charged with the responsibility of administering the regulations imposed by this Chapter and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing bingo games, promulgate and enforce administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

**4.21.035 ORGANIZATIONS ELIGIBLE FOR LICENSE.** Organizations which are exempted from the payment of the bank and corporation tax by Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, and 23701l of the Revenue and Taxation Code, mobile home park associations and senior citizens organizations shall be eligible to apply for and receive a Special Business License to conduct

bingo games in the City pursuant to the provisions of the California Constitution, Section 326.5 of the Penal Code, and the provisions of this Chapter provided that the proceeds of such games are used only for charitable purposes and provided the applicant has owned or leased property or occupied donated property within the City that has been used by the applicant for the performance of the charitable purposes for which the applicant is organized for at least twelve (12) consecutive months immediately preceding the filing of such application. The required consecutive twelve month period need not be as an organization that is exempt from the payment of bank and corporation tax. With the foregoing exceptions, no other person shall be qualified or eligible to receive such a license.

**4.21.040 CONTENTS OF THE APPLICATION.** In addition to the matters prescribed by Section 4.10.030, an application for a Special Business License to conduct bingo games shall contain the following:

(a) The names and signatures of at least two officers, including the presiding officer of the organization who will be primarily responsible for conducting bingo games. In the event of any change in persons holding such offices, the licensee shall within ten (10) days of change notify the Chief of Police, in writing, of such change, specifying the name, address, date of birth, and telephone number of such officer(s);

(b) A description of the property on which bingo games will be conducted, including the street number, whether owned or leased, applicant's current use of the premises, and the occupancy capacity of the property;

(c) A copy of the deed, lease or other written instrument by which the applicant will acquire entitlement to occupy the premises where the bingo games will be conducted, and a description of all uses which the applicant will make of the premises;

(d) A statement of the specific charitable purpose(s) for which the applicant is organized;

(e) Proposed day(s) of the week and hours for conduct of bingo games;

(f) Such proof as may be required by the Chief of Police that the applicant is eligible and qualified to receive a Special Business License under Section 4.21.035. If eligibility is based on an exemption from payment of the bank and corporation tax, the application shall be accompanied by a certificate of determination of exemption under the applicable Section of the Revenue and Taxation Code, or a letter of good standing from the Exemption Division of the Franchise Tax Board showing such exemption;

(g) A statement that the applicant agrees to conduct bingo games in strict accordance with the provisions of Section 326.5 of the Penal Code, this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation and

agrees that the license may be revoked by the Chief of Police upon violation of any such provisions; and

(h) The application shall be signed by the applicant under penalty of perjury.

**4.21.045 BINGO MANAGER.** Concurrently, with the filing of an application, each applicant shall file a statement specifying the name, address, telephone number and birth date of one or more persons who shall manage, supervise and be responsible for the conduct of all bingo games by the applicant. Such person(s) shall be known as the bingo manager(s), shall sign the statement accepting such responsibility and shall be present on the premises at all times during which bingo games are conducted. In the event any other person is designated as the bingo manager by any licensee, the licensee shall within ten (10) days of such designation file a new statement containing all of the data specified in this Section.

**4.21.050 LICENSE FEE.** Each holder of a Special Business License to conduct bingo games shall, pursuant to the authority conferred by Section 326.5 of the California Penal Code, pay to the Chief of Police a fee of fifty dollars (\$50) paid upon application for a Special Business License or the application for renewal thereof. An additional fee, prescribed by a Resolution of the City Council, for law enforcement and public safety costs incurred by the City that are directly related to bingo activities shall be imposed and shall be collected monthly by the City and such additional fee shall not exceed the actual costs incurred in providing the service.

**4.21.055 ISSUANCE OF LICENSE.** The Chief of Police shall issue a Special Business License for bingo games unless one or more of the findings prescribed by Section 4.10.040 are made, or the Chief of Police makes one or more of the following findings in writing:

(a) The bingo games will be a fraud on the public;

(b) The bingo games will be conducted at a location or in a manner or the proceeds thereof will be accounted for or expended in a manner which violates, or the applicant has violated, Section 326.5 of the Penal Code, this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(c) The identity of the applicant or proposed method or methods of conducting bingo games are contrary to the provisions of Section 326.5 of the California Penal Code, this Chapter, Sacramento City Administrative Regulations adopted under this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(d) The applicant will be maintaining an inadequate system of record keeping and accounting relating to the conduct of the games and disposition of the proceeds therefrom;

(e) The application does not conform to the requirements, terms, and conditions of this Chapter, California Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(f) The applicant holds a current license under Chapters 4.22 or 4.23.

**4.21.060 POSTING OF LICENSE.** The Special Business License shall be conspicuously posted at the location of the bingo games.

**4.21.065 PROFITS - 23701d ORGANIZATIONS.** With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account, and shall not be commingled with any other fund or account. Such profits shall be expended only for the charitable purposes stated in the application for bingo license or in the Articles of Incorporation of such organization. These profits shall not be used for the private gain of any individual.

**4.21.070 PROCEEDS - OTHER ORGANIZATIONS.**

(a) With respect to organizations licensed under this Chapter which are not exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. These proceeds shall not be used for the private gain of any individual. The proceeds shall be expended only for the charitable purposes stated in the application for bingo license or in the Articles of Incorporation of such organization, except as follows:

- (1) Such proceeds may be used for prizes;
- (2) A portion of such proceeds, not to exceed twenty percent (20%) of the proceeds before the deduction for prizes, or two thousand dollars (\$2,000) per month, whichever is less, may be used for rental of property, overhead, the purchase of bingo equipment, administrative expenses, security equipment and security personnel; and,
- (3) Such proceeds may be used to pay license fees.

(b) A licensee shall be deemed to violate Section 326.5(k)(2) of the California Penal Code and Subdivision (b) of this Section if expenses during any particular month exceed two thousand dollars (\$2,000). If expenses do not exceed two thousand dollars (\$2,000) per month, the twenty percent (20%) limitation shall be applied annually at the conclusion of each twelve (12) months of operation.

**4.21.075 RECORDS - COMPLIANCE EXAMINATION AND INSPECTION.**

(a) The licensee shall keep full and accurate records of the income received and expenses disbursed in connection with its operation, conduct, promotion, supervision, and any other phase of bingo games. Such records are to include but are not limited to: ledgers and accounts relating to inventory, proceeds, expenditures, and the distribution of all profits derived from bingo games, and any other records as are necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, California Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police; and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

(b) The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy, bingo licensee records as described in subdivision (a) of this Section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

(c) Compliance examinations shall be conducted by the Chief of Police of bingo licensee records described in subdivision (a) of this Section not less frequently than annually, for each twelve (12) months of each licensee's operation.

(d) If the organizational structure of the licensee is such that an umbrella organization disburses bingo proceeds to member organizations, the records described in subdivision (a) of this Section which are subject to examination, review, audit, inspection, or photocopy shall include both the bingo records of the umbrella organization and its member organizations. For purposes of this Section, an umbrella organization is defined as a nonprofit, income tax exempt, charitable organization which is organized for the purpose of providing financial support to other nonprofit, income tax exempt, charitable organizations.

**4.21.080 RETENTION OF RECORDS.** The licensee shall keep and preserve the records described in Section 4.21.075(a) for the following period of time, whichever occurs later:

(a) Three (3) years;

(b) Until completion of a compliance examination; or

(c) Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.21.083 LIMITATION OF INVOLVEMENT IN BINGO.** The bingo licensee shall not allow another person, sole proprietorship, partnership, corporation,

unincorporated association, cooperative, joint venture or other individual or entity to organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of its bingo game or the promotion thereof.

#### **4.21.085 PROHIBITION OF FINANCIAL INTEREST IN BINGO.**

(a) No individual, corporation, partnership, or other entity except the bingo licensee shall hold a financial interest in the conduct of any bingo game. A financial interest includes, but is not limited to, situations in which a bingo licensee maintains accounts payable to a parlor licensee for parlor rents and other costs beyond the next day of bingo operation; or, maintains accounts payable to a bingo supplier beyond thirty (30) days of the invoice date or ten (10) days of the statement date, whichever occurs later. For purposes of this subdivision of this Section "invoice date" is defined as the date of delivery of such supplies and "statement date" is defined as the date within thirty (30) days of the delivery of supplies.

(b) A licensee that has not paid its supplier account(s) or parlor account(s) within the period provided in subdivision (a) of this Section shall not purchase additional supplies from any supplier or rent or incur other costs from any parlor until all accounts are brought into compliance with the required payment periods provided in subdivision (a) of this Section.

**4.21.090 EXCLUSIVE OPERATION BY LICENSEE.** Only the bingo licensee shall operate bingo games or participate in the promotion, supervision, or any other phase of the games. Bingo games shall be operated and staffed solely by members of the licensee; except that the licensee may retain or employ an off-duty law enforcement officer or security personnel at such bingo games. Such members shall not receive a profit, wage, salary, or compensation from bingo proceeds or bingo profits for services rendered from any bingo game. The term "compensation" as used in this Section includes, but is not limited to, cash, bingo paper, pull tabs, coupons, redeemable vouchers, discounts, or payment in kind. Neither the provisions of Section 326.5(b) & (h) of the Penal Code nor those of this Section shall be deemed violated if a bingo licensee reimburses members staffing the games for the actual and necessary costs which they incur in providing services associated with the conduct of the games.

**4.21.095 STAFF MEMBER IDENTIFICATION.** Any person participating in the operation, conduct or staffing of any bingo game shall wear on his or her outside clothing, in plain view, an identification insignia or badge measuring not less than 2-1/2 inches by 3-1/2 inches in size and specifying the name and title of such person and the name of the licensee organization.

#### **4.21.100 ATTENDANCE LIMITED TO OCCUPANCY CAPACITY.**

(a) Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which the game is conducted as determined by the fire department or district having

jurisdiction in accordance with applicable laws and regulations.

(b) It is unlawful for a licensee to knowingly authorize or permit, and unlawful for any person to, reserve seats or space where bingo games are conducted.

**4.21.105 LICENSING OF PREMISES.** The license issued under this Chapter shall authorize the holder thereof to conduct bingo games only on such property the address of which is stated in the application. In the event the described property ceases to be used for the conduct of bingo games by the licensee, the license shall have no further force or effect. The bingo licensee shall file a new application, and such application shall be processed pursuant to the provisions of this Chapter, in order for the eligible organization to conduct bingo games at a new location or address.

**4.21.110 OPERATING RULES.** Each licensee shall formulate, publish and post in a conspicuous place at the location of the bingo games written rules by which the bingo games are conducted and which recite the prohibitions described below. It is unlawful for a licensee to knowingly authorize, permit, and unlawful for any person to do any of the following:

(a) Provide or award total prizes for each separate bingo game which exceeds two hundred fifty dollars (\$250) in cash or kind, or both;

(b) Limit attendance or participation in such games to members of the licensee or otherwise deny attendance or participation to any member of the general public who complies with the rules of the game and conducts himself or herself in an orderly and law abiding manner;

(c) Participate in a bingo game, if the participant is under the age of eighteen (18);

(d) Participate in a bingo game where alcoholic beverages are consumed in the room where the bingo games are conducted or if the participant is under the influence of alcohol;

(e) Participate in bingo games, unless personally present at the location of the games at the time the games are being conducted.

In this Section "participate" is defined as including, but not limited to, the handling of bingo supplies or receipts during any bingo session.

**4.21.115 LOCATION OF GAMES.** A licensee shall conduct bingo games only on property owned or leased by it, or property whose use is donated to the licensee, and which property is used by the licensee for performance of the charitable purposes for which the organization is organized. Nothing in this Section shall be construed to require that the property be owned or leased exclusively by or donated exclusively to such organization. The requirements of the provisions of

Section 326.5(f) of the Penal Code and those of this Section shall be deemed satisfied if the licensee conducts regular business meetings or other activities consistent with its charitable purposes, in addition to bingo games, upon the property which it owns, leases, or uses as a donee. A licensee need not use the property exclusively for activities which fulfill its charitable purposes or objectives.

#### **4.21.120 LIMITATION OF BINGO HOURS AND SESSIONS.**

(a) No bingo licensee shall conduct bingo games between the hours of 2:00 a.m. and 10:00 a.m. of the same day.

(b) Except as provided in this subdivision, no bingo licensee shall conduct more than one bingo session per week. To conduct more than one bingo session per week a licensee shall secure the permission of the Chief of Police. The licensee shall have a valid, unrevoked, and unexpired license to conduct such bingo games and shall submit a written application with information therein as required by the Chief of Police. The Chief of Police shall authorize the bingo licensee to conduct more than one session per week unless the Chief of Police makes one or more of the following findings in writing:

- (1) The bingo licensee is not an organization exempt from the payment of the bank and corporation tax as provided by Sections 23701a, 23701b, 238701d, 23701e, 23701f, 23701g, and 23701l of the Revenue and Taxation Code, or is not a mobile home park association, or a senior citizens organization; and, for at least two continuous years immediately preceding filing of the application for additional sessions has not existed and operated within the City. The two year consecutive period of existence and operation provided for herein, need not include exemption from payment of the bank and corporation tax;
- (2) The bingo licensee has failed, during the immediately preceding two (2) year period, to raise at least twenty-five thousand dollars (\$25,000) each year through public and private solicitations (including publicly funded grants and recreational and other fund raising activities, but exclusive of any revenue from the sponsorship of bingo games), and has failed to expend at least sixteen thousand dollars (\$16,000) during each of the preceding two (2) years on charitable causes; or, the bingo licensee has not conducted bingo games in the City for the preceding 12 months;

- (3) The bingo licensee has failed to equal or exceed, and has failed to maintain for at least 6 consecutive months, at least 75% of the average percentage Net Profit Available from bingo in the City as determined and defined by the Chief of Police from, but not limited to, bingo records of the licensee community during the previous City fiscal year;
- (4) The bingo licensee does not have enough volunteers to staff the extra sessions;
- (5) The bingo licensee's accounting records have never undergone a compliance examination by the Chief of Police or there exist uncorrected deficiencies from a compliance examination conducted by the Chief of Police;
- (6) The additional sessions will be detrimental to public safety, health or welfare; or
- (7) The licensee has failed to comply with other provisions of this Chapter, the City Regulations adopted pursuant to this Chapter, the California Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

(c) The Chief of Police shall notify the bingo licensee in writing of the denial of a licensee's application to conduct more than one bingo session per week and shall in such notice state the reason(s) for the denial and that the licensee has fifteen (15) calendar days from the date of service of such written notice of denial to file an appeal of such denial. Upon timely request by the licensee, the appeal hearing process and related procedures shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.130.

#### **4.21.125 LOCATION RESTRICTION.**

(a) Notwithstanding the permission contained in a Special Business License pursuant to Section 4.21.105, and notwithstanding any provision of this Chapter or Chapter 4.10 to the contrary, it shall be unlawful for any person who holds a Special Business License authorizing the operation of bingo games to conduct bingo games at a place which is or would by virtue of the conduct of such games be or become a bingo parlor, as defined by Section 4.22.010, unless the bingo parlor has been authorized by a valid unexpired, unrevoked Special Business License issued pursuant to the provisions of Sections 4.22.030 and Chapter 4.22.

(b) Notwithstanding any other provision of this Chapter or Chapter 4.10 to the contrary, violation of the provisions of subdivision (a) of this Section shall constitute grounds for revocation of a Special Business License authorizing the operation of bingo games issued pursuant to the provisions of this Chapter and Chapter 4.10.

**4.21.130 TEMPORARY SUSPENSION OF LICENSE PENDING OPPORTUNITY FOR HEARING.** The Chief of Police shall have the authority to temporarily suspend the bingo license by ordering in writing that the licensee immediately cease and desist any further operations of any bingo game pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

(a) The bingo licensee is conducting a bingo game in violation of any of the provisions of this Chapter, Penal Code Section 326.5, the City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) The bingo licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The bingo licensee has not kept records as required by the Chief of Police, this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove or federal law, administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulations.

**4.21.135 NOTICE OF TEMPORARY SUSPENSION AND APPEAL - APPEAL OF UNDERLYING SUSPENSION OR REVOCATION.**

(a) The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in Section 4.10.145.

(b) Upon timely request by the licensee, the appeal hearing process and related procedures of a revocation or suspension of its license pursuant to Section 4.10.135 shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.155.

**4.21.140 CONDUCTING BINGO GAMES AFTER TEMPORARY SUSPENSION OR REVOCATION.** Any person who continues to conduct a bingo game after temporary suspension pursuant to Section 4.21.130, or suspension pursuant to Section 4.10.135, is guilty of a misdemeanor.

**4.21.150 RECEIVING BINGO PROCEEDS DURING SUSPENSION OR REVOCATION.** Notwithstanding the provisions of Section 4.10.145, an organization whose license has been temporarily suspended, suspended, or revoked cannot receive bingo proceeds from any source during the period of temporary suspension, suspension, or revocation. A violation of this Section shall result in a permanent license revocation to the organization involved.

**4.21.155 PURCHASES FROM BINGO SUPPLIERS.** It is prohibited for bingo licensees to use bingo paper and pull tabs purchased from suppliers that are not licensed to conduct a bingo supply business by the City pursuant to Chapter 4.23.

**4.21.160 INJUNCTION.** The City may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the Penal Code, of this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.21.165 REGULATION OF GAMES AND EQUIPMENT.** The Chief of Police may prescribe such regulations with respect to the conduct of the games and the equipment used by the licensee as deemed necessary to ensure the fairness and integrity of the games, and the accountability of the funds collected. Violation of such regulations shall constitute grounds for revocation of the Special Business License, as set forth in this Chapter and Chapter 4.10.

**4.21.167 COMPUTERIZED EQUIPMENT.**

(a) Except as provided in Subsection (b) of this Section, it shall be unlawful for organizations licensed under this Chapter to:

(1) Permit the use of machines, devices, or equipment that is computerized, electronic, or mechanical, in a bingo game;

(2) Operate, or allow to be played, any form of bingo in which the numbers to be called are selected by electronic means rather than by random selection of numbered balls from a pool of game balls.

(b) Electronic Bingo Aid.

(1) Purpose. The purpose of this Subsection (b) is not to permit the use of all electronic bingo aids in bingo. The purpose is to permit the bingo licensee to use an electronic bingo aid on the conditions and specifications set forth in this Subsection (b). It is contemplated that an electronic bingo aid will include individual

units or components to be used by players and that these units or components will be activated by the organization licensed to conduct bingo for a player's operation. These individual player units or components are hand held or desktop devices used in conjunction with bingo cards. It is contemplated that an electronic bingo aid will permit a bingo player to input into an activated individual player unit or component randomly selected numbers called by the bingo licensee in order to match such numbers against programmed information to identify a winning card. The programmed information reflects the exact configurations of the bingo cards sold to and played by the player. The electronic bingo aid is not to alter the bingo cards. The electronic bingo aid is to be used in conjunction with bingo cards in order to assist the player identify a winning card. The electronic bingo aid is not to be used as an electronic or computerized game of bingo, or as a substitute for required bingo cards, or as a substitute for any other requirements of bingo as provided in this Chapter or Penal Code section 326.5.

(2) An electronic bingo aid may be used by bingo players in conjunction with bingo cards to assist in the identification of a winning card if the bingo licensee complies with the conditions set forth in this Section, and if the organization complies with all other required provisions of Chapter 4.21 herein and Penal Code section 326.5. Violation of any or all of such provisions and conditions shall constitute grounds for revocation, suspension, or denial of the Special Business License to conduct bingo games, pursuant to the procedures set forth in this Chapter and Chapters 4.02 and 4.10.

(3) An electronic bingo aid is permitted only as a means of assisting a player to mark, otherwise register, or record, numbers selected at random in order to identify a winning bingo card. An electronic bingo aid shall not replace or alter the bingo cards. An electronic bingo aid shall not interfere or interact with the element of chance in the game. The player shall have in his or her possession at all times during the game, bingo cards with configurations that were sold to the player by the bingo licensee for use with the electronic bingo aid that correspond exactly to such bingo card configurations programmed into the electronic bingo aid. The bingo cards and the individual unit or component of the electronic bingo aid used by the player shall be kept separate and apart and in public view on the tabletop, during the game.

(4) Players shall manually input numbers called by the bingo licensee into the individual player operated units or components of the electronic bingo aid; and, automatic daubing shall not be permitted. The portion of the electronic bingo aid system in the immediate physical possession and operation of the bingo licensee, and the individual player operated units or components of the electronic bingo aid used by a player, shall be able to identify a winning card during the game. Verification by the bingo licensee of a winning combination shall be made based on the bingo card and not solely on the electronic bingo aid. Players shall notify the game operator or caller of a winning pattern of bingo.

(5) The electronic bingo aid, including the individual player operated units or components of the electronic bingo aid, shall be enabled for play solely by the bingo licensee; and, only on the premises where the games are conducted. The electronic bingo aid shall be programmed either by the bingo licensee, or by a bingo supplier licensed pursuant to Chapter 4.23 at the direction and as specified by the bingo licensee. A copy of any change in the program of a programmed electronic bingo aid shall be submitted to the Chief of Police. The same card configurations shall be programmed into the electronic bingo aid as are sold to the player. All individual player operated units or components of the electronic bingo aid shall be rented or otherwise provided to a player solely by the bingo licensee.

(6) Prior to giving physical possession of the individual player operated unit or component of the electronic bingo aid to the player, the bingo licensee shall receive payment from the player for the number of games requested by the player that are programmed into the electronic bingo aid. The bingo licensee shall at the time of payment issue to the player: an individual player operated unit or component of the electronic bingo aid; the bingo cards sold to the player corresponding exactly to the bingo number pattern for each card face thereon that is programmed into the electronic bingo aid; and a receipt indicating, the amount paid, the number of faces and games sold to the player and activated in the electronic bingo aid, and the serial number of each card face sold to the player and activated by game.

(7) The Chief of Police shall by administrative regulation determine the maximum number of bingo card faces that may be programmed into a player operated unit or component of an electronic bingo aid during a bingo game, but such number shall in no event exceed 72 bingo card faces.

(8) Only one player operated unit or component of an electronic bingo aid may be used by a bingo player during a bingo game.

(9) A particular type of electronic bingo aid shall not be used by a bingo licensee until the bingo licensee has demonstrated the electronic bingo aid to the Chief of Police, and such electronic bingo aid has been inspected and approved by the Chief of Police.

(10) Each player electing to use the electronic bingo aid shall have an equal opportunity to do so. The bingo licensee shall distribute each player operated unit or component of the electronic bingo aid for play on a random basis; first come, first served. No particular player operated unit or component of the electronic bingo aid shall be reserved for any player. The bingo player is prohibited from selecting the player operated unit or component of the electronic bingo aid.

(11) Only a bingo supplier licensed by Chapter 4.23 may remove the electronic bingo aid from the premises where the games are conducted. Removal may be for repair or for use by another organization licensed by this Chapter to conduct bingo. A record shall be maintained by the bingo licensee of: all electronic

bingo aids removed from such premises; the name of the person, and business if any, who has taken the device from such premises; the site address where taken; the return date if any; and, disposition of the electronic bingo aid.

(12) Accounting records pertaining to electronic bingo aids, including the internal accounting system of the electronic bingo aid, shall be retained as prescribed by Section 4.21.080. The electronic bingo aid system must have a dial-up capability so the Chief of Police may remotely monitor the operation and the internal accounting system of the electronic bingo aid at any time. The electronic bingo aid shall contain a point of sale accounting system that allows it to track all financial activity for the bingo session. The electronic bingo aid shall at a minimum contain and keep an accounting system that records the serial number of each bingo card or bingo face sold, the price of each card sold, and the total amount of the electronic bingo aid proceeds from each session. The accounting information must be secure and shall not be accessible for alteration. The electronic bingo aid's capabilities and information must not be lost through power failure or other disruption during the session.

(13) The bingo licensee shall not conduct bingo games where a player is required to use an electronic bingo aid. During all games, the use of an electronic bingo aid shall be at the option of the bingo player. The bingo licensee shall permit all players to play in all bingo games without the use of an electronic bingo aid.

(14) The bingo licensee shall require a player electing to use an electronic bingo aid to purchase no less than the licensee's minimum number buy-in of bingo cards for use without an electronic bingo aid.

(15) The portion of the electronic bingo aid system in the immediate physical possession and operation of the bingo licensee shall have the capability during the game to print and may print the configurations of the bingo cards that are programmed into the electronic bingo aid. The player operated units or components of the electronic bingo aid shall not have such capability and shall not print configurations of the bingo cards.

(16) The electronic bingo aid including related circuitry shall be sealed and secured in order to prevent unauthorized removal, additions, changes, or other alterations to the data within such electronic bingo aid.

(17) The Chief of Police may, upon demand, examine and inspect the electronic bingo aid, or any player operated unit or component of the electronic bingo aid, during the conduct of the games if the Chief of Police detects or discovers any problem with such equipment that affects the integrity of the bingo game or such equipment. The bingo licensee shall immediately cooperate and comply upon the Chief of Police's demand for such examination and inspection. Such examination and inspection shall include immediate access to the electronic bingo aid, player operated units or components of the electronic bingo aid, and inspection of all

associated parts and systems, as applicable; and, may involve the immediate removal of the electronic bingo aid, player operated units or components of the electronic bingo aid, or related system or parts, as applicable, from the game premises for further testing.

(18) If, at any time, the Chief of Police detects or discovers any malfunction with an electronic bingo aid, or any player operated unit or component of the electronic bingo aid, that affects the integrity of such equipment or the bingo game, the Chief of Police may order the bingo licensee to cease the use of the electronic bingo aid or a player operated unit or component of the electronic bingo aid, as applicable, immediately. The bingo licensee shall comply immediately with such Chief of Police's order.

(19) If the bingo licensee detects or discovers any malfunction or any problem or occurrence with the electronic bingo aid, or the player operated unit or component of the electronic bingo aid, that affects the security or the integrity of the bingo game or such equipment, the bingo licensee shall cease immediately the use of the electronic bingo aid or affected player operated unit or component of the electronic bingo aid, as applicable.

**4.21.170 FALSE OR MISLEADING ADVERTISING.** It shall be unlawful for any licensee to make or disseminate or cause to be made or disseminated before the public in this City, in any newspaper or other publication, or any advertising device, or any other manner or means whatsoever, any statement concerning any such bingo game including, but not limited to, the amount of prizes to be awarded or distributed in any game, which is untrue or misleading, and which is known or which, by the exercise of reasonable care, should be known to be untrue or misleading.

**4.21.175 RECEIPT OF PROFIT BY A PERSON AND PENALTY FOR VIOLATION OF THIS CHAPTER.**

(a) It is a misdemeanor under Section 326.5(b) of the Penal Code of the State of California for any person to receive or pay a profit, wage, or salary from any bingo game authorized under this Chapter for activities related to bingo or the bingo operation. The expenditure of any revenues or proceeds derived from bingo to pay employees, members, or contractors of licensed organizations for services associated with the planning, organization, management, operation or staffing of bingo games, or related to bookkeeping, accounting, auditing or technical advice concerning the handling or disposition of such revenues or proceeds is prohibited. A violation of this prohibition is punishable by a fine not to exceed ten thousand dollars (\$10,000) payable to the general fund of the City of Elk Grove.

(b) In addition to other applicable provisions of this Title, a violation of any of the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a Special Business License to

conduct bingo games issued pursuant to the provisions of this Chapter and Chapter 4.10.

**4.21.180 DISCONTINUANCE OF BINGO GAMES.** Bingo licensees who discontinue conducting bingo games shall follow the accounting requirements prescribed by the Chief of Police in the City Regulations adopted pursuant to this Chapter. Their failure to do so shall result in denial of a subsequent license to conduct bingo games for two (2) years from the last day a bingo game was conducted.

## CHAPTER 4.22

### BINGO PARLORS

#### Sections:

- 4.22.000 Purpose.
- 4.22.005 Definitions.
- 4.22.010 Same - Bingo Parlor.
- 4.22.015 Same - Bingo.
- 4.22.017 Same - Bingo Session.
- 4.22.020 License Required.
- 4.22.025 Contents of the Application.
- 4.22.030 Issuance.
- 4.22.035 Employee Permits.
- 4.22.040 Application for Permits.
- 4.22.045 Issuance of Permit.
- 4.22.050 Revocation of Permits.
- 4.22.055 Records - Compliance Examination and Inspection.
- 4.22.057 Retention of Records.
- 4.22.060 Hours of Operation.
- 4.22.065 Limitation on Parlor Owner Involvement in Bingo.
- 4.22.070 Prohibition of Financial Interest in Bingo.
- 4.22.080 Temporary Suspension of License Pending  
Opportunity for Hearing.
- 4.22.085 Notice of Temporary Suspension and Appeal -  
Appeal of Underlying Suspension or Revocation.
- 4.22.090 Operating and Conducting Business at the Bingo  
Parlor after Temporary Suspension or Suspension.
- 4.22.100 Receipt of Profit by a Person and Penalty for  
Violation of this Chapter.

**4.22.000 PURPOSE.** In recent years, there has been a proliferation of bingo parlors in the region, resulting in multiple organizations licensed to conduct bingo in accordance with Chapter 4.21 and conducting bingo games at a single commercial location. Competition for the bingo player and the bingo dollar has increased between charitable organizations conducting bingo games. High rents and overhead and increased promotional expenditures have reduced the charitable organizations' profits derived from bingo games, thereby resulting in a substantial decrease in the profits available for charitable purposes.

The regulatory provisions of this Chapter are necessary to ensure that bingo parlors are operated subject to reasonable conditions for the protection of the public health, safety and welfare. A system of regulating bingo parlors, in conjunction with the existing regulations of organizations licensed to conduct bingo in accordance with Chapter 4.21, encourages the maximum use of bingo proceeds and profits for charitable purposes, but also limits the commercialization of bingo, particularly by criminal or otherwise undesirable elements.

The licensing regulations for bingo parlors further clarify and define the relationship between the bingo parlor and the licensed charitable organizations with respect to the operation and management of bingo games in the City.

**4.22.005 DEFINITIONS.** As used in this Chapter, the terms identified by Sections 4.22.010 through 4.22.017 shall be ascribed the meanings indicated.

**4.22.010 SAME - BINGO PARLOR.** A "bingo parlor" means a building, facility, or other improvement upon which space is leased, rented or otherwise allocated for monetary consideration to two or more organizations possessing a Special Business License pursuant to Chapter 4.21, within or upon which bingo games sponsored by the licensed organizations are conducted. A bingo parlor shall not be deemed to mean or include a building, facility, or other improvement which is owned by a public agency, within or upon which space is rented, leased or otherwise allocated for the operation of bingo games by two or more licensed organizations.

**4.22.015 SAME - BINGO.** As used in this Chapter, the term "bingo" shall be deemed to mean a game of chance as specifically defined in Section 4.21.010.

**4.22.017 SAME - BINGO SESSION.** As used in this Chapter, the term "bingo session" shall be deemed to mean the same as specifically defined in Section 4.21.017.

**4.22.020 LICENSE REQUIRED.** No person shall, unless under and by authority of a valid, unrevoked and unexpired Special Business License issued pursuant to the provisions of this Chapter, operate a bingo parlor in the City, whether singularly or in connection with another type of enterprise. A person shall be deemed to operate or conduct a bingo parlor and violate this Section if the person, without a Special Business License supervises, directs, organizes, controls or is in any way responsible for or in charge of a bingo parlor for which a Special Business

License is required.

**4.22.025 CONTENTS OF THE APPLICATION.** In addition to the matters prescribed by Section 4.10.030, an application for a Special Business License to operate a bingo parlor shall contain the following:

(a) A copy of all leases, contracts or other agreements regarding the use or occupancy of the bingo parlor by and between the licensee and any organization licensed to conduct bingo games pursuant to Chapter 4.21;

(b) A description of all uses which any organization licensed pursuant to Chapter 4.21 shall make of the bingo parlor premises; and,

(c) A detailed description of the facility, services, resources and security personnel which the licensee shall provide to each organization licensed pursuant to Chapter 4.21 which shall operate or conduct a bingo game at the bingo parlor.

**4.22.030 ISSUANCE.** The Chief of Police shall issue a Special Business License unless:

(a) One or more of the findings set forth in Section 4.10.040 is made;

(b) The bingo parlor has violated, or will be conducted, operated or managed in a manner which violates, Penal Code Section 326.5, this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The applicant holds a current license under Chapters 4.21 or 4.23.

**4.22.035 EMPLOYEE PERMITS.** No person shall work in a bingo parlor as a bingo parlor manager and no person who holds a Special Business License authorizing operation of a bingo parlor shall employ any person as a bingo parlor manager unless such person possesses a valid Employee Permit or a Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.22.040 APPLICATION FOR PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to serve as a bingo parlor manager shall contain a list of each arrest resulting in either a conviction, a plea of guilty or a plea of nolo contendere. This list shall, for each such conviction, plea of guilty or plea of nolo contendere, set forth the date of arrest, the offense charged and the offense for which the applicant was convicted, or entered a plea of guilty or plea of nolo contendere.

**4.22.045 ISSUANCE OF PERMIT.** Upon receipt of an application for an employee permit to serve as a bingo parlor manager, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the permit pursuant to Section 4.10.090 unless he or

she finds any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.22.040, or is otherwise incomplete;

(b) That information contained in the application is false or otherwise inaccurate;

(c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or, has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act the applicant may not perform his or her duties as a bingo parlor manager in a law-abiding manner or in a manner which does not subject patrons of the bingo parlor to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.05; or,

(d) That the applicant has violated or is in noncompliance with any of the provisions of this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.22.050 REVOCATION OF PERMITS.** An employee permit may be revoked or suspended pursuant to Section 4.10.140 upon any of the following grounds:

(a) Violation of any of the duties, terms, conditions, requirements or prohibitions contained in this Chapter, in the City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) Violation of any duties, terms, conditions requirements or prohibitions imposed by Chapter 4.02 or Chapter 4.10;

(c) Misrepresentation of a material fact contained in the application for the permit; or,

(d) The Chief of Police has acquired information supporting a finding as described by Section 4.22.045(c) in relation to the holder of the permit.

#### **4.22.055 RECORDS - COMPLIANCE EXAMINATION AND INSPECTION.**

(a) The parlor licensee shall keep full and accurate records of the income received and expenses disbursed in connection with its operation and conduct of a bingo parlor, and as necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

(b) The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy, parlor licensee records as described in subdivision (a) of this Section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

(c) Compliance examinations shall be conducted by the Chief of Police of parlor licensee records described in subdivision (a) of this Section not less frequently than annually, for each twelve (12) months of each licensee's operation.

(d) Records described in subdivision (a) of this Section shall be subject to disclosure only pursuant to:

(1) Any suspension, revocation or other proceeding conducted under this Chapter or the City Regulations adopted pursuant to this Chapter; or,

(2) Any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Counsel. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

**4.22.057 RETENTION OF RECORDS.** The parlor licensee shall keep and preserve the records described in Section 4.22.055(a), for the following period of time, whichever occurs later:

(a) Three (3) years;

(b) Until completion of a compliance examination; or

(c) Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.22.060 HOURS OF OPERATION.** It shall be unlawful for any bingo parlor

to operate or remain open for purposes of conducting bingo games between the hours of 2:00 a.m. and 10:00 a.m. of the same day.

**4.22.065 LIMITATION ON PARLOR OWNER INVOLVEMENT IN BINGO.**

The licensee shall not organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of any bingo game conducted at the bingo parlor or the promotion thereof.

**4.22.070 PROHIBITION OF FINANCIAL INTEREST IN BINGO.** With the exception of revenue generated by any business or enterprise for which a Special Business License is required pursuant to this Chapter no licensee shall have a financial interest in the conduct of a bingo game operated in the City. A licensee shall be deemed to have a financial interest in the conduct of a bingo game including, but not limited to, the following situations:

(a) Rent or other costs for the bingo parlor is adjusted based on the profits, losses or tax exempt status of any organization licensed under Chapter 4.21;

(b) The licensee absorbs, assumes, shares or otherwise participates in the losses or profits of any bingo game conducted by any organization licensed under Chapter 4.21; or,

(c) The licensee maintains an accounts receivable for an organization licensed under Chapter 4.21 for rent amounts or other costs owed to the bingo parlor; except, for amounts owed by such organization from a previous day of bingo operation which are paid before the next day of bingo operation.

**4.22.080 TEMPORARY SUSPENSION OF LICENSE PENDING**

**OPPORTUNITY FOR HEARING.** The Chief of Police shall have the authority to temporarily suspend the parlor's license by ordering in writing that the licensee immediately cease and desist any further operations of the parlor pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

(a) The parlor licensee is conducting its operation in violation of any of the provisions of this Chapter, Penal Code Section 326.5, the City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) The parlor licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, any other applicable State of California, City of Elk Grove, federal law, or administrative rule or

regulation; or,

(c) The parlor licensee has not kept records as prescribed by the Chief of Police, this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.22.085 NOTICE OF TEMPORARY SUSPENSION AND APPEAL -  
APPEAL OF UNDERLYING SUSPENSION OR REVOCATION.**

(a) The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in Section 4.10.145.

(b) Upon timely request by the licensee, the appeal hearing process and related procedures of the revocation or suspension of its license pursuant to Section 4.10.135 shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.155.

**4.22.090 OPERATING AND CONDUCTING BUSINESS AT THE BINGO PARLOR AFTER TEMPORARY SUSPENSION OR REVOCATION.** Any person(s) who continues to operate and conduct the business of a bingo parlor after temporary suspension pursuant to Section 4.22.080, or suspension pursuant to Section 4.10.135, is guilty of a misdemeanor.

**4.22.100 RECEIPT OF PROFIT BY A PERSON AND PENALTY FOR  
VIOLATION OF THIS CHAPTER.**

(a) It is a misdemeanor under Section 326.5(b) of the Penal Code for any person to receive or pay a profit, wage or salary from any bingo game authorized under this Chapter. Payment received by a parlor licensee for rent or lease of a parlor facility or other costs of the parlor related to bingo from a bingo licensee licensed pursuant to Chapter 4.21 and 4.10 shall not be deemed a violation of this Section. A violation of this prohibition is punishable by a fine not to exceed ten thousand dollars (\$10,000) payable to the general fund of the City of Elk Grove.

(b) A violation of any of the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a Special Business License to conduct a bingo parlor issued pursuant to the

provisions of this Chapter.

**CHAPTER 4.23**  
**BINGO SUPPLIERS**

Sections:

- 4.23.000 Purpose.
- 4.23.010 Definitions.
- 4.23.015 Same - Bingo Supplier.
- 4.23.020 Same - Bingo.
- 4.23.025 License Required.
- 4.23.030 Issuance.
- 4.23.035 Records - Compliance Examination and Inspection.
- 4.23.037 Retention of Records.
- 4.23.040 Limitation on Involvement in Bingo.
- 4.23.045 Prohibition of Financial Interest in Bingo.
- 4.23.050 Required Records.
- 4.23.055 Computerized Equipment.
- 4.23.060 Temporary Suspension of License Pending  
Opportunity for Hearing.
- 4.23.065 Notice of Temporary Suspension and Appeal -  
Appeal of Underlying Suspension and Revocation.
- 4.23.075 Operating and Conducting Business after Temporary  
Suspension or Suspension.
- 4.23.080 Receipt of Profit by a Person and Penalty for  
Violation of this Chapter.

**4.23.000 PURPOSE.** A system of regulating bingo suppliers in conjunction with the regulation of organizations authorized to conduct bingo games pursuant to Penal Code Section 326.5 and of bingo parlors is necessary to ensure the maximum use of bingo proceeds and profits for charitable purposes and to limit the abuses stemming from increased commercialization of bingo in the City.

**4.23.010 DEFINITIONS.** As used in this Chapter, the terms identified by Sections 4.23.015 through 4.23.020 shall be ascribed the meanings indicated.

**4.23.015 SAME - BINGO SUPPLIER.** A "bingo supplier" means any person or enterprise which, for a consideration, sells, rents, supplies, provides or furnishes equipment, products, goods, paper or other items for use in the conduct of bingo games.

**4.23.020 SAME - BINGO.** As used in this Chapter, the term "bingo" shall be deemed to mean a game of chance as specifically defined in Section 4.21.010.

**4.23.025 LICENSE REQUIRED.** No person shall, unless under and by authority of a valid, unrevoked and unexpired Special Business License, sell, rent, supply, provide or furnish for a consideration, any equipment, products, goods, paper or other items for use in the conduct of bingo games. A bingo supplier shall be deemed to operate or conduct business within the unincorporated area of the City if the bingo supplier or representatives thereof sell, rent, supply, provide or furnish for a consideration, within the City, any equipment, products, goods, paper or other items for use in the conduct of bingo games, whether or not the bingo supplier operates from a fixed location within another jurisdiction.

**4.23.030 ISSUANCE.** The Chief of Police shall issue a Special Business License unless:

- (a) One or more of the findings set forth in Section 4.10.040 is made;
- (b) The bingo supplier sells, rents, supplies, provides or furnishes any equipment, products, goods, paper or other items for use in conjunction with or in the conduct of bingo games in a manner which violates Penal Code Section 326.5, this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;
- (c) The applicant has a current license under Chapter 4.21 or 4.22; or,
- (d) The applicant has violated or is not in compliance with this Chapter, Section 326.5 of the Penal Code, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.23.035 RECORDS - COMPLIANCE EXAMINATION AND INSPECTION.**

- (a) The bingo supplier licensee shall keep full and accurate records of all

inventory, income received and expenses disbursed in connection with the sale, rental, supply, provision or furnishing of any equipment, products, goods, paper or other items for use in the conduct of bingo games, and as necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or rule or administrative regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police; and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

(b) The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy, supplier licensee records as described in subdivision (a) of this Section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

(c) Compliance examinations shall be conducted by the Chief of Police of supplier licensee records described in subdivision (a) of this Section not less frequently than annually, for each twelve (12) months of each licensee's operation.

(d) Such records shall be subject to disclosure only pursuant to:

(1) Any suspension, revocation or other proceeding conducted under this Chapter or the City Regulations adopted pursuant to this Chapter; or,

(2) Any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Attorney. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

**4.23.037 RETENTION OF RECORDS.** The supplier licensee shall keep and preserve the records described in Section 4.23.035(a), for the following period of time, whichever occurs later:

(a) Three (3) years;

(b) Until completion of a compliance examination; or

(c) Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.23.040 LIMITATION ON INVOLVEMENT IN BINGO.** The licensee shall not organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of any bingo game conducted in the City or the

promotion thereof.

#### **4.23.045 PROHIBITION OF FINANCIAL INTEREST IN BINGO.**

(a) With the exception of revenue generated by any business or enterprise for which a Special Business License is required pursuant to this Chapter, no bingo supplier shall have a financial interest in the conduct of a bingo game operated in the City. A licensee shall be deemed to have a financial interest in the conduct of a bingo game including, but not limited, to the following situations:

(1) The price or cost of bingo supplies is adjusted by the licensee based on the profits, losses or tax exempt status of any organization licensed under Chapter 4.21;

(2) The licensee absorbs, assumes, shares or otherwise participates in the losses, or profits of any bingo game conducted by any organization licensed under Chapter 4.21; or,

(3) The licensee maintains an accounts receivable for an organization licensed to conduct bingo games pursuant to Chapter 4.21 for amounts owed to the bingo supplier for a period that exceeds thirty (30) days from the invoice date or ten (10) days from the statement date, whichever occurs later. For purposes of this subdivision of this Section "invoice date" is defined as the date of delivery of such supplies and "statement date" is defined as the date within thirty (30) days of the delivery of supplies.

(b) The licensee with knowledge that a bingo licensee licensed pursuant to Chapter 4.21 has not paid its supplier account(s) to any supplier within the required period as provided in subdivision (a) (3) of this Section shall not sell or rent supplies to such a bingo licensee until all the bingo licensee's account(s) are brought within the time period provided for within subdivision (a) (3) of this Section.

**4.23.050 REQUIRED RECORDS.** Licensed bingo suppliers shall maintain a complete set of records which includes detail of all activities. These records shall include, but are not be limited to the following:

(a) Pre-printed sales invoices which reflect the following information:

(1) Date of sale;

(2) The customer name, and complete business address;

(3) A description and stock number of each line item sold; and,

(4) Quantity and sales price of each line item.

(b) The original and two (2) copies of the pre-printed sales invoice shall be prepared and maintained as follows:

- (1) Original issued to the customer;
- (2) A copy retained in a file by customer name; and,
- (3) A copy file in (invoice number) numerical sequence.

(c) Credit memos for returned items shall be prepared in the same detail as items described in subdivision (a) of this Section.

#### **4.23.055 COMPUTERIZED EQUIPMENT.**

(a) Except as provided in Subsection (b) of this Section, it shall be unlawful for bingo suppliers licensed under this Chapter to:

(1) Sell, rent, supply, provide or furnish machines, devices, or equipment that is computerized, electronic, or mechanical to an organization licensed to conduct bingo pursuant to Chapter 4.21, for use in a bingo game; or,

(2) Sell, rent, supply, provide, or furnish equipment for use in a bingo game in which the numbers to be called are selected by electronic means rather than by random selection of numbered balls from a pool of game balls.

(b) Electronic Bingo Aid.

(1) Purpose. The purpose of this Subsection is not to permit a licensed bingo supplier to sell, rent, supply, provide or furnish to organizations licensed to conduct bingo pursuant to Chapter 4.21 all electronic aids for use in bingo. The purpose is to permit the licensed supplier to sell, rent, supply, provide or furnish to such organizations the use of electronic bingo aids on the conditions set forth herein. It is contemplated that an electronic bingo aid will include individual units or components to be used by players and that these units or components will be activated by the organizations licensed to conduct bingo for a player's operation. These individual player units or components are hand held devices or desktop devices to be used in conjunction with bingo cards. It is contemplated that an electronic bingo aid will permit a bingo player to input into an activated individual player unit or component randomly selected numbers called by an organization licensed to conduct bingo pursuant to Chapter 4.21 in order to match such numbers against programmed information to identify a winning card. The programmed information reflects the exact configurations of the bingo cards sold to and played by the player. The electronic bingo aid is not to alter the bingo cards. The electronic bingo aid is to be used in conjunction with bingo cards in order to assist the player identify a winning card. The electronic bingo aid is not to be used as an electronic or computerized game of bingo, or as a substitute for required bingo cards, or as a substitute for any other requirements of bingo as provided in Chapter 4.21 or in Penal Code section 326.5.

(2) An electronic bingo aid to assist in the identification of a winning card or paper may be sold, rented supplied, provided or furnished to an organization

licensed pursuant to Chapter 4.21 to conduct bingo by a licensed bingo supplier if the licensed bingo supplier complies with the conditions set forth in Subsections (b)(3) through (b)(12) of this Section, and if the supplier complies with all other required provisions of this Chapter and Penal Code section 326.5. Violation of any or all of such provisions and conditions shall constitute grounds for revocation, suspension, or denial of the Special Business License to conduct the business of a bingo supplier, pursuant to the procedures set forth in this Chapter and Chapters 4.02, and 4.10.

(3) An electronic bingo aid shall assist a player to mark, otherwise register, or record, numbers selected at random in order to identify a winning bingo card. An electronic bingo aid shall not replace or alter bingo cards. The electronic bingo aid shall be programmed either by the supplier licensee at the direction and as specified by an organization licensed to conduct bingo pursuant to Chapter 4.21, or by the organization licensed to conduct bingo. The electronic bingo aid shall be programmed only with bingo card configurations corresponding exactly to bingo card configurations used by such licensed organization. A copy of any change made by the supplier licensee in the program of a programmed electronic bingo aid shall be submitted to the Chief of Police. The electronic bingo aid shall permit licensed organizations to enable the electronic bingo aid, including the individual player operated units or components, for play on the premises where the games are conducted. The electronic bingo aid shall not interfere or interact with the element of chance in the game.

(4) The electronic bingo aid shall permit a player to use a player operated unit or component of the electronic bingo aid to manually input numbers called in a bingo game into the electronic bingo aid. Automatic daubing shall not be a feature of the electronic bingo aid. The portion of the electronic bingo aid system in the immediate physical possession and operation of the organization licensed by Chapter 4.21 to conduct the games, and the individual player operated units or components of the electronic bingo aid used by a player, shall identify winning cards during a game. The portion of the electronic bingo aid system in the immediate physical possession and operation of the organization licensed to conduct bingo shall be capable of printing a winning card for verification during the game; the individual player operated units or components shall not have this feature.

(5) A particular type of electronic bingo aid shall not be sold, rented, supplied, provided or furnished to an organization licensed to conduct bingo pursuant to Chapter 4.21 by a licensed bingo supplier until the licensed supplier has demonstrated the electronic bingo aid to the Chief of Police, and such electronic bingo aid has been inspected by, and approved by the Chief of Police.

(6) An electronic bingo aid may be removed from the place where the games are conducted solely by the supplier licensee for repair or to transfer to another organization licensed to conduct bingo pursuant to Chapter 4.21 for the conduct of bingo. The supplier licensee shall keep a record of the bingo electronic aid received; the date received; the repairs made, if any; the particular malfunction, if

any; the name of the licensed organization that the electronic bingo aid or part thereof was removed; and, the date the aid or part thereof is returned to an organization if returned, or notation of what action taken if not returned.

(7) The electronic bingo aid shall have a dial-up capability so that the Chief of Police may remotely monitor the operation and internal accounting system of the electronic bingo aid at any time. The electronic bingo aid shall contain a point of sale accounting system that allows it to track all financial activity for a bingo session. The bingo supplier licensee's accounting records pertaining to electronic bingo aids shall be retained as prescribed by Section 4.23.050. An electronic bingo aid shall work with an accounting system that records, and retains for a retention period of not less than that found in Section 4.21.080, the serial number of each bingo card or face sold, the price of each card sold, and the total amount of the electronic bingo aid proceeds from each session. An electronic bingo aid's capabilities and information must not be lost through power failure or other disruption during the session.

(8) An electronic bingo aid shall have the capability to permit organizations licensed to conduct bingo to print the configurations of the bingo cards or papers that are programmed into the device; but, the individual player operated units or components shall not have this feature.

(9) The electronic bingo aid including related circuitry shall be sealed and secured in order to prevent unauthorized removal, additions, changes, or other alterations or tampering with the data within such electronic bingo aid.

(10) If the Chief of Police detects or discovers any problem with an electronic bingo aid, including the player operated electronic bingo aid unit or component, or any related system or parts, that affects the integrity of the bingo game, or such equipment, the Chief of Police may, upon demand, examine and inspect such equipment, as applicable, if it is in possession of the supplier licensee after removal from the place where the game of bingo is conducted. The Chief of Police may upon demand examine and inspect any electronic bingo aid, player operated unit or component of an electronic bingo aid, or related system or parts, for sale, rent, supply, or to be provided or furnished by the supplier licensee to an organization licensed to conduct bingo. Such examinations and inspections shall include immediate access to the electronic bingo aid, including the player operated unit or component of an electronic bingo aid, and unlimited inspection of all parts and associated systems, as applicable; and, may involve the removal of such equipment, as applicable, from the supplier licensee's premises or possession for further testing. Upon the Chief of Police's demand, the supplier licensee shall immediately comply and cooperate with the Chief of Police for such examinations, inspections, or removals.

(11) If at any time the Chief of Police detects or discovers any problem with an electronic bingo aid, or with a player operated bingo unit or component of the electronic bingo aid, or with any related system or parts, that

affects the security or the integrity of a bingo game or such equipment, the Chief of Police may order the supplier licensee to cease the sale, rental, supply, or provision or furnishing of such electronic bingo aid or player operated unit or component, as applicable, to an organization licensed to conduct bingo, and the supplier licensee shall comply immediately with such Chief of Police's order.

(12) If at any time the supplier licensee detects or discovers any problem with a electronic bingo aid, or with a player operated unit or component of the electronic bingo aid, or any related system or parts, that affects the security or the integrity of a bingo game or such equipment, the supplier licensee shall cease immediately to sell, rent, supply, provide, or furnish the electronic bingo aid or player operated unit or component, as applicable, to an organization licensed to conduct bingo, and shall notify the Chief of Police, and organizations licensed to conduct bingo who have secured possession of such electronic bingo aid from such bingo supplier, of such malfunction, problem or occurrence.

**4.23.060 TEMPORARY SUSPENSION OF LICENSE PENDING OPPORTUNITY FOR HEARING.** The Chief of Police shall have the authority to temporarily suspend the supplier's license by ordering in writing that the licensee immediately cease and desist any further operations of the bingo supply business pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

(a) The supplier licensee is conducting its operation in violation of any of the provisions of this Chapter, Penal Code Section 326.5, the City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) The supplier licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The supplier licensee has not kept records as prescribed by the Chief of Police, this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.23.065 NOTICE OF TEMPORARY SUSPENSION AND APPEAL - APPEAL OF UNDERLYING SUSPENSION AND REVOCATION.**

(a) The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in Section 4.10.145.

(b) Upon timely request by the licensee, the appeal hearing process and related procedures of the revocation or suspension of its license pursuant to Section 4.10.135 shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.155.

**4.23.075 OPERATING AND CONDUCTING BUSINESS AFTER TEMPORARY SUSPENSION OR REVOCATION.** Any person(s) who continues to operate and conduct the business of a bingo supplier after temporary suspension pursuant to Section 4.23.065, or suspension pursuant to Section 4.10.135, is guilty of a misdemeanor.

**4.23.080 RECEIPT OF PROFIT BY A PERSON AND PENALTY FOR VIOLATION OF THIS CHAPTER.**

(a) It is a misdemeanor under Section 326.5(b) of the Penal Code for any person to receive or pay a profit, wage or salary from any bingo game authorized under this Chapter. Payment received by a bingo supplier for supplies purchased by a bingo licensee licensed pursuant to Chapter 4.21 shall not be deemed a violation of this Section. A violation of this prohibition is punishable by a fine not to exceed ten thousand dollars (\$10,000) payable to the general fund of the City of Elk Grove.

(b) A violation of any of the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a Special Business License for a bingo supplier issued pursuant to the provisions of this Chapter.

## CHAPTER 4.25

### PAWNBROKERS, SECONDHAND DEALERS AND JUNK DEALERS

Sections:

- 4.25.000 Purposes.
- 4.25.005 License Required.
- 4.25.010 Definitions.
- 4.25.015 Display of License.
- 4.25.020 Daily Report.
- 4.25.025 Contents of Reports.
- 4.25.030 Records.
- 4.25.040 Use of English Language Required.
- 4.25.045 Time Limit for Sale.
- 4.25.050 Junk Dealer Not to Accept Pledges or Pawns.
- 4.25.055 Receipt of Goods - Prohibited Persons.
- 4.25.060 Nonapplicability of Sections.
- 4.25.065 Hours.
- 4.25.070 Construction Requirements.
- 4.25.075 Sanitation of Premises.
- 4.25.080 Separate Businesses.
- 4.25.085 Bond.
- 4.25.090 Reporting Stolen Goods.
- 4.25.095 Inspection.

**4.25.000 PURPOSES.** Pawnbrokers, secondhand dealers and junk dealers and collectors constitute prime vehicles for the disposal and sale of stolen property within the City. The purposes of the Chapter are to regulate the activities of such enterprises for the purpose of facilitating law enforcement's apprehension of criminals and recovery of stolen property and to curtail the trafficking of stolen property.

This Chapter is enacted pursuant to the provisions of Section 21638 of the Business and Professions Code. The provisions of this Chapter shall not be construed to require any act or omission which is expressly prohibited or prohibit any act or omission which is expressly required by the provisions of Sections 21625 through 21647 of the Business and Professions Code.

**4.25.005 LICENSE REQUIRED.** It is unlawful for any person to operate or conduct the business of pawnbroker, secondhand dealer, junk dealer or junk collector, unless under and by authority of a valid, unexpired and unrevoked Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

Notwithstanding the provisions of Section 4.10.040(c) and Section 4.10.100, the Chief of Police shall not deny a Special Business License for the business of pawnbroker, secondhand dealer, junk collector or junk dealer on grounds enumerated by Section 4.10.040(c) unless one or more of the persons identified in Section 4.10.040(c) has been convicted of an offense described by Section 21641 of the Business and Professions Code. A License shall not be revoked on grounds prescribed by Section 4.10.135(b) unless one or more of the persons identified by Section 4.10.040(c) has been convicted of an offense described by Section 21641 of the Business and Professions Code.

**4.25.010 DEFINITIONS.** As used in this Chapter the following terms shall be ascribed the following meanings:

(a) "Pawnbroker" -- shall mean a person engaged in conducting, managing or carrying on the business of pawnbroking, or the business of lending money for himself or any other person upon personal property, pawns or pledges; or the business of purchasing articles from the vendors or their assignees at prices agreed upon at or before the time of such purchase.

(b) "Pawnshop" -- shall mean any room, store, building or other place in which any such business is engaged in, carried on or conducted.

(c) "Secondhand Dealer" -- shall mean a person engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, furniture, wares, coins or merchandise.

(d) "Junk Dealer" -- shall mean a person having a fixed place of business in the City, and engaged in conducting, managing or carrying on the business of

buying, selling or otherwise dealing in, either at wholesale or retail, any old rags, sacks, bottles, cans, papers, metal, or other articles commonly known as junk.

(e) "Junk Collector" -- shall mean a person not having a fixed place of business in the City, who goes from house to house, or from place to place, gathering, collecting, buying, selling, or otherwise dealing in any old rags, sacks, bottles, cans, papers, metal or other articles commonly known as junk.

**4.25.015 DISPLAY OF LICENSE.** Every person issued a Special Business License under the provisions of this Chapter, and conducting, managing or carrying on a business or occupation at a fixed place of business, shall keep such License posted and exhibited while in force in some conspicuous part of the place of business. Every person having such License and not having a fixed place of business shall carry such License with him at all times while carrying on the business or occupation for which the same was granted. Every person having a License under the provisions of this Chapter shall produce and exhibit the same when applying for a renewal thereof and whenever requested to do so by any officer authorized to issue, inspect or collect licenses.

**4.25.020 DAILY REPORT.** Every pawnbroker and secondhand dealer shall send to the Chief of Police the daily electronic report in the format required by Business and Professions Code section 21628(j)(2). The report shall be sent electronically to the Chief of Police by a method and format acceptable to him or her.

Every junk dealer and junk collector shall send to the Chief of Police in an electronic format approved by the Chief of Police a daily report of all information required to be gathered by Business and Professions Code section 21606. The report shall be sent electronically by a method determined by the Chief of Police.

**4.25.025 CONTENTS OF REPORTS.** The contents of the reports to be sent at the close of each business day to the Chief of Police shall be as provided in Business and Professions Code section 21628 for pawnbrokers and second hand dealers and in section 21606 for junk dealers and junk collectors

**4.25.030 RECORDS.** Every pawnbroker and secondhand dealer shall keep a complete record of all goods, wares, merchandise or things pledged to or purchased or received by him, sold or otherwise disposed of, which shall contain all the matters required to be shown in the reports required to be made by such pawnbroker or secondhand dealer and referred to and described in Sections 4.25.020 and 4.25.025.

Every junk dealer and junk collector shall keep a record of all goods, wares, merchandise or things purchased or received by him, sold or otherwise disposed of, which record shall contain all the matters required to be shown in the reports referred to and described in Sections 4.25.020 and 4.25.025.

Every such record and all goods, wares, merchandise and things pledged to or pledged or received by any such pawnbroker, secondhand dealer, junk dealer or

junk collector shall be immediately produced for inspection by any officer required to inspect such records or personal property in the performance of his official duties.

**4.25.040 USE OF ENGLISH LANGUAGE REQUIRED.** Every report and record required by the terms of this Chapter to be filed or kept, shall be written or printed entirely in the English language, in a clear and legible manner.

**4.25.045 TIME LIMIT FOR SALE.** It is unlawful for any pawnbroker, secondhand dealer, or junk dealer to sell or otherwise dispose of any article or thing, the report of which is required to be made under the provisions of Sections 4.25.020 and 4.25.025 within one week after making a report to the Chief of Police as required in Section 4.25.020. The provisions of this section shall not apply to motor vehicles duly and regularly cleared for transfer by the Department of Motor Vehicles of the state.

**4.25.050 JUNK DEALER NOT TO ACCEPT PLEDGES OR PAWNS.** No Junk dealer or junk collector shall receive any personal property by way of pledge or pawn, nor shall the business of junk dealer and the business of pawnbroker be conducted upon the same premises.

**4.25.055 RECEIPT OF GOODS - PROHIBITED PERSONS.** It is unlawful for any pawnbroker, secondhand dealer, junk dealer or junk collector, to receive or purchase any property, article or thing, from any person who shall appear to be, or who is known to be, intoxicated, or from any minor, unless the minor presents the written consent of his parent or guardian, duly signed, authorizing the particular transaction, which written consent must be kept, and exhibited, upon demand, by any officer requesting the same in the performance of his official duties.

In any criminal prosecution, or proceeding for the suspension or revocation of any license for a violation of this section, proof that the defendant licensee, or his agent or employee, demanded and was shown, before receiving or purchasing any property, article or thing, a motor vehicle operator's license or a registration certificate issued under the Federal Selective Service Act, or other bona fide documentary evidence of majority and identity of the person, is a defense to the prosecution or proceeding for the suspension or revocation of any license.

**4.25.060 NONAPPLICABILITY OF SECTIONS.** The provisions of Sections 4.25.020 through 4.25.045 shall not apply to the receipt of, or sale of secondhand personal property which has been received as part payment for a new article if the person receiving or selling the secondhand personal property is the authorized dealer or agent of the manufacturer of the new article sold.

**4.25.065 HOURS.** It is unlawful for any person engaged in, conducting, managing or carrying on the business of pawnbroker, secondhand dealer, junk dealer or junk collector, or for any agent, or employee of any such person, to accept any pledge, or to loan any money upon personal property or to receive or purchase any goods, wares or merchandise, or any article or thing between midnight on

Saturday and seven a.m. the following Monday, or between seven p.m. of any day other than Saturday and Sunday, and seven a.m. the following day.

**4.25.070 CONSTRUCTION REQUIREMENTS.** If any business or establishment required by Section 4.25.005 to possess a Special Business License is located in whole or in part in any yard, enclosure, lot, or open area, such premises as are open to public view shall be completely surrounded and enclosed by a wall, fence or barrier constructed of wood or other solid, impervious material, and so constructed as to be a continuous barrier, except for necessary openings, sufficient to prevent the ingress or egress of rats, mice, or other rodents so far as is possible. Should any part of such yard, enclosure, lot or open area abut upon any earthen embankment, the height of which shall not be less than the minimum height of the wall, fence or barrier herein provided for, such part so abutting upon the earthen embankment need not be enclosed by said wall, fence or barrier. The wall, fence or barrier shall be continuously kept and maintained in the condition required by this section. The wall, fence or barrier shall extend above the ground for at least six feet. Any and all necessary openings in such fence, wall or barrier shall be provided with suitable gates or doors. No such openings shall in any single instance be greater than is reasonably necessary.

Such gate or door shall be kept closed at all times except during the normal business hours of the business or establishment.

It is unlawful for any person to permit any such business or establishment referred to and described in this Chapter to be established, conducted, carried on or maintained unless the premises shall have been rendered rodentproof as far as reasonably possible, and continuously maintained in such condition. Each day's violation of the requirements declared and established by this Chapter shall be and constitute a separate and distinct violation and offense.

**4.25.075 SANITATION OF PREMISES.** If any business or establishment required by Section 4.25.005 to possess a Special Business License is located in whole or in part in a yard, enclosure, lot or open area, such premises and area shall, so far as reasonably possible, be kept clean and free from rubbish and similar loose material that might serve as a harborage for rats, mice or other rodents, and all loose metal, or parts or accessories of automobiles, and all other material kept, stored or accumulated in said place, shall, so far as reasonably possible, be neatly and carefully piled, in such manner as to minimize and prevent as far as possible the harborage of rodents, and shall be suitably protected from water and the elements so that there can be, so far as is practicable, no accumulation of water in any article or thing stored on the premises.

**4.25.080 SEPARATE BUSINESSES.** If any person shall engage in, conduct, manage or carry on, at the same time, more than one of the businesses defined by Section 4.30.010, such person shall be deemed to be engaging in, conducting, managing and carrying on each such business separately and apart from the other such business, and such person shall comply in all respects with the

provisions of this chapter relating to each such business, and it is unlawful for any such person to fail, refuse or neglect so to do.

**4.25.085 BOND.** Every junk dealer, as defined herein, shall furnish to the City a bond in the principal amount of five thousand (\$5,000) dollars guaranteeing faithful performance by the junk dealer of the terms and conditions of this Chapter.

**4.25.090 REPORTING STOLEN GOODS.** Every pawnbroker, secondhand dealer, junk dealer and junk collector shall immediately notify the Chief of Police by telephone when any property is offered to him for pledge or for sale under such circumstances that the pawnbroker, secondhand dealer, junk dealer or junk collector knows or should have known the property so offered for pledge or sale to have been stolen.

**4.25.095 INSPECTION.** The Chief of Police or the Community Services Director or their designees may conduct an inspection of the premises of a pawnbroker, second hand dealer, or junk dealer at any time during regular business hours for the purpose of determining that the business is being operated in compliance with all requirements under state law and the City of Elk Grove Municipal Code.

## **CHAPTER 4.26**

### **JUNK TIRE STORAGE**

#### **Article 1**

#### **Special Business License Required**

Sections:

- 4.26.000 Purposes.
- 4.26.005 Deputy.
- 4.26.010 Definitions.
- 4.26.015 License Required.
- 4.26.020 Number of Licenses Required.
- 4.26.025 Display of License.
- 4.26.030 Application.
- 4.26.035 Issuance.
- 4.26.040 Change of Information.

#### **Article 2**

#### **Requirements - Services**

- 4.26.045 Inspections.
- 4.26.050 Indemnification.
- 4.26.055 Fire protection.
- 4.26.060 Existing Junk Tire Storage Compliance Schedule.
- 4.26.065 Employee Permits Not Required.

#### **Article 3**

#### **Penalties**

- 4.26.070 Fine, Imprisonment and Expenses for Compliance.
- 4.26.075 Injunctive Relief.
- 4.26.080 Revocation.
- 4.26.085 Temporary Suspension.
- 4.26.090 Abatement.
- 4.26.095 Nature of Enforcement Actions.
- 4.26.100 Appeals.

**Article 1**  
**Special Business License Required**

**4.26.000 PURPOSES.** The improper storage and the careless disposal of junk tires jeopardize the public health, safety and welfare of City residents and visitors. Large numbers of these junk tires randomly placed in buildings or fields are breeding grounds for disease-carrying insects and animals. If large numbers of these junk tires are ignited by fire, those fires are extremely difficult and expensive to extinguish and the smoke from those fires presents a serious hazard to the environment. Furthermore, large numbers of junk tires carelessly strewn about offend the aesthetic sensibilities of the residents of the City.

The regulatory provisions of this Chapter are necessary to insure reasonable storage of these junk tires and thereby minimize the jeopardy to the public health, safety and welfare.

This enactment will provide criminal penalties to those who violate its requirements. It will also provide a means of enforcing abatement of the nuisance caused by the unreasonable storage of large numbers of junk tires.

This enactment does not apply to tires that do not meet the definition of "junk tires" as set forth herein. Tires that are not junk tires have economic value and are therefore not indiscriminately discarded in large quantities as are junk tires. Further, while tires other than junk tires present the same fire extinguishment problems and environmental hazards as junk tires, the City Council finds they are usually stored in a manner that minimizes these problems and hazards.

**4.26.005 DEPUTY.** The Deputy City Manager for Development Services is charged with the responsibility of administering this Chapter and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing junk tire storage, promulgation and enforcement of administrative regulations and the performance and exercise of the duties and authorities conferred herein.

To these ends, the Deputy City Manager for Development Services shall be vested with the same powers and authorities in relation to junk tire storage and the issuance and administration of Special Business Licenses therefor as are vested in the Chief of Police under Chapter 4.02, Sections 4.02.070 and 4.02.085; and Chapter 4.10, Sections 4.10.025, 4.10.030, 4.10.040(a)(b) and (d), 4.10.045, 4.10.055, 4.10.060, 4.10.100, 4.10.105, 4.10.110, 4.10.115, 4.10.120 and 4.10.145 of this Code. Any reference to the "Chief of Police" in these sections as that reference relates to the issuance, renewal or denial of a Special Business License or as that reference relates to the appeal of a denial, revocation or suspension of a Special Business License shall be deemed a reference to the Deputy City Manager for Development Services in relation to this junk tire storage ordinance.

Also, the Deputy City Manager for Development Services shall be vested with the same powers and authorities in relation to abatement of violations of this junk tire storage ordinance as are vested in the Director of Public Works under Chapter 6.58 of this Code . Any reference in that Chapter to the "Director of the Department of Public Works" shall be deemed a reference to the Deputy City Manager for Development Services in relation to abatement of violations of this junk tire storage ordinance.

Whenever the term "Deputy" is used in this Chapter, the term shall mean the Deputy City Manager for Development Services.

**4.26.010 DEFINITIONS.** As used in this Chapter, the following terms shall be ascribed the following meanings:

(a) "Premises" means a unit of improved or unimproved land, or any portion thereof, shown on the latest equalized City assessment roll as a parcel or as contiguous parcels. Property shall be considered as contiguous parcels even if separated by a utility easement or railroad right of way.

(b) "To store" means to leave, deposit, accumulate, abandon or discard.

(c) "Storage" means the act of storing.

(d) "Junk tire" means a not new automobile, truck or any other type of motorized vehicle tire that is not directly attached to an operational vehicle and does not meet the federal or State of California requirements for used tires or recappable casings

**4.26.015 LICENSE REQUIRED.** It is unlawful for any person to store five hundred (500) or more junk tires either inside or outside a building for any length of time on or about any one particular premises within the City which is owned, leased or in any manner utilized by that person unless the storage is under and by authority of a valid, unexpired, unrevoked and unsuspended Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.26.020 NUMBER OF LICENSES REQUIRED.** Notwithstanding Section 4.10.010, a person who stores five hundred (500) or more junk tires either inside or outside a building for any length of time at one or several premises throughout the City shall be required to obtain a Special Business License for each particular premises where five hundred (500) or more junk tires are stored.

**4.26.025 DISPLAY OF LICENSE.** Every person issued a Special Business License under the provisions of this Chapter shall keep the License posted and exhibited in a conspicuous part of the particular premises where the five hundred (500) or more junk tires are stored.

**4.26.030 APPLICATION.** In addition to the information required by Section 4.10.030, an application shall contain the following:

(a) All names under which the applicant has engaged, does or proposes to engage in junk tire storage;

(b) An accurate legal description, including assessment number, of the particular premises where the junk tires are to be stored;

(c) The name and street address of any person with a legal ownership interest in the particular premises where the junk tires are to be stored;

(d) The written consent of any person with a legal ownership interest in the anticipated junk tire storage premises to the storage of junk tires on those premises and to the requirements and obligations imposed on these owners by this Chapter. The written consent form shall be furnished by the Deputy and all signatures on this form shall be notarized in accordance with California law;

(e) Factual information, as specific as possible, as to the maximum number of junk tires expected to be stored on the particular premises at any one time and the number of junk tires expected to be transferred onto or off of the particular premises on a daily, weekly and monthly basis;

(f) A written statement from the Chief of the Fire Protection District with jurisdiction over the proposed junk tire storage premises discussing in detail any fire hazard that would be created by the storage of junk tires on or about the particular premises; and

(g) The name and street address within the City of an individual authorized to accept service of legal process or any notices issued pursuant to this Chapter.

**4.26.035 ISSUANCE.** The Deputy City Manager for Development Services shall issue a Special Business License to allow storage of junk tires unless:

(a) One or more of the findings prescribed by Section 4.10.040(a) (b) and (d) are made; or

(b) The Deputy finds in writing that the use of the particular premises for junk tire storage would not be in compliance with the City of Elk Grove Zoning Ordinance and has not been approved by the City Council through any required use permit hearing process; or

(c) The Deputy finds in writing that based upon detailed information provided by the Chief of the appropriate Fire Protection District or other appropriate fire prevention experts and officials, the proposed storage of junk tires on the particular premises would constitute a dangerous fire hazard.

The requirements of Section 4.10.035 and Section 4.10.040(c) shall not be applicable to this Chapter for issuance of a Special Business License.

**4.26.040 CHANGE OF INFORMATION.** The applicant shall report to the Deputy any change in the information required by Section 4.26.030 within ten (10) days of the effective date of the change except that the information required by Section 4.26.030(c) shall be reported immediately. An updated written consent form pursuant to Section 4.26.030(d) shall be required immediately upon a change in the information required by Section 4.26.030(c).

## **Article 2 Requirements - Services**

**4.26.045 INSPECTIONS.** Premises on which junk tires are stored pursuant to a Special Business License shall be open during regular working hours for inspection by the Deputy or his or her designated representative. Inspections shall occur as frequently as determined necessary by the Deputy but in no event shall there be less than six inspections per year of each particular premises where junk tires are stored pursuant to a Special Business License.

The refusal by a Licensee, or an officer, employee or agent thereof, to permit inspection by the Deputy, or his or her designated representative, pursuant to the authority conferred by this Section shall constitute grounds for suspension or revocation of the Special Business License.

The refusal by a Licensee, or an officer, employee or agent thereof, to permit such inspections by the Chief of the appropriate Fire District, or his designated representative, as may be reasonably necessary to insure compliance with Section 4.26.055 shall also constitute grounds for suspension or revocation of a Special Business License issued pursuant to this Chapter.

**4.26.050 INDEMNIFICATION.** The licensee and the legal owners of the premises where junk tires are stored pursuant to this Chapter shall indemnify, hold harmless and, upon written request, assume any and all costs of the legal defense of the City, its officers, employees and agents from all claims, losses, damages, injuries and liabilities of every kind, nature and description directly or indirectly arising from the performance of activities and operations permitted by a Special Business License issued pursuant to this Chapter.

**4.26.055 FIRE PROTECTION.** The licensee shall provide such fire protection measures and equipment as may be required by all applicable laws, and as the Chief of the Fire Protection District with jurisdiction over the premises where the junk tires are stored finds reasonably necessary to provide adequate fire protection to the immediate and adjacent premises. No junk tires may be stored on a particular premises pursuant to this Chapter unless and until the written statement required by Section 4.26.030(f) is obtained from the Chief of the appropriate Fire Protection District.

**4.26.060 EXISTING JUNK TIRE STORAGE COMPLIANCE SCHEDULE.** Any person who presently stores junk tires and who will be required to obtain a

Special Business License pursuant to this Chapter upon its adoption may be granted by the Deputy a maximum of three (3) months to comply with all of the requirements of this Chapter provided that public health, safety and welfare of the City residents and visitors will not be unreasonably jeopardized thereby.

**4.26.065 EMPLOYEE PERMITS NOT REQUIRED.** Section 4.10.070 and related sections of Chapter 4.10 requiring employee permits for personnel of Special Business Licenses shall not be applicable to this Chapter.

### **Article 3 Penalties**

**4.26.070 FINE, IMPRISONMENT AND EXPENSES FOR COMPLIANCE.** Notwithstanding the provisions of Section 4.02.100, any person who violates any of the provisions of this Chapter, or fails to comply with any of the regulatory requirements adopted by the Deputy pursuant to this Chapter, is guilty of a misdemeanor, and upon conviction may be punished by a fine not to exceed five hundred dollars or by imprisonment in the City jail not to exceed six months, or by both. In addition, each such person shall be required to pay any and all expenses necessary to bring the subject premises into compliance with this Chapter and any regulatory requirements adopted by the Deputy pursuant to this Chapter. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter, or regulatory requirements adopted by the Deputy pursuant to this Chapter, is committed, continued, or permitted by any such person, and he shall be punished accordingly.

**4.32.075 INJUNCTIVE RELIEF.** In addition to the penalties set forth in Section 4.26.070 and consistent with the provisions of Section 4.26.090, any storage of junk tires contrary to the provisions of this Chapter, or any regulations adopted by the Deputy pursuant to this Chapter, shall be and the same is hereby declared to be unlawful and a public nuisance. The Deputy may commence action for the abatement and removal and enjoinder of this public nuisance in the manner provided by law. The Deputy may take such other steps and may apply to such court or courts as may have jurisdiction to grant relief as will abate and remove such junk tires and restrain and enjoin any person, firm or corporation from using any premises contrary to the provisions of this Chapter.

**4.26.080 REVOCATION.** In addition to the grounds set forth in Section 4.10.135 and in addition to the penalties prescribed in Section 4.26.070 and Section 4.26.075, a Special Business License may be revoked during its term if the Deputy finds in writing that one or more of the following grounds exist:

(a) Violation by the licensee of any of the terms, conditions or requirements of this Chapter;

(b) Violation by the licensee of any administrative regulation or rule promulgated pursuant to the provisions of this Chapter;

(c) Failure of the licensee to comply with any applicable County, State or federal law; and

(d) Refusal of the licensee to permit an inspection pursuant to Section 4.26.045.

Except for the junk tires on the subject premises at the time of the revocation, no other junk tires shall be stored on the subject premises pending final determination of the revocation proceedings. Nothing in this Section shall be construed as precluding the removal of any junk tires from the subject premises.

**4.26.085 TEMPORARY SUSPENSION.** In addition to the matters prescribed by Section 4.10.145 and in addition to the penalties prescribed in Section 4.26.070 and Section 4.26.075, a Special Business License issued pursuant to this Chapter may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal if the Deputy finds that such temporary suspension is necessary to protect against a serious and immediate threat to public health, safety or welfare caused by the exercise of the license. In the event the Deputy orders a temporary suspension, the notice of the suspension shall be delivered to the address of the agent designated in the application as authorized to accept service of legal process for each junk tire storage premises to which the suspension pertains. The notice shall contain the following:

(a) The finding justifying the temporary suspension;

(b) The time, date and place at which the Licensee may appear in advance of the commencement of the temporary suspension for the purpose of responding to the charges contained in the notice; and

(c) The time and date on which the temporary suspension commences, which shall not be earlier than 24 hours following the time and date of delivery of the notice.

Restoration of Special Business License privileges following a temporary suspension may be granted by the Deputy upon the establishment of such terms, conditions and requirements as are reasonably necessary to protect the public health, safety and welfare of the City residents and visitors.

Except for the junk tires on the subject premises at the time of the temporary suspension, no other junk tires shall be stored on the subject premises pending final determination of the temporary suspension proceedings. Nothing in this section shall be construed as precluding the removal of any junk tires from the subject premises.

**4.26.090 ABATEMENT.** Junk tires stored in violation of this Chapter are within the meaning of the term "rubbish" as that term is used in Chapter 6.58 of this Code. The provisions of Chapter 6.58 shall be applicable to abatement of violations of this Chapter relating to junk tire storage. In the event that a particular premises is

rented or leased or otherwise utilized by a person other than the property owner, that person, in addition to the property owner, shall be held responsible and liable for any costs of abatement that result from the implementation of this section. For the purposes of this Chapter, nothing in Chapter 6.58 or in this Chapter shall be interpreted as imposing a requirement that the City, its officers, agents or employees remove or cause to be removed any junk tires stored contrary to this Chapter.

**4.26.095 NATURE OF ENFORCEMENT ACTIONS.** Any action or proceeding commenced or continued by the Deputy or the City against a person for violations of this Chapter, or any regulations or rules adopted by the Deputy pursuant to this Chapter, shall be deemed actions or proceedings to enforce the police or regulatory power of the City.

**4.26.100 APPEALS.** The appeals procedure set forth in Chapter 4.10, Sections 4.10.115 through 4.10.155 as those Sections relate to Special Business Licenses, shall be applicable to this Chapter relating to junk tire storage.

## Chapter 4.27

### TOBACCO RETAILERS

#### Sections:

- 4.27.010 Legislative Findings.
- 4.27.020 Purpose.
- 4.27.030 Definitions.
- 4.27.040 Requirement for Tobacco Retailers License.
- 4.27.050 Application Procedure.
- 4.27.060 Issuance and Renewal of License.
- 4.27.070 Display of License.
- 4.27.080 License Fee.
- 4.27.090 License Nontransferable.
- 4.27.100 License Violation.
- 4.27.110 Suspension or Revocation of License.
- 4.27.120 Denial, Suspension, and Revocation – Appeals.
- 4.27.130 Enforcement.

**4.27.010 Legislative Findings.** The City Council of the City of Elk Grove finds and determines that:

(a) State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Penal Code § 308).

(b) State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business & Professions Code § 22956) and provide procedures for using persons under 18 years of age to conduct onsite compliance checks of tobacco retailers (Business & Professions Code § 22952).

(c) State law requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under 18 years of age is illegal (Business & Professions Code § 22952, Penal Code § 308).

(d) State law prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk (Business & Professions Code § 22962).

(e) State law prohibits the sale of “bidis” (hand-rolled filterless cigarettes imported primarily from India and Southeast Asian countries) except at those businesses that prohibit the presence of minors. (Penal Code § 308.1).

(f) State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than 0.60 ounces of tobacco (Penal Code § 308.3).

(g) State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees (Education Code § 48901(a)).

(h) Elk Grove Municipal Code Section 6.86.070 prohibits the sale or distribution of tobacco products from vending machines.

(i) In May of 2004, the Sacramento County Department of Health and Human Services Tobacco Education Program found that 17.0% of tobacco retailers sampled in the County unlawfully sold tobacco products to minors, clerks in several types of outlets, including supermarket, convenience mart/gas stations, drug stores, and small markets, sold tobacco to minors and less than 45% of the stores surveyed displayed the STAKE Act signs required by State Law.

(j) Eighty-eight percent of adults who have ever smoked tried their first cigarette by the age of 18, and the average age at which smokers try their first cigarette is 14½.

(k) The City of Elk Grove has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults.

(l) California courts in *Cohen v. City Council*, 40 Cal. 3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law.

(m) State law authorizes local tobacco retailer licensing laws to provide for the suspension or revocation of the local tobacco retailer license for any violation of a state tobacco control law (Business & Professions Code § 22971.3).

(n) A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.

**4.27.020 Purpose.** The purpose of this Chapter is to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided for violations.

**4.27.030 Definitions.** As used in this Chapter, the following words and phrases shall have the meaning given them in this Section, unless the context clearly requires otherwise:

(a) “City” means the City of Elk Grove.

(b) “City Manager” means the City Manager of the City of Elk Grove or his or her designee.

(c) “Itinerant tobacco retailing” means engaging in tobacco retailing at other than a fixed location.

(d) “License” means a tobacco retailer license issued by the City pursuant to this Chapter.

(e) “Licensee” means any proprietor holding a license issued by the City pursuant to this Chapter.

(f) "Person" means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(g) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day-to-day operations of a business.

(h) "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(i) "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed or used for the smoking or ingestion of tobacco products.

(j) "Tobacco retailer" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

(k) "Tobacco retailing" shall mean selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

#### **4.27.040 Requirement for Tobacco Retailers License.**

(a) It shall be unlawful for any person to act as a tobacco retailer without first obtaining a license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.

(b) Nothing in this Chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the City identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this Chapter shall be construed to render inapplicable, supercede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by Labor Code section 6404.5.

#### **4.27.050 Application Procedure.**

All applications for a license shall be submitted to the City Manager in the name of each proprietor proposing to conduct tobacco retailing and shall be signed by each proprietor or an authorized agent thereof. A proprietor proposing to conduct tobacco retailing at more than one location shall submit a separate application for each location. Every application shall be submitted on a form supplied by the City Manager and shall contain the following information:

- (a) The name, address, and telephone number of each proprietor.
- (b) The business name, address, and telephone number of the fixed location for which a license is sought.
- (c) Whether or not any proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.
- (d) Such other information as the City Manager deems necessary for the administration or enforcement of this Chapter.

#### **4.27.060 Issuance and Renewal of License.**

(a) Upon the receipt of an application for a license and the applicable license fee, the City Manager shall issue a license unless:

- (1) The application is incomplete or inaccurate;
- (2) The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this Chapter except this subparagraph shall not constitute a basis for denial of a license if either or both of the following apply:
  - (A) The applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subparagraph, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Chapter that occurred at the location, is presumed not to be an "arm's length transaction";
  - (B) It has been more than five (5) years since the most recent license for that location was revoked;
- (3) The application seeks authorization for tobacco retailing that is unlawful pursuant to this Code, or that is unlawful pursuant to any other local, state, or federal law; or,

(4) The City Manager has information that the applicant or his or her agents or employees has violated any local, state or federal tobacco control law at the location for which the license or renewal of the license is sought within the preceding thirty-day (30) period.

(b) Unless revoked on an earlier date, all licenses shall expire one year after the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding License, the City Manager shall transmit to the licensee by mail an application for renewal. The application submitted for renewal shall be in such form and include such information as is prescribed and required by the City Manager, but shall include a renewal form provided by the City, the required fee, and a copy of the license to be renewed. A license that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed. An application for renewal and license fee shall be submitted at least thirty (30) days, but not more than sixty (60) days, prior to the expiration of the current valid license. The applicant shall follow all of the procedures and provide all of the information required Section 4.27.050. The City Manager shall process the application according to the provisions of this Section.

(c) Where the City Manager does not approve a license or renewal of a license, the City Manager shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by mail not later than five (5) calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**4.27.070 Display of License.** Each license shall be prominently displayed in a publicly visible location at the licensed premises.

**4.27.080 License Fee.** The fee for issuance or renewal of a license shall be established by resolution of the City Council and shall be in addition to the fees associated with any other license or permit fee imposed by this Code upon the applicant. The license fee shall be paid to the City at the time the license application is submitted.

**4.27.090 License Nontransferable.** A license is nontransferable. If a licensee changes business location, that licensee must obtain a new license prior to acting as a tobacco retailer at the new location. If a business licensed to conduct tobacco retailing is sold, the new owner must obtain a license for that location before acting as a tobacco retailer.

**4.27.100 License Violation.** It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, state, or federal tobacco-related law.

**4.27.110 Suspension or Revocation of License.**

(a) In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this Section, if the City Manager finds that the licensee or his or her agents or employees has or have violated any of the provisions of this Chapter except violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location.

(1) Upon a finding by the City Manager of a first license violation within any five-year (5) period, the license shall be suspended for thirty (30) days.

(2) Upon a finding by the City Manager of a second license violation within any five-year (5) period, the license shall be suspended for ninety (90) days.

(3) Upon a finding by the City Manager of a third license violation within any five-year (5) period, the license shall be suspended for one (1) year.

(4) Upon a finding by the City Manager of a fourth license violation within any five-year (5) period, the license shall be revoked.

(b) Notwithstanding Section 4.27.110(a), a license shall be revoked if the City Manager finds that either one or both of the following conditions exist:

(1) One or more of the bases for denial of a license under Section 4.27.060(a) existed at the time application was made or at anytime before the license issued.

(2) The information contained in the license application, including supplemental information, if any, is found to be false in any material respect.

(c) In the event the City Manager suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five (5) days of the suspension or revocation in the manner prescribed in Section 4.27.060(c). The notice shall contain:

(1) A brief statement of the specific grounds for such suspension or revocation;

(2) A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of Section 4.27.120, to the City Manager, within ten (10) calendar days of the date of service of the notice; and,

(3) A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.

(d) A licensee for whom a license suspension is in effect must remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended license.

#### **4.27.120 Denial, Suspension, and Revocation – Appeals.**

(a) Any applicant or licensee aggrieved by the decision of the City Manager in denying, suspending, or revoking a license, may appeal the decision by submitting a written appeal to the City Manager within ten (10) calendar days from the date of service of the notice of denial, suspension, or revocation. The written appeal shall contain:

(1) A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

(2) A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

(3) The signatures of all parties named as appellants and their official mailing addresses; and,

(4) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

(b) The appeal hearing shall be conducted in accordance with Chapter 1.11 of the Municipal Code.

(c) Any suspension or revocation of a license shall be stayed during the pendency of an appeal that is properly and timely filed pursuant to this Section.

#### **4.27.130 Enforcement.**

(a) In addition to any other remedy, any person violating any provision of this Chapter shall be guilty of a misdemeanor for each day such violation continues.

(b) Any violation of this Chapter may be remedied by a civil action brought by the City Attorney. The City may recover reasonable attorneys' fees and costs of suit in any civil action brought by the City Attorney to remedy any violation of this Chapter.

(c) Any person violating the provisions of this Chapter shall also be liable for civil penalties of not less than two hundred fifty dollars (\$250.00) or more than twenty-five thousand dollars (\$25,000.00) for each day the violation continues.

(d) Violations of this Chapter are hereby declared to be public nuisances subject to abatement by the City.

(e) In addition to criminal sanctions, civil penalties as provided in this Section, and other remedies set forth in this Chapter, administrative penalties of up to \$5,000 for each violation of this Chapter may be imposed against any person violating any provision of this Chapter pursuant to the procedures specified in Section 16.18.205(f) of the Municipal Code or pursuant to any generally applicable provisions of the Municipal Code concerning administrative fines and penalties.

## **CHAPTER 4.30**

### **ADULT-RELATED ESTABLISHMENTS**

#### **Article 1 General Provisions**

Sections:

- 4.30.000 Purposes.
- 4.30.005 Definitions
- 4.30.010 Same - Adult-Related Establishment.
- 4.30.015 Same – Bathhouse.
- 4.30.020 Same - Introductory Service.
- 4.30.025 Same - Massage Services.
- 4.30.030 Same - Escort Services.
- 4.30.035 Same – Employed or Retained By.
- 4.30.050 Exemptions.
- 4.30.060 Hours of Operation.
- 4.30.065 List of Services.
- 4.30.070 Personnel Registers.
- 4.30.075 Employment of Minors.
- 4.30.080 Schools of Massage.
- 4.30.085 Sanitation requirements - Massage Establishments.
- 4.30.090 Sanitation requirements - Bathhouses.
- 4.30.095 Sanitation requirements - Massage Technicians.
- 4.30.100 Minimum qualifications - Massage Managers.
- 4.30.105 Minimum qualifications - Massage Technicians.

#### **Article 2 Licenses and Permits**

- 4.30.200 License Required.
- 4.30.205 Display of License.
- 4.30.210 Employee Permits Required.
- 4.30.215 Application.
- 4.30.220 Issuance.
- 4.30.225 Revocation of Permits.

## **Article 1 General Provisions**

**4.30.000 PURPOSES.** There has been a proliferation throughout the region of adult-related establishments, such as escort bureaus, introductory services, public bathhouses, and similar businesses which offer patrons services or entertainment of an adult character. There has been a demonstrable relationship between high incidence of unlawful prostitution and drug-related crime, and the adult-related establishments regulated by this Chapter. Such businesses have been known to operate as fronts for houses of prostitution, and for illegal drug-related transactions. Past regulation by the regional governments of some of these establishments, such as massage parlors, has been unsuccessful because the establishments evade the regulations by changing their names to indicate different objects or purposes from the types of businesses regulated.

A system of requiring regulatory licenses for adult-related establishments and for those persons rendering services to customers will assist in assuring illegal activities do not occur on the premises or otherwise in connection with the business within the City. If criminal activity occurs on the premises, or if other provisions of this Chapter are violated, the licenses are subject to revocation. Criminal liability also exists for a violation of this Chapter. These provisions will provide the Chief of Police with both preventative and investigatory tools to control illegal activity in such businesses, and will promote and protect the public health, safety and welfare.

By the definition of "adult-related establishment" contained in Section 4.30.010, it is the intent of the City Council to prevent evasion of the provisions of this Chapter through the device of calling the business by a new or different name.

This Chapter is enacted pursuant to the provisions of Section 51034 of the Government Code.

**4.30.005 DEFINITIONS.** As used in this Chapter, the terms identified by Sections 4.30.010 through 4.30.035 shall be ascribed the meanings indicated.

**4.30.010 SAME – ADULT RELATED ESTABLISHMENT.** "Adult-related establishment" means a bathhouse, escort bureau, introductory service, massage establishment, or out-call massage service as defined by this Chapter. "Adult-related establishment" does not include an "Adult-Oriented Business" as defined and regulated in Chapter 4.31.

**4.30.015 SAME - BATHHOUSE.** "Bathhouse" means an establishment whose primary business is to provide, for pecuniary compensation, consideration, hire or reward, access to any kind of bath facility, including but not limited to, showers, saunas and hottubs.

**4.30.020 SAME - INTRODUCTORY SERVICE.** "Introductory service" means a business which, for pecuniary compensation, consideration, hire or reward will help persons to meet or become acquainted with others for social purposes. For purposes of this Section, "others" include personnel of the introductory service.

**4.30.025 SAME - MASSAGE SERVICES.** In relation to massage services, the following terms shall be ascribed the following meanings:

(a) "Massage" -- means any method of pressure or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external surfaces of the body with hands or with any object or appliance;

(b) "Massage Establishment" -- means an establishment whose primary business is the offering of massage in exchange for pecuniary compensation, consideration, hire or reward;

(c) "Out-Call Massage Service" -- means any business, not licensed as a massage establishment under the provisions of this Chapter, wherein the primary function of such business is to engage in or carry on massage for pecuniary compensation, consideration, hire or reward not at a fixed location, but at a location designated by the customer or client;

(d) "Massage Technician" -- means any person who for pecuniary compensation, consideration, hire or reward, engages in the practice of massage.

**4.30.030 SAME - ESCORT SERVICES.** In relation to escort services, the following terms shall be ascribed the following meanings:

(a) "Escort Bureau" -- means a business which, for pecuniary compensation, consideration, hire or reward, furnishes or offers to furnish escorts;

(b) "Escort" -- means a person who, for pecuniary compensation, consideration, hire or reward, either escorts or accompanies others to or about social affairs, entertainment or places of amusement, or keeps company with others about any place of public resort or within any private quarters.

**4.30.035 SAME – EMPLOYED OR RETAINED BY.** "Employed or retained by" shall include:

(a) any person who is a directly paid employee of an adult-related business;

(b) any person whose association with an adult-related business is that of an independent contractor who receives payments of anything of value in exchange for any service rendered to the adult-related business or any of its customers;

(c) any person who receives a referral of customers from an adult-related business and who at any time before the referral or thereafter arranges in any way

for money or any thing of value to flow to the adult-related business or any of its owners (regardless of whether the parties involved acknowledge that consideration is flowing in exchange for the referral or record such consideration in their financial records).

**4.30.050 EXEMPTIONS.** This Chapter shall not be applicable to or include the following:

(a) Hospitals, nursing homes, sanitariums, or persons working in any such establishments;

(b) Persons holding an unrevoked certificate to practice the healing arts under the laws of the State of California or persons working under the direction of any such persons;

(c) Barbers or cosmetologists lawfully carrying out their particular occupation or business, and holding a valid, unrevoked license or certificate of registration issued by the State of California;

(d) Modeling schools maintained pursuant to standards established by the State Board of Education of the State of California; or

(e) Any recognized school of massage which: (i) teaches the theory, ethics, practice, profession and work of massage requiring a minimum of 250 hours of instruction for which not more than 125 hours of credit can be given to a student for previous experience; and (ii) requires a residence course of study to be given before the student is furnished with a diploma or certificate of learning or completion; and (iii) has been registered pursuant to Section 94931 of the Education Code, or, if such school is not located in California, has complied with the standards commensurate with those specified in Section 94931. A "recognized school of massage" as those terms are used above, shall not include a school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class.

**4.30.060 HOURS OF OPERATION.** It shall be unlawful for any adult-related establishment to be operated or remain open for business between the hours of 10:00 p.m. and 8:00 a.m. of the following day.

**4.30.065 LIST OF SERVICES.** A list of the services available and the price of such services shall be posted in a clearly visible place at or near the entrance of each adult-related establishment. The services available shall be described in readily understandable language. No adult-related establishment shall render or provide, or offer to render or provide, any service not listed in compliance with this Section.

**4.30.070 PERSONNEL REGISTERS.** Operators of adult-related establishments shall maintain personnel registers, which shall be available for inspection by the Chief of Police at all times during regular business hours, as follows:

(a) With respect to a massage establishment and an out-call massage service, a personnel register shall be maintained containing the names and employee permit numbers of each person employed or retained to perform service as a massage technician.

(b) With respect to an escort or introductory service, a personnel register shall be maintained which includes the names and employee permit number of each person employed or retained as an escort or person employed or retained by the introductory service.

(c) With respect to any other adult-related establishment, a personnel register shall be maintained which includes the names of all persons employed or retained on the premises to provide services, the title of the position of each such person, and as to those persons required to possess employee permits by this Chapter, their employee permit numbers.

**4.30.075 EMPLOYMENT OF MINORS.** It shall be unlawful for the operator or any other person in charge of an adult-related establishment to employ or retain any person who is under the age of eighteen years to perform any service on the premises of the establishment.

**4.30.080 SCHOOLS OF MASSAGE.** No massage establishment shall operate as a school of massage, as the terms "school of massage" are defined by Section 4.30.050(e), or shall use the facilities or premises of such a school of massage in connection with the operations of the massage establishment.

No person shall perform a massage on a member of the general public while on the premises of a school of massage, as defined by Section 4.30.050(e).

**4.30.085 SANITATION REQUIREMENTS - MASSAGE ESTABLISHMENTS.** Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Towels, coverings and linens shall not be used on more than one patron unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one patron. Soiled linens and paper towels shall be deposited in approved receptacles.

Within massage establishments wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Chief of Police. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Chief of Police. All walls, ceilings, floors and other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Instruments for massage

shall not be used on more than one patron unless they are sterilized before each use by sterilization methods approved by the Chief of Police.

**4.30.090 SANITATION REQUIREMENTS - BATHHOUSES.** Within bathhouses, towels shall not be supplied to more than one patron unless such towels have first been laundered and disinfected. Wet and dry heat rooms, steam or vapor rooms and cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once a day the premises are open, with a disinfectant approved by the Chief of Police. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Chief of Police. All walls, ceilings, floors and other physical facilities shall be in good repair and maintained in a clean and sanitary condition.

**4.30.095 SANITATION REQUIREMENTS - MASSAGE TECHNICIANS.** While performing services in any adult-related establishment, massage technicians shall wear garments which cover the entire body, exclusive of the head, neck, arms, legs, hands and feet, while giving a massage. Such garments shall not be transparent.

**4.30.100 MINIMUM QUALIFICATIONS - MASSAGE MANAGERS.** Each massage establishment and out-call massage service offering any services involving physical contact with patrons shall be managed by a person who possesses a diploma or certificate of graduation from a recognized school of massage, as the terms "recognized school of massage" are defined by Section 4.30.050(e). It shall be unlawful for any massage establishment or out-call massage service offering such services to operate unless managed by a person possessing a diploma or certificate.

Such an establishment and service shall not be deemed "managed" as required by this Section unless a person possessing the required certificate or diploma having the authority and responsibility to supervise personnel employed or retained to perform services and to supervise the delivery of services is on the premises of the establishment not less than seventy-five percent of the time the business is open for the delivery of services.

**4.30.105 MINIMUM QUALIFICATIONS - MASSAGE TECHNICIANS.** It shall be unlawful for any massage establishment and out-call massage service to employ or retain a person to provide services as a massage technician, and unlawful for any person to work at or for such an establishment or service, unless the person possesses a diploma or certificate of graduation from a recognized school of massage, as the terms "recognized school of massage" are defined by Section 4.30.050(e).

## **Article 2 Licenses and Permits**

**4.30.200 LICENSE REQUIRED.** It shall be unlawful for any person to operate or conduct an adult-related establishment unless under and by authority of a valid, unexpired and unrevoked Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.30.205 DISPLAY OF LICENSE.** Each adult-related establishment, except an out-call massage service, shall display the Special Business License in a conspicuous place within the establishment so that the same may be readily seen by persons entering the premises.

A person engaged in an out-call massage service who is the Licensee for such service shall have the License available for inspection at all times while providing out-call massage services.

**4.30.210 EMPLOYEE PERMITS REQUIRED.** It shall be unlawful for any person to provide any of the following services without possessing a valid, unexpired and unrevoked Employee Permit issued pursuant to the provisions of Chapter 4.10 and this Chapter:

- (a) Act as a manager of an adult-related establishment by supervising or controlling the personnel of such an establishment or the services rendered therein;
- (b) Give a massage for a fee or any other form of consideration;
- (c) Act as an escort or a person employed or retained by an Introductory Service.

It shall be unlawful for the operator of any adult-related establishment to employ or retain a person to perform any of the above services unless such person possesses such an Employee Permit.

**4.30.215 APPLICATION.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to provide services identified by Section 4.30.210 shall contain the following:

- (a) A list of each conviction of the applicant, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged and the offense of which the applicant was convicted.
- (b) Proof of the age of the applicant; and
- (c) With respect to a permit to perform services as a manager of a massage establishment or out-call massage service or as a massage technician, the name and address of each school of massage attended or provider of instructional services in massage which has been received, the name and address and current telephone number of the school or provider, the dates of attendance or receipt of instruction, and a copy of any certificate or diploma or other evidence of completion which the applicant has received.

**4.30.220 ISSUANCE.** Upon receipt of an application for an Employee Permit to act as a manager of an adult-related establishment or a massage technician, an escort or a figure model, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit unless he or she finds pursuant to Section 4.10.090 any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.30.215, or is otherwise incomplete;

(b) That information contained in the application is false or otherwise inaccurate;

(c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Sheriff concludes that by reason of the crime or act the applicant would not perform his or her duties as a manager, massage technician, escort or figure model in a law-abiding manner or in a manner which does not subject patrons to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 482(a).

(d) That the applicant is under eighteen years of age; or

(e) That with respect to an application for an Employee Permit to act as a manager of a massage establishment or out-call massage service offering services involving physical contact with patrons, or massage technician, the applicant has not graduated from a recognized school of massage, as defined by Section 4.30.050(e).

Notwithstanding any other provision in this Chapter to the contrary, the Chief of Police may deem the requirements of the immediately preceding subparagraph and Sections 4.30.100 and 4.30.105 satisfied if he or she finds in writing that the applicant for the Permit has attended not less than two hundred and fifty (250) hours of instruction in massage at a school within or outside this State or in any foreign country that provides education substantially equal to or in excess of that received as a result of graduating from a recognized school of massage .Not more than one

hundred and twenty-five (125) hours of such 250 hour instructional requirement can be waived based upon prior education or training experience.

**4.30.225 REVOCATION OF PERMITS.** An Employee Permit may be revoked or suspended pursuant to Section 4.10.140 upon any of the following grounds:

(a) Violation of any of the duties, requirements or prohibitions contained in this Chapter;

(b) Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to Section 4.02.085;

(c) Misrepresentation of a material fact contained in the application for the Permit; or

(d) That since issuance or renewal of the Permit the Chief of Police has acquired information supporting a finding prescribed by Section 4.30.220(c) in relation to the holder of the Permit.

## **CHAPTER 4.31**

### **ADULT-ORIENTED BUSINESSES**

#### **Article 1 General Provisions**

Sections:

- 4.31.000 Purpose and Intents.
- 4.31.005 Licenses and Registration Required.
- 4.31.010 Classification.

#### **Article 2 Definitions**

- 4.31.050 Definitions.

#### **Article 3 Adult-Oriented Business Licenses**

- 4.31.100 Adult-Oriented Business License Required.
- 4.31.105 Investigation and Action on Application.
- 4.31.110 Transfer for Adult-Oriented Business Licenses.

#### **Article 4 Adult-Oriented Business Employee Permit**

- 4.31.200 Employee Permit Required.
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#### **Article 5 Denial, Suspension and Revocation of License or Permit**

- 4.31.300 Denial of License or Permit.
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**Article 7**  
**Enforcement**

- 4.30.500 Each Day Separate Offense.
- 4.30.505 Public Nuisance.
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- 4.30.520 Administrative Remedies.
- 4.30.525 Revocation of License.

## Article 1

### GENERAL PROVISIONS

#### **Sec. 4.31.000 Purpose and Intent.**

It is the intent of this Chapter to regulate Adult-Oriented Businesses in order to promote the health, safety, and general welfare of the residents of the City. The provisions of this Chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials and paraphernalia protected by the First Amendment, or denying access by the distributors, exhibitors, and Performers of adult-oriented entertainment to their intended market. In addition, the provisions of this Chapter have neither the purpose nor effect of condoning or legitimizing the distribution of obscene material.

#### **Sec. 4.31.005 Licenses and Registration Required.**

(a) It is a violation of this Chapter for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises in the City, the operation of an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business License issued by the Chief of Police pursuant to this Chapter.

(b) It is a violation of this Chapter for any person who operates an Adult-Oriented Business to employ or permit a person to work for or at the Adult-Oriented Business who does not possess a valid Adult-Oriented Business Employee License issued by the Chief of Police pursuant to this Chapter.

(c) It is a violation of this Chapter for any person to obtain employment with or perform, work for or at an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business Employee License issued by the Chief of Police pursuant to this Chapter. These provisions shall not apply to persons exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not Nude, Semi-Nude, in a State of Nudity, or in a Semi-Nude Condition.

(d) It is a violation of this Chapter for any person to engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business Employee License issued by the Chief of Police pursuant to this Chapter.

#### **Sec. 4.31.010 Classification.**

Adult-Oriented Businesses are classified as follows:

- (a) Adult Arcades;
- (b) Adult Bookstores (including Adult Novelty Stores or Adult Video Stores);
- (c) Adult Cabarets;
- (d) Adult Motels (including Adult Hotels);
- (e) Adult Motion Picture Theaters;
- (f) Adult Theaters;
- (g) Nude Model Studios; and
- (h) Sexual Encounter Centers.

## Article 2 DEFINITIONS

### Sec. 4.31.050 Definitions.

The definitions contained in this Section shall govern the construction of this Chapter.

(a) **Adult Arcade** means any commercial establishment to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, computer, or other image-producing devices are maintained to show images to four (4) or fewer persons per machine at any one time, and where, as a regular and substantial course of conduct, the images so displayed are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas. The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the business' displays that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(2) The proportion of the business' revenue that is attributable to displays that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(b) **Adult Bookstore (including Adult Novelty Store or Adult Video Store)** means a commercial establishment which, as a regular and substantial course of conduct, offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, any material in digital format (including, but not limited to, compact disc (CD) or digital

video disc (DVD)), slides, or other visual representations which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; or,

(2) Instruments, devices, or paraphernalia, except for clothing, which are designed for use in connection with Specified Sexual Activities.

(3) The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(A) The business devotes more than twenty-five percent (25%) of its retail inventory (not measured by the number of items but rather by the cost to the business owner of the inventory) to merchandise distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.

(B) The business devotes more than twenty-five percent (25%) of the retail floor area to merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.

(C) The retail value of merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas exceeds twenty-five (25%) of the total retail value of inventory offered in each of the following categories:

(i) books,

(ii) magazines,

(iii) video tapes or any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), for sale or rental,

(iv) novelties and devices, and

(v) on-premises viewing of images, films, and or videos.

(D) Gross revenue derived from merchandise in any category set forth in Paragraph C above exceeds (25%) of the total gross revenue for the category.

There is a rebuttable presumption that a business constitutes an adult bookstore, adult novelty store or adult video store where the business offers or advertises merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas as set forth in Paragraph C above and fails to make revenue and inventory related business records available to the City upon twenty-four (24) hours advance notice.

(c) **Adult Cabaret** means a nightclub, bar, restaurant, or similar commercial establishment which, as a regular and substantial course or conduct, features:

(1) Persons who appear in a State of Nudity or Semi-Nude Condition; or

(2) Live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or

(3) Films, motion pictures, video cassettes, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(4) The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(A) The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(B) The proportion of the business' revenue that is attributable to performances or services that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(d) **Adult Motels (including Adult Hotels)** means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or other photographic reproductions which, as a regular and substantial course of conduct, are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; and has any of the following characteristics:

(1) a sign visible from the public right of way which advertises the availability of the above-described photographic reproductions; or

(2) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(3) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

(e) **Adult Motion Picture Theater** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, for observation by five (5) or more patrons at any one time.

The phrase "regularly shown" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the theater's photographic reproductions that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(2) The number of photographic reproductions shown at the theater each month that are distinguished or characterized by an emphasis upon depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(3) The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the display or depiction of Specified Sexual Activities or Specified Anatomical Areas.

(f) **Adult-Oriented Businesses** means any of the following commercial establishments where patrons are permitted or invited: an Adult Arcade, Adult Bookstore, Adult Novelty Store, Adult Video Store, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Nude Model Studio, or Sexual Encounter Center.

(g) **Adult Theater** means a theater, concert hall, auditorium, or similar commercial establishment which as a regular and substantial course of conduct features persons who appear in a State of Nudity or Semi-Nude Condition and/or features live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(2) The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the

depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(h) **Distinguished or Characterized by An Emphasis Upon** means the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas," the films so described are those whose dominant or predominant character and theme are the depiction, description, showing, or simulation of the enumerated sexual activities or anatomical areas.

(i) **Employee** means a person who performs any service on the premises of an Adult-Oriented Business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not such person is paid a salary, wage or other compensation by the operator of the business. Employee does not include a person exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not in a State of Nudity or in a Semi-Nude Condition.

(j) **Establishment of an Adult-Oriented Business** means and includes any of the following:

(1) The opening or commencement of any Adult-Oriented Business as a new business;

(2) The conversion of an existing business, whether or not an Adult-Oriented Business, to any other Adult-Oriented Business;

(3) The addition of any Adult-Oriented Business to any other existing Adult-Oriented Business; or

(4) The relocation of any Adult-Oriented Business.

(k) **Fabric** means cloth made by weaving or knitting natural or synthetic fibers and filaments, and for the purposes of this definition, includes paper, metallic or plastic materials but excludes any material directly painted on a body.

(l) **Hotel** means a building or group of buildings containing guestrooms offering transient lodging accommodations to the general public and incidental services that are customarily provided by a hotel, for the convenience of hotel guests, such as food service, recreational facilities, retail services, and banquet, reception and meeting rooms.

(m) **Licensee** means: a person in whose name a license to operate an Adult-Oriented Business has been issued, as well as the person listed as an applicant on the application for a license.

(n) **Motel** means an establishment otherwise defined as a hotel with at least twenty-five (25) percent of all rooms having direct access to the parking areas without the necessity of persons passing through a main lobby of the building.

(o) **Nude Model Studio** means any place where a person: appears Semi-Nude, in a State of Nudity, or displays Specified Anatomical Areas; and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of California or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(1) That has no sign visible from the exterior of the structure and no other advertising that indicates a person in a State of Nudity or a Semi-Nude Condition is available for viewing;

(2) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

(3) Where no more than one (1) Nude or Semi-Nude model is on the premises at any one time.

(p) **Nudity or a State of Nudity** means the showing of the human male or female genitals, pubic area, anus, or buttocks with less than a fully opaque fabric covering, the showing of the female breast with less than a fully opaque fabric covering of any part of the areola, or the showing of completely or opaquely covered (by Fabric) male genitals in a discernibly turgid state.

(q) **Permit** means a person in whose name a permit has been issued authorizing employment in an Adult-Oriented Business.

(r) **Person** means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(s) **Police Chief or Chief of Police** means the Chief of Police of the City of Elk Grove or the authorized representatives thereof.

(t) **Semi-Nude or in a Semi-Nude Condition** means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks and areola of the female breast as well as portions of the body covered by supporting straps or devices.

(u) **Sexual Encounter Center** means a business or commercial enterprise that, as one of its principal purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, when one or more of the persons is in a State of Nudity or Semi-Nude

Condition. The definition of sexual encounter center does not include an establishment where a medical practitioner, physiologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(v) **Specified Anatomical Areas** means and includes the following:

(1) Less than completely and opaquely covered by fabric: human genitals or pubic region; human buttocks; human anus; or the female breast below a point immediately above the top of the areola;

(2) Human male genitals in a discernibly turgid state, even if completely or opaquely covered by Fabric; and

(3) Any device, costume, or covering that simulates any of the body parts included in subdivisions (1) or (2) above.

(w) **Specified Criminal Activity** means the following offenses within the State of California, or an offense without the State of California that would have constituted any of the following offenses if committed within the State of California: Sections 243.4, 261, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 288, 314.1, 314.2, 315, 316, 318, 653.22 or subdivisions (a), (b) and (d) of Section 647 of the California Penal Code; any offense requiring registration under provisions of either Section 290 of the California Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or as those sections may thereafter be amended or renumbered

(x) **Specified Sexual Activities** means and includes any of the following, whether performed directly or indirectly through clothing or other covering:

(1) The fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breast;

(2) Sex acts, actual or simulated, including but not limited to, intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated;

(4) Excretory functions as part of or in connection with any of the other activities described in subdivision (1) through (2) above.

(y) **Transfer of Ownership or Control of Adult-Oriented Business** means and includes any of the following:

(1) The sale, lease, or sublease of the Adult-Oriented Business;

(2) The transfer of securities which constitute a controlling interest in the Adult-Oriented Business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the Adult-Oriented Business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

### **Article 3 ADULT-ORIENTED BUSINESS LICENSES**

**Sec. 4.31.100 Adult-Oriented Business License Required.** Every person who proposes to maintain, operate, conduct, or establish an Adult-Oriented Business in the City shall file an application with the Chief of Police on a form provided by the City and shall pay a non-refundable application, investigation, and licensing fee set forth in the schedule of fees established from time to time by the City Council.

(a) All applicants must be qualified according to the provisions of this Chapter. The application may request and the applicant shall provide such information including fingerprints as to enable the Chief of Police to determine whether each applicant meets the qualifications established in this Chapter.

(b) If a person who wishes to operate an Adult-Oriented Business is an individual, the person must sign the application. If a person who wishes to operate an Adult-Oriented Business is other than an individual, each individual who has a twenty percent (20%) or greater ownership interest in the Adult-Oriented Business must sign the application. Each applicant must be qualified under this Chapter and each applicant shall be considered a Licensee if a license is granted.

(c) The completed application for an Adult-Oriented Business License shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(A) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least eighteen (18) years of age;

(B) a partnership, the partnership shall state its complete name, address, and the names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any;

(C) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacity of all officers and directors, and

the name of the registered corporate agent and the address of the registered office for service of process.

If the applicant is a partnership or corporation, each partner of the partnership or each shareholder of the corporation with twenty (20%) percent or more share of the corporation shall be deemed an individual applicant and must each be qualified under this Chapter.

(2) If the applicant intends to operate the Adult-Oriented Business under a name other than that of the applicant, the applicant shall register the fictitious name of the Adult-Oriented Business with the appropriate governmental entity and show written proof of registration of the fictitious name.

(3) Whether the applicant has been convicted of a Specified Criminal Activity and, if so, the particular California statute section listed in the definition of Specified Criminal Activity, the date, place, and jurisdiction of each.

(4) Whether the applicant has ever had a license previously issued under this Chapter or its predecessor, or other similar Adult-Oriented Business ordinances from another city or county, denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or majority stockholder of a corporation that is licensed under this Chapter, or its predecessor, whose license has previously been denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) Whether the applicant holds any other licenses under this Chapter, or its predecessor, or other similar Adult-Oriented Business ordinance from another city or county, and, if so, the names and locations of such other licensed businesses.

(6) The particular Adult-Oriented Business for which the applicant is applying. An applicant must apply separately for each Adult-Oriented Business to be operated, owned, managed, or controlled by the applicant.

(7) The address to which notice of action on the application is to be mailed.

(8) The location of the Adult-Oriented Business, including a legal description of the property, street address, and telephone number(s), if any.

(9) The applicant's mailing address and residential address.

(10) A recent photograph of the individual applicant.

(11) The applicant's driver's license number, Social Security number, and, for partnerships or corporation applicants, the applicant's state or federally issued tax identification number to the extent the applicant has been issued these items.

(12) The names of all Employees, independent contractors, and other persons who will work, be employed or perform at the Adult-Oriented Business, who are required by this Chapter to obtain an Adult-Oriented Business Employee License.

(13) A sketch or diagram showing interior configuration of the premises, including a statement of the total floor area occupied by the Adult-Oriented Business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(14) A certificate and straight-line drawing, prepared within 30 days prior to application, depicting, without regard to intervening structures or objects, the distance from the closest exterior wall of the building or structure, in which the Adult-Oriented Business is located, to the boundary of the property on which is located a building, structure or use, or portion of the building, structure or use, described in, and within the distance specified in, section 23.70.040 of the City's Zoning Code.

(15) A diagram of the off-street parking areas and premises entries of the Adult-Oriented Business and showing the location of the lighting system.

(d) Every application for a license under this Chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

(e) The fact that an applicant possesses other types of state, city or county permits or licenses does not exempt the applicant for the requirement of obtaining an Adult-Oriented Business License.

#### **Sec. 4.31.105 Investigation and Action on Application.**

(a) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within ten (10) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have thirty (30) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be

notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with Chief of Police as set forth herein.

(b) Within three (3) business days after the Chief of Police determines that the application is complete and the required non-refundable application fee has been submitted, the Chief of Police shall issue a temporary license to the applicant, which shall be valid for the time period during which the license application is being processed, which time period shall not exceed thirty (30) business days from the date the application has been deemed complete. A temporary license issued pursuant to this subsection shall not grant any vested rights on the holder of the temporary license.

(c) Within five (5) business days after receipt of a completed application and the required filing fee, the Chief of Police shall transmit copies of the application and its attachments to appropriate City departments.

(d) Within thirty (30) business days after receipt of a completed application and the required filing fee, the Chief of Police shall complete the investigation, grant or deny the application in accordance with the provisions of this Chapter, and shall notify the applicant as follows:

(1) If the application is approved, the Chief of Police will write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an Adult-Oriented Business License.

(2) If the application is denied, the Chief of Police will write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(3) The documents specified in paragraphs (1) and (2) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application for receipt of the determination under this Chapter. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(e) The Chief of Police shall approve the issuance of a license to an applicant, unless it is determined by a preponderance of the evidence that any of the following findings is true:

(1) That the operation as proposed by the applicant, if permitted, will not comply with all applicable laws, including, but not limited to the locational requirement set forth in the City's Zoning Code, the provisions of Chapter 4.31 of this Code, and the building, health, housing and fire codes of the City.

(2) That the applicant has been convicted of a Specified Criminal Activity except the Chief of Police shall issue a permit to any person convicted of any

of the crimes described above if the person is otherwise qualified for a permit; and the longer of the following time periods has passed:

- (A) Five years from date of the conviction; or
- (B) Five years from release from confinement; or
- (C) Five years from formal release from probation period; or
- (D) Five years from formal release from parole.

(3) That the applicant has knowingly made a material misrepresentation in the application;

(4) That the applicant or any operator has had a license for an Adult-Oriented Business revoked for cause by this City or any other city or county within the last five years except as provided in this Chapter;

(5) That the applicant is not at least eighteen (18) years of age;

(6) That the applicant has not paid the required fee.

(f) The license, if granted shall expire one (1) year from the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding License, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the Chief of Police, but shall include a renewal form provided by the City, the required fee, and a copy of the license to be renewed.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding License. The Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate. The Chief of Police shall extend the term of the immediately preceding License during the period of any investigation or examination required in order to determine whether the License should be renewed. The Chief of Police shall act upon applications for license renewal as provided herein for applications for initial licenses.

(g) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the Adult-Oriented Business and the single classification of Adult-Oriented Business as set forth herein, for which the license is issued.

(h) All licenses shall be posted in a conspicuous place at or near the entrance to the Adult-Oriented Business so that they may be easily read at any time by all persons entering the Adult-Oriented Business.

(i) Within thirty (30) calendar days of any change in the information originally submitted with the license application, all Licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this Chapter. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(j) Within thirty (30) calendar days of any change in Employee hiring or status, all Licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this Chapter. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(k) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within thirty (30) business days after its receipt, the applicant may begin operating the Adult-Oriented Business for the single classification of Adult-Oriented Business as set forth herein, for which the license was sought, subject to strict compliance with the provisions of this Chapter for a period of 12 months subject to the renewal provisions as set forth in this Chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police from either granting or denying a completed application pursuant the terms of this Chapter even if more than thirty days has elapsed since the receipt of a completed application.

#### **Sec. 4.31.110 Transfer of Adult-Oriented Business Licenses.**

(a) It is a violation of this Chapter for a Licensee to operate an Adult-Oriented Business under the authority of an Adult-Oriented Business License at any place other than the address of the Adult-Oriented Business stated in the application upon which the license was issued.

(b) It is a violation of this Chapter for a Licensee to Transfer Ownership or Control of an Adult-Oriented Business License to another person unless and until the transferee first obtains a written amendment to the license from the Chief of Police in accordance with and subject to the application and fee requirements set forth in this Chapter.

(c) It is a violation of this Chapter for a Licensee to transfer an Adult-Oriented Business License when the Chief of Police has notified the Licensee that the license has been suspended or revoked or that such action is pending.

(d) Any attempt to transfer a license either directly or indirectly in violation of this Chapter is void, and the license shall be deemed revoked.

### **Article 4 ADULT-ORIENTED BUSINESS EMPLOYEE PERMIT**

#### **Sec. 4.31.200 Employee Permit Required.**

(a) No person shall engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business, without a valid Adult-Oriented Business Employee Permit issued by the Chief of Police.

(b) All Employees of an Adult-Oriented Business shall have a valid Adult-Oriented Business Employee Permit issued by the Chief of Police.

(c) Before any applicant may be issued an Adult-Oriented Business Employee Permit, the applicant shall submit to the Chief of Police on a form to be provided by the City the following information:

(1) The applicant's legal name and any other name including "stage" names or aliases used by the applicant;

(2) Age, date, and place of birth;

(3) Height, weight, hair and eye color;

(4) Present residence address and telephone number;

(5) Present business address and telephone number;

(6) Date, issuing state and number of driver's license or other identification card information if applicable;

(7) Social Security number; and,

(8) Satisfactory written proof that the individual is at least eighteen (18) years of age.

(d) Attached to the application form shall be the following:

(1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(2) A statement detailing the permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously obtained or is seeking to obtain an Adult-Oriented Business Employee Permit in this City or any other county, city, state, or country, and whether such applicant has ever had a license, permit, or authorization to do business in an Adult-Oriented Business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or

suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted within the past five (5) years, as of the date of submitting the application, of a Specified Criminal Activity as defined in this Chapter and, if so, the particular California statute section listed in the definition of Specified Criminal Activity, the date, place and jurisdiction of each conviction.

(e) Every application for a permit under this Chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

(f) Every application for an Adult-Oriented Business Employee Permit, whether for a new permit or for a renewal of an existing permit, shall be accompanied by a non-refundable application, investigation and permit fee as set forth in the schedule of fees established from time to time by the City Council.

(g) The fact that an applicant possesses other types of state, City or county permits or licenses does not exempt the applicant for the requirement of obtaining an Adult-Oriented Business Employee Permit.

#### **Sec. 4.31.205 Investigation and Action on Application.**

(a) Upon receipt of an application for an Adult-Oriented Business Employee Permit and the required non-refundable application, investigation, and licensing fee, the Chief of Police shall issue a temporary license to the applicant.

(b) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within five (5) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have ten (10) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with Chief of Police as set forth herein

(c) Within fifteen (15) business days after the issuance of the temporary permit, the Chief of Police shall grant or deny the application and so notify the applicant as follows:

(1) If the application is approved, the Chief of Police will write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an Adult-Oriented Business Employee Permit.

(2) If the application is denied, the Chief of Police will write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(3) The documents specified in (1) and (2) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(d) The Chief of Police shall grant the application unless it is determined by a preponderance of the evidence that any of the following findings is true:

(1) That the applicant has been convicted of a Specific Criminal Activity except the Chief of Police shall issue a permit to any person convicted of any of the crimes described above if the person is otherwise qualified for a permit; and the longer of the following time periods has passed:

- (A) Five years from date of the conviction; or
- (B) Five years from release from confinement; or
- (C) Five years from formal release from probation period; or
- (D) Five years from formal release from parole.

(2) That the applicant has knowingly made a material misrepresentation in the application.

(3) That the applicant has had an Adult-Oriented Business Employee Permit revoked for cause by this City or any other city or county within the last five years except as provided in this Chapter.

(4) That the applicant is not at least eighteen (18) years of age.

(5) That the applicant has not paid the required fee

(e) The permit, if granted shall expire one (1) year from the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding Permit, the City Manager shall transmit to the permittee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the Chief of Police, but shall include a renewal form provided by the City, the required fee, and a copy of the permit to be renewed.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding Permit. The Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate. The Chief of Police shall extend the term of the immediately preceding Permit during the period of any investigation or examination required in order to determine whether the Permit should be renewed. The Chief of Police shall act upon applications for permit renewal as provided herein for applications for initial permits.

(f) The permit, if granted, shall state on its face the name of the person to whom it is granted, and the expiration date. The Chief of Police shall provide each person issued an Adult-Oriented Business Employee Permit with an identification card containing the name, address, photograph, and license number of the Permit.

(g) Both the permit and identification card shall be available for inspection at all times during which the Permittee is on the premises of an Adult-Oriented Business.

(h) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within fifteen (15) business days after its receipt, the applicant may begin employment at an Adult-Oriented Business, subject to strict compliance with the provisions of this Chapter for a period of 12 months subject to the renewal provisions as set forth in this Chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police from either granting or denying a completed application pursuant the terms of this Chapter even if more than thirty days has elapsed since the receipt of a completed application.

**Sec. 4.31.210 Transfer of Employee License.** A Licensee shall not transfer ownership or control of an Adult-Oriented Business Employee Permit.

## **Article 5**

### **DENIAL, SUSPENSION, AND REVOCATION OF LICENSE OR PERMIT**

**Sec. 4.31.300 Denial of License or Permit.** When the Chief of Police denies application for a license or permit or the application for a renewal of a license or permit, other than due to the failure to pay the required fees, the applicant shall not be issued a license or permit for one (1) year from the date of denial. If, subsequent to denial, the Chief of Police finds that the basis for denial has been corrected or abated, the applicant shall be granted a license or permit if at least ninety (90) days have elapsed since the date denial became final and the applicant is otherwise qualified to obtain a license permit.

### **Sec. 4.31.305 Suspension or Revocation of License or Permit.**

(a) A Licensee or Permittee may be subject to suspension or revocation of his or her License or Permit, or be subject to other appropriate remedial action, including the imposition of additional conditions, for any of the following causes

arising from the acts or omissions of the Licensee or Permittee, or an employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business:

(1) The Licensee or Permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a License or Permit, or in any report or record required to be filed with the City.

(2) The Licensee or Permittee, employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business has engaged in or knowingly allowed or permitted, or has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the Adult-Oriented Business:

(A) Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.

(B) Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.

(C) Any conduct constituting a criminal offense which requires registration under Section 290 of the California Penal Code.

(D) The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of Sections 315, 316, or 318 or Section 647(b) of the California Penal Code.

(E) Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including but not limited to Sections 311 through 313.4.

(F) Any conduct prohibited by this Chapter.

(3) The Licensee or Permittee failed to abide by any lawful condition previously imposed by an authorized City official.

(4) The Licensee or Permittee failed to abide by any applicable provision of this Chapter.

(b) After notice and a hearing in accordance with the provisions of this Chapter, if the Chief of Police finds and determines that there are grounds for action, the Chief of Police shall impose one of the following:

(1) A warning;

(2) Suspension of the License or Permit for a specified period not to exceed six months;

(3) Revocation of the License or Permit.

(4) The Chief of Police shall revoke a License or Permit if it has been suspended within the proceeding twelve (12) months.

(c) When the Chief of Police revokes a License or Permit, the revocation shall continue for one (1) year, and the Licensee or Permittee shall not be issued an Adult-Oriented Business license or permit for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may apply for and be granted a new license or permit if at least ninety (90) days have elapsed since the date the revocation became effective and the applicant is otherwise qualified for a license or permit.

**Sec. 4.31.306 Suspension or Revocation Hearing.** On determining that grounds for license or permit revocation or suspension exist, the Chief of Police shall furnish written notice of the proposed suspension or revocation to the Licensee. Such notice shall set forth the time and place of a hearing to be conducted by a Hearing Authority appointed by the City Manager, and the grounds upon which the hearing is based, the pertinent Code sections at issue, and a brief summary of the facts in support of the suspension or revocation. The notice shall be mailed, postage prepaid, to the last know address of the Licensee or Permittee, or shall be delivered to the Licensee or Permittee personally, at least ten (10) working days prior to the hearing date. At the hearing, all parties shall have a right to offer testimonial, documentary, and tangible evidence on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence upon which reasonable persons are accustomed to rely in the conduct of serious matters may be admitted. Any hearing under this Chapter may be continued for a reasonable time for the convenience of a party or witness. Notice of the Hearing Authority's decision shall be mailed to the applicant or Licensee or Permittee no later than seven (7) days after the close of the hearing. If the Hearing Authority determines that grounds for revocation or suspension exist, the Chief of Police shall take action as listed in section 4.31.305(b) within fourteen (14) days of the hearing.

**Sec. 4.31.310 Appeal.**

(a) All decisions of the Chief of Police to issue, renew, deny, suspend or revoke a license or permit are final within thirty (30) calendar days. After denial of an application, renewal, or a suspension or revocation, the applicant or licensee or permittee may seek prompt judicial review of such decision in any court of competent jurisdiction as provided by law, including judicial review pursuant to Section 1094.8 of the California Code of Civil Procedure. Notwithstanding the applicant's or licensee's or permittee's right to initiate judicial review, the City shall, upon the written request of an aggrieved applicant, licensee, or permittee within three (3) business days of its receipt of the request, file an action with a court of competent jurisdiction seeking declaratory and injunctive relief, including temporary and preliminary relief, as to the propriety of the denial, revocation, or suspension.

(b) If, upon request, the City files such action seeking judicial review or the

aggrieved applicant, licensee or permittee files the action, the City's revocation or suspension will be stayed pending a judicial decision on the merits by a court of competent jurisdiction.

(c) If the City denies an initial or renewal application and the aggrieved applicant commences a legal action to determine the validity of the denial or makes a written request in the manner set forth herein that the City commence such action, the City shall issue a temporary license or permit if the court has not rendered a decision on the merits within the earlier of twenty (20) calendar days after the matter is submitted to the court or fifty (50) calendar days of the filing of the action. This temporary license or permit shall remain in effect only until the court in which the action is pending renders its decision on the merits as to the propriety of the denial.

**Sec. 4.31.315 Confidentiality.** The City deems confidential license and permit applications required by this Chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the applications or the information contained therein.

## Article 6

### DEVELOPMENT AND PERFORMANCE STANDARDS AND REGULATIONS

**Sec. 4.31.400 Prohibition Against Minors.** It shall be unlawful for any Licensee, operator, or other person in charge of any Adult-Oriented Business to permit to enter, or remain within the Adult-Oriented Business, any person who is not at least eighteen (18) years of age or to provide any service for which this Chapter requires a license, to any person who is not at least eighteen (18) years of age.

**Sec. 4.31.405 Concealing Specified Activities and Anatomical Areas from Public View.** No Adult-Oriented Business shall be operated in any manner that permits the observation of any material or activities depicting or describing Specified Sexual Activities or Specified Anatomical Areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window, or other opening. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.

**Sec. 4.31.410 Posting Notices Relating to Minors.** The building entrance to an Adult-Oriented Business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Such notice shall be constructed and posted to the satisfaction of the Planning Director or his or her designee.

**Sec. 4.31.415 Indoor Areas Open to View by Management.** All indoor areas of the Adult-Oriented Business where patrons or members of the public are permitted, excluding rest rooms and non-public areas of Adult Motels, shall be open to view by management at all times.

**Sec. 4.31.420 Building Requirements.** The premises and grounds of all Adult-Oriented Businesses shall comply with the following;

(a) Maximum occupancy load, fire exits, aisles, parking and fire equipment shall be regulated, designed and provided in accordance with the fire department and building regulations and standards adopted by the City.

(b) The premises within which the Adult-Oriented Business is located shall provide sufficient sound-absorbing insulation so that noise generated inside the premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.

(c) All interior areas of the Adult-Oriented Business shall be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

(1) Adult Bookstores – 20 foot-candles;

(2) Adult Theaters, Adult Motion Picture Theaters and Adult Cabarets – 5 foot-candles (except during performances, at which times lighting shall be at least 1.25 foot-candles);

(3) Adult Arcades - 10 foot-candles;

(4) Adult Motels – 20 foot-candles (in public areas)

(5) Nude Model Studios - 20 foot-candles.

(d) All off-street parking areas and premise entries of the Adult-Oriented Business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of at least one (1) foot candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the Adult-Oriented Business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

(e) The exterior of the Adult-Oriented Business shall be equipped with a security system that visually records and monitors all off-street parking areas provided for the Adult-Oriented Business during all times that the business is open or occupied for business.

(1) The surveillance equipment utilized shall provide continuous recording for at least a 24-hour period, with all recording maintained for a minimum of 72 hours.

(2) Immediately upon request, the surveillance recording for all or any portion of the previous 72-hour period shall be made available to the Chief of

Police, or his or her designated representative. Such recordings shall be utilized only for purposes of investigation of an alleged violation of a local, state or federal law, or the enforcement thereof. Except as necessary to enforce a local, state or federal law, the City deems confidential the surveillance recordings required by this Chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the surveillance recordings or the information contained therein.

(3) Signs shall be posted in the parking area, near the entrances to the premises, and at a conspicuous location inside the premises in such a manner as to notify the public that the exterior of the premises is subject to recorded surveillance.

(f) The exterior portions of the building shall be painted in a single achromatic color unless the Adult-Oriented Business is a part of a commercial multi-unit center and the exterior portions of each individual unit in the commercial center, including the exterior portion of the business, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit center. Nothing in this provision shall be construed to require the painting of an otherwise unpainted exterior portion of an Adult-Oriented Business.

(g) No exterior signage shall contain photographs, silhouettes, drawings, images or pictorial representations in any manner, depicting or making linguistic reference to nudity, specified anatomical areas, specified sexual activity, or any device or paraphernalia designed for use in connection with specified sexual activity.

**Sec. 4.31.425 Hours of Operations.** An Adult-Oriented Business shall be open for business only between the hours of 10 a.m. and 12 a.m./midnight on any particular day.

**Sec. 4.31.430 Security Guards.** Adult-Oriented Businesses shall employ off-duty law enforcement officers or security guards in order to maintain the public peace and safety, based upon the following standards:

(a) Adult-Oriented Businesses shall provide at least one (1) officer or security guard at all times while the business is open. If the occupancy limit of the Adult-Oriented Business is greater than thirty-five (35) persons, an additional officer or security guard shall be on duty.

(b) Officers or security guards shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of these regulations. Officers and security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as an officer or security guard as required by applicable provisions of state law. No officer or security guard required pursuant to this Chapter shall act as a door person,

ticket seller, ticket taker, admittance person, entertainer or performer, or sole occupant of the manager's station while acting as a security guard.

(c) Officers and security guards shall report any violation of law immediately to the responsible manager on the premises at the time the violation or threatened violation occurs, and shall prepare a written report outlining the violation or threatened violation observed. Copies of all written reports required by this Chapter shall be maintained on the premises and shall be available for inspection by law enforcement personnel at all times during regular business hours.

**Sec. 4.31.435 Register and License Number of Employees.** Every Licensee of an Adult-Oriented Business that provides live entertainment depicting Specified Anatomical Areas or involving Specified Sexual Activities must maintain a register of all past and current persons so performing at the Adult-Oriented Business and their license numbers. Such register shall be available for inspection during regular business hours by any police officer of the City.

**Sec. 4.31.440 Inspection.**

(a) When the Chief of Police, the Planning Director, and/or Code Enforcement Officers have reasonable cause to believe that violations of this Title and/or other provisions of the Zoning Code are occurring on the premises where an Adult-Oriented Business is operating, they, and/or their authorized representatives, may conduct a reasonable inspection of the public areas of and areas otherwise open to plain view on or within, the premises or the Adult-Oriented Business to the extent allowed by law and during the business hours of the Adult-Oriented Business

(b) It is a violation of this Chapter for a person who operates an Adult-Oriented Business or that person's agent or Employee to refuse to permit such lawful inspection of the Adult-Oriented Business at any time it is open for business.

**Sec. 4.31.445 Restroom Facilities.** The Adult-Oriented Business shall provide and maintain separate restroom facilities for male patrons and Employees, and female patrons and Employees. Male patrons and Employees shall be prohibited from using the restroom(s) for females, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. Female patrons and Employees shall be prohibited from using the restroom(s) for males, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. The restrooms shall be free from any adult material. Restrooms shall not contain television monitors or others motion picture or video projection, recording, or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an Adult-Oriented Business which deals exclusively with the sale or rental of Adult Material which is not used or consumed on the premises, such as an Adult Bookstore or Adult Video Store, and which does not provide restroom facilities to its patrons or the general public.

**Sec. 4.31.450 Special Regulations -- Live Entertainment.** The following additional requirements shall pertain to Adult-Oriented Businesses providing live entertainment distinguished or characterized by the depiction, description, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities, except for businesses regulated by the California Department of Alcoholic Beverage Control.

(a) No person shall perform live entertainment for patrons of an Adult-Oriented Business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least six (6) feet from the nearest area occupied by patrons. Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this Chapter. Performer shall mean any person who is an Employee or independent contractor of the Adult-Oriented Business, or any person who, with or without compensation or other form of consideration, performs live entertainment for patrons of an Adult-Oriented Business.

(b) The Adult-Oriented Business shall provide separate dressing room facilities for performers which are exclusively dedicated to the performers' use.

(c) The Adult-Oriented Business shall provide an entrance/exit for performers which is separate from the entrance/exit used by patrons.

(d) The Adult-Oriented Business shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the Adult-Oriented Business shall provide a minimum three (3) foot wide aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers capable of (and which actually results in) preventing any physical contact between patrons and performers.

(e) No performers, either before, during, or after performances, shall have physical contact with any patron and no patron shall have physical contact with any performer either before, during or after performances by such performer. This paragraph shall only apply to physical contact anywhere on or within the premises of the Adult-Oriented Business, including off-street parking areas.

(f) No patron shall directly pay or give any gratuity to any performer and no performer shall solicit any pay or accept gratuity from any patron.

(g) No owner or other person with managerial control over an Adult-Oriented Business shall permit any person on the premises of the Adult-Oriented Business to engage in a live showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This paragraph may not be

complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

**Sec. 4.31.455 Special Regulations -- Adult Motels.**

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an Adult Motel.

(b) It is a violation of this Chapter for a person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an Adult-Oriented Business License to rent or sub-rent the same sleeping room to another person more the two (2) times in a period of time that is less than ten (10) hours.

(c) For purposes of paragraphs (a) and (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

**Sec. 4.31.460 Special Regulations -- Films, Videos or Viewing Rooms.**

A person who operates or causes to be operated an Adult-Oriented Business, including an Adult Arcade and other than an Adult Motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:

(a) Upon application for an Adult-Oriented Business License, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of premises to an accuracy of plus or minus six (6) inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was first prepared.

(b) No alteration in the configuration or location of a manager's station may be made without the prior written approval of the Chief of Police.

(c) It is the duty of the Licensee of the Adult-Oriented Business to ensure that at least one licensed Employee is on duty and situated in each manager's station at all times that any patron is present inside the Adult-Oriented Business.

(d) The interior of the Adult-Oriented Business shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the Adult-Oriented Business to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing equipment. If the Adult-Oriented Business has two (2) or more designated manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the Adult-Oriented Business to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required by this Section must be by direct line of sight from the manager's station.

(e) It shall be the duty of the Licensee to ensure that the view area specified in this Section remains unobstructed at all times by any doors, curtains, partitions, walls, merchandise, display racks or other materials.

(f) It shall be the duty of the Licensee to ensure that no patron is permitted access to any area of the Adult-Oriented Business which has been designated as an area in which patrons will not be permitted pursuant to paragraph (a) of this section.

(g) No viewing room may be occupied by more than one (1) person at any time.

(h) No viewing room shall have any door, curtain, shutter, or any other device blocking or capable of blocking, wholly or partially, the entrance to the viewing booth.

(i) The Adult-Oriented Business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level.

(j) It shall be the duty of the Licensee to ensure that the illumination required by this Section is maintained at all times that any patron is present in the premises.

(k) No openings of any kind shall exist between viewing rooms or booths.

(l) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(m) The Licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(n) The Licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(o) The Licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition Board or other porous material shall be used within forty-eight (48) inches of the floor.

(p) The floors, seats, walls, and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, or saliva in any such booths shall be evidence of improper maintenance and inadequate sanitary controls.

(q) Customers, patrons, or visitors shall not be allowed to loiter in the vicinity of any such video booths, or remain in the common area of such Adult-Oriented Business, other than the restrooms, unless actively engaged in shopping for or reviewing the products available or on display for purchaser viewing. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.

(r) It is a violation of this Chapter for a person having a duty under this Section to knowingly fail to fulfill that duty.

#### **Sec. 4.31.465 Special Regulations -- Nude Model Studios.**

(a) A Nude Model Studio shall not employ any person under the age of eighteen (18) years.

(b) It is a violation of this Chapter for a person under the age of eighteen (18) years to appear Semi-Nude or in a State of Nudity in or on the premises of a Nude Model Studio. It is a defense to prosecution under this Section if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

(c) A Nude Model Studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

#### **Sec. 4.31.470 Special Regulations -- Public Nudity.**

(a) It is a violation of this Chapter for a person knowingly and intentionally, in an Adult-Oriented Business, to appear in a State of Nudity or to engage in, perform or simulate Specified Sexual Activities.

(b) It is a violation of this Chapter for a person knowingly or intentionally, in a public area of an Adult-Oriented Business, to appear in a Semi-Nude condition unless the person is an Employee or performer who, while Semi-Nude, is upon a

stage at least eighteen (18) above the level of the floor which is separated by a distance of at least six (6) feet from the nearest areas occupied by patrons.

(c) It is a violation of this Chapter for an Employee or performer while Semi-Nude in an Adult-Oriented Business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any Employee.

(d) It is a violation of this Chapter for an Employee or performer in an Adult-Oriented Business, while Semi-Nude, to knowingly and intentionally, touch a patron or the clothing of a patron.

**Sec. 4.31.475 Prohibition -- Sexual Encounter Centers.** A sexual encounter center is not a permitted use.

## **Article 7 ENFORCEMENT**

**Sec. 4.31.500 Each Day Separate Offense.** Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

**Sec. 4.31.505 Public Nuisance.** Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the Municipal Code of the City.

**Sec. 4.31.510 Infractions.** Any person who violates, causes, or permits another person to violate any provision of this Chapter commits an infraction. Any person convicted of an infraction shall be subject to a fine to the maximum amount permitted by state law. Any person twice convicted of an infraction for repeat violations of the same provision within a one (1) year period, may be charged with a misdemeanor upon being issued a citation for the repeated violation of the same provision since, rather than simply a violation of a provisions of this Chapter, such repeat violations evidence a disregard of municipal authority. Any person convicted of a misdemeanor shall be subject to punishment by fine or imprisonment to the maximum permitted by state law. Pursuant to Government Code section 36900(a), the City Attorney may prosecute these violations in the name of the People of the State of California.

**Sec. 4.31.515 Civil Injunction.** The violation of any provision of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause for injunctive relief.

**Sec. 4.31.520 Administrative Remedies.** In addition to the remedies set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies, as set forth in the Municipal Code of the City.

**Sec. 4.31.525 Revocation of License.** In addition to the remedies set forth above, violation of the provisions of this Chapter constitutes grounds for the revocation of an Adult-Oriented Business License and/or Adult-Oriented Business Employee Permit.

## CHAPTER 4.35

### OUTDOOR FESTIVALS

#### Article 1

#### General Provisions and Requirements

##### Sections:

- 4.35.000 Purposes.
- 4.35.005 City Manager.
- 4.35.006 Exclusion for City Park and Recreation Department Festivals.
- 4.35.010 Definitions.
- 4.35.015 Same - Automobile Parking Space.
- 4.35.020 Same - Outdoor Festival.
- 4.35.025 Same - Sponsors and Promoters.
- 4.35.030 Landowner's Consent.
- 4.35.035 Sponsor Responsibilities.
- 4.35.040 Same - Water.
- 4.35.045 Same - Sanitary Facilities.
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- 4.35.055 Same - Security Personnel.
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- 4.35.065 Same - Lighting Equipment.
- 4.35.070 Same – Sound Levels
- 4.35.075 Same - Garbage.
- 4.35.080 Same - Emergency Communications.
- 4.35.085 Same - Access Ways.
- 4.35.090 Same - Dust.
- 4.35.095 Same - Food.
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- 4.35.110 Limitation Upon Attendance.
- 4.35.115 Conduct Prohibited.
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#### Article 2

#### Special Business License

- 4.35.205 License Required.
- 4.35.210 Filing Time.
- 4.35.215 Application Contents.
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- 4.35.255 Issuance.
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**Article 1**  
**General Provisions and Requirements**

**4.35.000 PURPOSES.** In this state and elsewhere, outdoor festivals have been promoted and have attracted large numbers of persons, sometimes exceeding one hundred thousand. Occurrences at those outdoor festivals already held include the stealing of automobiles, abandonment of automobiles stolen elsewhere, totally unmanageable traffic congestion, slaughtering of cattle and other animals on adjoining property without permission of the owners thereof, unauthorized destruction of property, scattering of trash, garbage, and other debris on adjoining property, overnight camping at random locations, collision of automobiles with persons sleeping on the ground, and, generally, the commission of serious crimes with impunity due to the inability of police to patrol the area.

Such festivals, with their attendant large crowds create serious health and safety risks for persons attending and the general public thereafter unless adequate sanitary facilities, drinking water supplies, lighting, medical services, vehicular parking areas, supervision, and other services and guarantees are provided.

The regulatory provisions of this Chapter are necessary to insure that outdoor festivals are held only at suitable places and are subject to reasonable conditions for the protection of the public health, safety, and welfare.

**4.35.005 CITY MANAGER.** The City Manager is charged with the responsibility of administering the regulations imposed by this Chapter, and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing outdoor festivals, promulgate administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to outdoor festivals and the issuance and administration of Special Business Licenses therefor, as are vested in the Chief of Police under Chapter 4.02, Section 4.02.070, 4.02.085, 4.02.100 and 4.02.105; and Chapter 4.10, Sections 4.10.000 through 4.10.155. Any reference to the "Chief of Police" shall be deemed to be a reference to the City Manager in relation to outdoor festivals.

**4.35.006 EXCLUSION FOR CITY PARK AND RECREATION DEPARTMENT FESTIVALS.** The outdoor festivals ordinance does not apply to outdoor festivals held at City parks and conducted under the direction of the City Parks and Recreation Department.

**4.35.010 DEFINITIONS.** As used in this Chapter, the terms contained in Sections 4.35.015 through 4.35.025 shall be ascribed the meanings contained therein, unless the context indicates otherwise.

**4.35.015 SAME - AUTOMOBILE PARKING SPACE --** shall mean any maintained space, not less than one hundred eighty square feet in area nor less than nine feet wide at any place, on or contiguous to the land on which the outdoor festival is conducted, and so located and arranged as to permit the parking of an average size, six-passenger automobile.

**4.35.020 SAME - OUTDOOR FESTIVAL --** shall mean any outdoor gathering of more than five hundred persons for the purpose of participating in or attending a dance, music carnival, "rock" festival, or like musical activity at which vocal or instrumental or both vocal and instrumental music is provided by professional or amateur performers or by prerecorded means, held at any place other than in a permanent building, stadium or like permanent installation which has been constructed or customarily used for the purpose of housing such activities, and to which gathering members of the public are invited or admitted with or without the payment of admission charges in any form.

**4.35.025 SAME - SPONSORS AND PROMOTERS --** shall mean all persons and business entities having a direct financial interest in the proceeds to be derived from the outdoor festival, whether such proceeds arise from ticket sales, sales of film, radio, television, or sound recording rights, or otherwise.

**4.35.030 LANDOWNER'S CONSENT.** It shall be unlawful for any person to sponsor, conduct, operate, promote or advertise an out-door festival unless the owner or owners of the land upon which the festival is or would be conducted have consented to the use thereof for such purposes. If the land is not solely owned by the person or persons sponsoring, conducting, operating, promoting or advertising the festival, such consent shall be evidenced by a written instrument containing the notarized signatures of all record owners.

**4.35.035 SPONSOR RESPONSIBILITIES.** Each person to whom a Special Business License required by Article 2 is issued, shall be responsible as licensee and at the sole cost and expense thereof, for provision of those facilities, services, resources and guarantees required by Sections 4.35.040 through 4.35.100.

**4.35.040 SAME - WATER.** The licensee shall provide drinking water of the quantity, quality, and from a source approved by the City Manager. Drinking fountains shall be provided as follows:

- (a) One drinking fountain for the first one hundred persons;
- (b) Two drinking fountains for more than one hundred but less than five hundred persons; and

(c) One additional drinking fountain for each additional five hundred persons or fraction thereof.

**4.35.045 SAME - SANITARY FACILITIES.** The licensee shall provide sanitary facilities as follows: at least one water closet and one urinal, or in lieu thereof two patented chemical toilets, for every two hundred males, and at least one water closet or patented chemical toilet for every one hundred females, unless the City Manager finds that a lesser number is sufficient, in which case he or she shall designate each number. If both sexes are admitted to any sanitary facility, for purposes of determining the required quantity of facilities the persons attending the outdoor festival shall be assumed to be equally divided by sex. Prior to the commencement of the outdoor festival, the City Manager shall inspect the sanitary facilities with regard to adequacy of quantity, functioning, and plans for periodic removal of wastes therefrom, and shall approve the sanitary facilities only if they meet applicable health standards. While any premises are being prepared for use for an outdoor festival or for parking or other uses incidental thereto, the licensee shall provide on the premises one patented chemical toilet for each twenty persons or fractional part thereof working at the job site. Every patented chemical toilet installed in accordance with this Section shall be maintained and operated in accordance with the rules and regulations approved by the City Manager.

**4.35.050 SAME - AUTOMOBILE PARKING SPACES.** On all premises on which an outdoor festival is conducted, or contiguous thereto and under the control of the applicant, in addition to those ways described in Section 4.35.080 of this Chapter, there shall be automobile parking spaces equal in number to one-fourth of the number of persons which the license permits to attend the outdoor festival, unless the City public works director finds that a lesser number of parking spaces is sufficient in which case the licensee shall provide the lesser number of spaces. Such automobile parking spaces shall be graded, plainly and individually marked, and separated by a physical barrier from the area where patrons will watch the performances. At all times between two hours before the commencement of the outdoor festival and two hours after its termination the licensee shall provide parking attendants at all entrances and exits to the parking area within the area.

**4.35.055 SAME - SECURITY PERSONNEL.** At any outdoor festival, one off-duty law enforcement officer or uniformed security guard for each two hundred persons which the license permits to attend, whether such permissible attendance is present or not, shall be in constant attendance during the entire time the outdoor festival is in progress. Each officer or security guard shall be approved by the Chief of Police or shall be provided by a private patrol operator whose name and address has been stated in the application and who is licensed pursuant to Chapter 11 of Division 3 of the Business and Professions Code. The Chief of Police shall approve any security guard if the guard meets the qualifications stated in Sections 7526 and 7526.3 of the Business and Professions Code. The officers and security guards shall devote their entire attention and time to keeping order and enforcing all applicable statutes and ordinances, including this Chapter.

**4.35.060 SAME - FIRE PROTECTION.** The licensee shall provide such fire protection measures and equipment as the Chief of that Fire Protection District with jurisdiction over the site on which the outdoor festival is conducted finds reasonably necessary to provide fire protection to the immediate and adjoining premises and to persons participating in and attending the outdoor festival.

**4.35.065 SAME - LIGHTING EQUIPMENT.** If the hours during which the outdoor festival can be held as provided in the license are such that any portion thereof is between sunset of one day and sunrise of the following day, or if the license permits any participant or person in attendance to remain overnight, the licensee shall provide such lighting, including light standards and electrical switches, and such power supply as the Chief of Police and director of public works find necessary for the public safety and welfare.

**4.35.070 SAME – SOUND LEVELS.** The licensee shall propose reasonable limits on sound emanating from the festival grounds into adjoining areas with resident homes or businesses. At the option of the Chief of Police, the licensee shall provide up to three sound monitoring locations at the edge of the property where the outdoor festival is to be conducted. The monitoring locations shall be equipped to measure the decibels of sound emanating from the festival grounds and, at the option of the Chief of Police, may be monitored by City personnel to assure compliance with the sound level limits agreed to in the permit.

**4.35.075 SAME - GARBAGE.** The licensee shall provide solid waste receptacles to receive solid wastes at a ratio of one cubic yard of available receptacle space for each two hundred fifty persons which the license permits to attend the outdoor festival.

All solid waste receptacles shall be serviced once every twenty-four hours during the festival. Within seventy-two hours after the conclusion of an outdoor festival, the licensee shall clean the premises, including contiguous public roads, ways, and ease-ments, removing all trash, garbage, and debris therefrom which matter would not have been deposited therein had not the outdoor festival occurred.

**4.35.080 SAME - EMERGENCY COMMUNICATIONS.** At all times during the conduct of an outdoor festival, the licensee shall maintain such emergency communications systems as the Chief of that Fire Protection District with jurisdiction over the site on which the outdoor festival is conducted and Chief of Police find reasonably necessary for fire and police protection.

**4.35.085 SAME - ACCESS WAYS.** The licensee shall provide all exterior and interior access ways which the Chief of Police and director of public works find necessary for the use of those attending the outdoor festival. All such access ways shall be clearly marked and delineated by means of curbs or temporary buffers on the ground.

**4.35.090 SAME - DUST.** The licensee shall use such methods of dust control as are approved by the City Manager. The City Manager shall approve such methods if he finds that such methods will prevent the arising of dust to an extent which may endanger public health and safety.

**4.35.095 SAME - FOOD.** In selling, preparing, delivering, or serving food or beverages or both, all persons shall comply with the California Restaurant Act, Chapter 11 (beginning with Section 28600), Division 21, of the California Health and Safety Code and with Chapter 6.04 of the Municipal Code.

**4.35.100 SAME - DAMAGE REIMBURSEMENT.** The licensee and owner or owners of the premises upon which the outdoor festival would be held shall sign a unilateral written contract promising that they will reimburse all owners and occupants of property adjoining the subject premises for any and all loss, injury, or damages to such owners or occupants or to their property caused by the licensee, by the owner of the subject premises, or by any other person attending the outdoor festival, which damage would not have occurred had the outdoor festival not been held. Accompanying and securing this agreement shall be a surety bond in favor of the City of Elk Grove and all persons to whom the licensee or owner of the subject premises may be liable because of the above required agreement. The bond shall be prepared by a corporate bonding company authorized to do business within the State of California by the Department of Insurance, and shall be in the amount of not less than fifty thousand dollars, or ten dollars per person permitted by the license to attend the outdoor festival, whichever is more.

**4.35.105 SAME - CLEAN-UP.** The licensee and owner or owners of the premises upon which the outdoor festival would be held shall sign a unilateral written contract promising that, within seventy-two hours after the conclusion of the outdoor festival, they will clean up the premises, including contiguous public roads, ways, and easements, and remove all debris, garbage, trash, litter, and other waste matter from, in, and around the premises. Accompanying and securing this agreement shall be a surety bond in favor of the City of Elk Grove and all persons to whom the applicant may be liable because of the above required agreement prepared by a corporate bonding company authorized to do business in the State of California by the Department of Insurance, obligating the licensee and owner for all costs necessitated to clean up the premises and to remove debris, garbage, trash, litter, or other waste matter from, in, or around the premises. Such surety bond shall be in the amount of not less than five thousand dollars.

**4.35.110 LIMITATION UPON ATTENDANCE.** Adequate facilities, services and accommodations for those in attendance of an outdoor festival and required to otherwise protect the public peace, health, safety and welfare necessitate a planned limit upon the volume of potential attendance and the establishment of means to ensure that the volume limit is not exceeded.

The licensee shall provide such facilities on the premises where a festival is to be conducted and such personnel as the Chief of Police deems necessary to

effectively control the number of persons in attendance as required in order to ensure that the limit for which the Special Business License is issued is not exceeded.

The licensee shall not admit to the outdoor festival, and shall prevent the entrance thereto of, any person who does not possess a ticket, except a peace officer or other public officer in the performance of his duty. Admission to an outdoor festival shall be by ticket only. The licensee shall not sell, give, or otherwise distribute or cause to be distributed a greater number of tickets than the number of persons the license permits to attend. The licensee shall not admit any person to an outdoor festival if such admission would result in a greater number of persons present than is permitted by the license.

The provisions of this Section shall not be construed to require that tickets be sold for money as distinguished from given away or exchanged for some other consideration. Nor shall the provisions of this Section be construed to require the persons desiring to attend to identify themselves either as a condition of receiving a ticket or of admission.

**4.35.115 CONDUCT PROHIBITED.** The attendant harm and danger caused by large numbers of persons who are under the influence of intoxicating liquor or prohibited drugs necessitate the following restrictions.

No person shall, nor shall any licensee permit any person to enter, be, or remain on any part of the premises on which an outdoor festival is being conducted which such person is in possession of, consuming, using, or under the influence of any alcoholic beverage or legally proscribed dangerous drugs or narcotics.

**4.35.120 ADVERTISING.** No person shall advertise or announce by any means or medium, including, but without limitation to, posters, pamphlets, handbills, newspaper, radio or television, the holding of an outdoor festival prior to the granting of a Special Business License permitting such outdoor festival.

Any and all such advertising shall contain reference to the fact that attendance is prohibited without possession of a ticket or other entitlement to attend, and the maximum number of persons permitted by the license to attend.

**4.35.125 DAYS AND HOURS.** The licensee shall operate the outdoor festival only on those days and during those hours specified in the Special Business License.

**4.35.130 TERMINATION OF FESTIVAL.** During the conduct of an outdoor festival for which a Special Business License has been issued under the provisions of Chapter 4.10 and this Chapter, the Chief of Police shall be empowered to interrupt and terminate the festival, order the cessation thereof, and order all persons in attendance to disburse if he or she finds any of the following:

- (a) That the actual attendance at the festival exceeds the maximum attendance authorized by the License; or
- (b) That violations of Section 4.35.115 are occurring in such volume or under such circumstances that available law enforcement and security resources are inadequate to effectively enforce the prohibitions of that Section; or
- (c) That any service on the site of the festival required by those in attendance is insufficient, and the insufficiency endangers the health, safety or welfare of those in attendance; or
- (d) That conduct violating the penal laws of the State of California is occurring in such volume or under such circumstances that law enforcement and security resources are insufficient to effectively prevent such violations; or
- (e) That the decibel level of sound intruding into neighboring properties exceeds the standards agreed to by the Sponsors and Promoters in the permit.

It shall be unlawful for any person to violate an order issued by the Chief of Police under the authority conferred by this Section.

## **Article 2 Special Business License**

**4.35.205 LICENSE REQUIRED.** No person shall sponsor, conduct, promote, advertise or sell or furnish tickets or other authority for an outdoor festival unless under and by authority of a valid, unexpired and unrevoked Special Business License authorizing the outdoor festival issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.35.210 FILING TIME.** Notwithstanding the provisions of Chapter 4.10, an application for a Special Business License to conduct an outdoor festival shall be filed not later than ninety calendar days in advance of the date the festival is proposed to commence.

**4.35.215 APPLICATION CONTENTS.** In addition to the matters prescribed by Section 4.10.030, an application for a Special Business License to conduct an outdoor festival shall contain that information and material prescribed by Sections 4.35.220 through 4.35.240.

**4.35.220 SAME - IDENTIFICATION OF APPLICANTS.** The application shall include the name (including aliases), age, residence, mailing address and telephone numbers of each person making the application. If the application is filed by a partnership, the name (including aliases), age, residence and mailing address, the telephone numbers of each partner shall be included. If the application is filed by a corporation, the application shall be signed by the president, vice president and secretary thereof and contain their residences, mailing addresses, and telephone numbers, contain the telephone numbers, the mailing addresses, and the street

addresses of the principal place of business of the corporation, and include a certified copy of the articles of incorporation and the bylaws of the corporation.

**4.35.225 SAME - IDENTIFICATION OF PROPERTY OWNERS.** The application shall include the names, addresses and telephone numbers of the owners of the premises upon which the proposed outdoor festival, including automobile parking and other incidental uses, is to be held, and the exact location, legal description, and area of these premises. If any of the owners of the premises is a partnership, the names, addresses, and telephone numbers of all partners shall be included. If any of the owners of the premises is a corporation, the street address and telephone numbers of the principal place of business of the corporation, together with the names, addresses and telephone numbers of the principal officers thereof, shall be included.

**4.35.230 SAME - TIME - ATTENDANCE - ADVERTISING.** The application shall include:

(a) The date or dates and the hours during which the proposed outdoor festival is proposed to be conducted;

(b) A statement of the maximum number of persons proposed to be admitted to the outdoor festival on each day;

(c) Specification of the means of identifying the persons permitted to attend the festival, whether by tickets or otherwise; the number of tickets or other entitlements to admission to be issued for distribution; the names and addresses of all persons who are to receive such entitlements for distribution; and the number of such entitlements to be provided to each distributor;

(d) Identification of all fencing, the number and location of admission gates, security and other measures proposed to ensure that actual attendance does not exceed the maximum prescribed by the License; and

(e) The text of all advertising intended for the purpose of publicizing the festival, which shall be subject to approval only in relation to compliance of the text with those requirements prescribed by Section 4.35.120.

**4.35.235 SAME - PROVISIONS FOR SERVICES.** The application shall include a detailed statement of the applicant's plans to supply all facilities, services, resources and guarantees required by Sections 4.35.040 through 4.35.105; together with:

(a) The names and addresses of all business entities or other person intended to supply the facilities, services and resources, coupled with an exact description of the facilities, services or resources each business entity or other person is intended to supply;

(b) Contracts or other written statements executed by the providers showing the charges to be imposed for the facilities, services or resources to be provided, and the dates and amounts of all deposits or other advance payments required therefor; and

(c) Financial statements by the applicant showing the availability of funds with which to make any deposits or advance payments required.

The application shall include copies of the written instruments required by Sections 4.35.030, 4.35.100 and 4.35.105. The bonds required by Sections 4.35.100 and 4.35.105 shall be filed with the City Manager not later than the date of and as a condition precedent to issuance of the Special BusinessLicense.

**4.35.240 SAME - MAPS AND DIAGRAMS.** The application shall include a map of white background print, drawn to scale, showing:

(a) The location of the property on which the proposed outdoor festival and all related activities will be held;

(b) The location of all highways, streets, alleys, lots, and parcels of land within seven hundred feet of the exterior boundaries of the proposed use;

(c) All access ways to the property;

(d) All exterior access ways;

(e) The location of all buildings and structures on the premises, or to be erected thereon, including, but without limitation to, all bandstands, stages, tents other facilities for performers, and bleachers, tents or seats for those attending;

(f) The location of all loudspeakers; and

(g) The location of all toilets, medical facilities, lighting, emergency communications, drinking facilities, and solid waste receptacles.

**4.35.245 FINGERPRINTS AND PHOTOGRAPHS.** An application shall not be deemed completed until each of the following persons associated with an applicant has been fingerprinted and photographed at the Police Department:

(a) All general partners, if the applicant is a partnership;

(b) All joint venturers, if the applicant is a joint venture; and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this Section would apply if the partnership or corporation were the applicant;

(c) A sole proprietor, if the applicant is a sole proprietorship;

(d) All owners of more than ten percent of the voting shares of stock, if the applicant is a commercial corporation;

(e) All directors, if the applicant is either a commercial or non-profit corporation;

(f) All members of the management committee, if the applicant is a partnership or joint venture;

(g) All members of a governing body or other Board or committee to which management is entrusted, if the applicant is an unincorporated association; and

(h) Each president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm who is the applicant.

**4.35.250 PROCESSING OF APPLICATION.** Upon receipt of a fully completed application, the City Manager shall provide copies thereof to the Chief of Police, Director of Health Department, Director of Public Works, Chief of the Fire Protection District with jurisdiction over the site where the outdoor festival is to be conducted, and Planning Director. Each of said officials shall determine whether, with regard to their specific areas of responsibility under this Chapter, the proposed outdoor festival can be held without violating any of the provisions of this Chapter, and shall make such determinations as are otherwise required by the provisions of this Chapter.

Each such official shall submit to the City Manager within thirty calendar days following the date of filing of a completed application his or her written findings, determinations and requirements.

**4.35.255 ISSUANCE.** Notwithstanding the provisions of Section 4.10.040, the City Manager shall act upon the application not later than thirty calendar days following the date of filing of the application, and the provisions of Section 4.10.040(c) shall not constitute grounds for denial of a Special Business License to conduct an outdoor festival.

The City Manager shall issue the Special Business License within thirty days after the date on which the application is filed, unless, in addition to the grounds prescribed by Section 4.10.040, either:

(a) The Planning Director, Chief of Police, Director of Public Works, Chief of the Fire Protection District with jurisdiction over the site where the outdoor festival is to be conducted, or City Manager has found in writing that the proposed outdoor festival sites or facilities would not comply with all health, zoning, fire and safety requirements and standards imposed by the laws (including ordinances) applicable to the site where the outdoor festival is to be conducted, including this Chapter; or

(b) The Planning Director, Chief of Police, Director of Public Works or City Manager finds in writing that any of the facilities, services, resources or guarantees proposed by the applicant as required by this Chapter are insufficient to satisfy any discretionary requirement imposed by any of these officials pursuant to authority conferred by this Chapter; or

(c) The City Manager finds in writing that because of the inadequacy of financial resources of the applicant or for other reasons that there is a significant risk that any of the facilities, services, resources or guarantees required of the applicant by this Chapter will not be provided.

**4.35.260 LICENSE REQUIREMENTS.** A Special Business License authorizing an outdoor festival pursuant to the provisions of this Chapter, shall state on its face, and the City Manager shall be vested with discretionary authority to determine based upon considerations of health, safety and welfare as identified by this Chapter, the following:

(a) The maximum number of persons authorized to attend the festival on each date the festival will be conducted;

(b) The dates and hours during which the festival may be conducted; and

(c) Such conditions pertaining to conduct of the festival as may be deemed appropriate.

To the extent that the License authorizes a lower maximum number of persons to attend the festival than proposed by the applicant, authorizes the festival on fewer dates or during more restricted hours than proposed by the applicant, or contains conditions to which the applicant objects, such provisions of the License shall be appealable in the same manner and in accordance with the same procedure as if the application had been denied, and the appeal shall be governed by the procedures and standards prescribed by Sections 4.10.110 through 4.10.130.

## **CHAPTER 4.54**

### **ADDITIONAL REGULATIONS AND PROHIBITIONS FOR BUSINESSES**

#### **Article 1 Street Businesses**

Sections:

- 4.54.000 Purposes
- 4.54.005 Definitions
- 4.54.010 Prohibitions
- 4.54.015 Exceptions
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**Article 1**  
**Street Businesses**

**4.54.000 PURPOSES.** Regulation of the sale of merchandise upon the public streets and sidewalks within the City is necessary for the purpose of promoting the free and safe flow of vehicular and pedestrian traffic. The City Council finds that the use of such rights-of-way for such purposes in violation of the prohibitions of this Article would constitute an interruption of the free flow of traffic and a serious and dangerous hazard to the public.

**4.54.005 DEFINITIONS.** As used in this Article, the following terms shall be ascribed the following meanings:

(a) "Public Streets" -- shall mean that portion of any County, State or public road or highway within the City which is utilized for motor vehicle or bicycle traffic, including any improved shoulder adjacent to traffic lanes, and excluding sidewalks.

(b) "Sidewalks" -- shall mean any right-of-way within the City which is improved for public pedestrian traffic, including paved walks and pathways.

(c) "Stand" -- shall mean any fixed, temporary, permanent or mobile rack, counter, shelving, vehicle or other structure or device utilized for the purpose of transporting, storing, carrying or displaying merchandise or for the purpose of conducting sales of merchandise.

(d) "Merchandise" -- shall mean any item of personal property, including but not limited to, written materials, foods and wares.

**4.54.010 PROHIBITIONS.** Except as otherwise provided by Section 4.54.015, it shall be unlawful for any person to:

(a) Hawk or peddle merchandise upon the public streets; or

(b) Place a stand or merchandise upon a sidewalk for the purpose of hawking or peddling merchandise.

**4.54.015 EXCEPTIONS.** The provisions of this Article shall not be applicable to or deemed to prohibit:

(a) The placement of newspaper racks upon sidewalks; or

(b) The peddling or hawking of merchandise by the taking of orders or delivering of commodities from any vehicle which is parked not longer than required in order to complete a single transaction adjacent to the premises or residents of the customer, patron or purchaser.

**4.54.020 FOOD VENDORS.** No person operating a vehicle from which candy, confections, ice cream, beverages or other articles of food are sold or offered for sale under the authority of Section 4.54.015(b)

(a) shall park or stand the vehicle for purposes of sale within three hundred fifty feet of the grounds of any public school in which children at or below the twelfth grade level are enrolled, and which is in session; or

(b) shall sell any non-food items including, but not limited to, toys, clothing, or fireworks.

## **Article 2**

### **Aggressive Solicitation**

**4.54.100 PURPOSES.** The City Council finds that aggressive solicitation negatively impacts the quality of life of residents of the City. Patrons of commercial districts in which aggressive solicitation occurs are less likely to patronize the City's businesses and negatively impact the public interest in economic growth and tax revenues to the City. Mindful of everyone's right of free speech, the City Council finds there is a reasonable balance between those interests and the rights of listeners to be left alone -- even in public places. Furthermore, the City Council takes notice that the specific provisions of this Article have been judicially upheld by the California Supreme Court.

**4.54.105 DEFINITIONS.** For purposes of this Article:

(a) "Solicit, ask or beg" includes using the spoken, written, or printed word, or bodily gestures, signs or other means with the purpose of obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services.

(b) "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, an apartment house or hotel not constituting a room or apartment designed for actual residence.

**4.54.110 AGGRESSIVE SOLICITATION PROHIBITED.**

(a) No person shall solicit or beg in an aggressive manner in any public place.

(b) "Aggressive manner" means any of the following:

(1) Approaching or speaking to a person, or following a person before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to

another, damage to or loss of property, or otherwise be intimidated into giving money or other thing of value;

(2) Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent in the course of soliciting, asking or begging;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

(4) Using violent or threatening gestures toward a person solicited either before, during, or after soliciting, asking or begging;

(5) Persisting in closely following or approaching a person after the person solicited has been solicited and informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or any other thing of value to the solicitor; or

(6) Using profane, offensive or abusive language that is inherently likely to provoke an immediate reaction, either before or after solicitation.

#### **4.54.115 ALL SOLICITATION PROHIBITED AT SPECIFIED LOCATIONS.**

(a) Banks and ATMs. No person shall solicit, ask, or beg within 15 feet of any entrance or exit of any bank, savings and loan association, credit union, or check cashing business during its business hours or within 15 feet of any automated teller machine during the time it is available for customers' use. However, when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. No person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility. Nothing in this paragraph shall be construed to prohibit the lawful vending of goods and services within such areas.

(1) Definitions. For purposes of this section:

(A) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(B) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section

401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(C) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(D) "Check cashing business" means any person duly licensed as a check seller, bill payer, or prorater pursuant to Division 3 of the California Financial Code, commencing with section 12000.

(E) "Automated teller machine" shall mean any electronic information processing device that accepts or dispenses cash in connection with a credit, deposit, or convenience account.

(F) "Automated teller machine facility" shall mean a secure area comprised of one or more automated teller machines, and any adjacent space that is made available to banking customers after regular banking hours.

(2) Exemptions. The provisions of this Subdivision shall not apply to any unenclosed automated teller machine located within any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings as long as such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.

(b) Motor vehicles and parking lots.

(1) Motor Vehicles. No person shall approach an operator or occupant of a motor vehicle for the purpose of soliciting, asking or begging while such vehicle is located in any public place.

(2) Parking lots. No person shall solicit, ask or beg in any public parking lot or structure any time after dark. "After dark" means any time from one-half hour after sunset to one-half hour before sunrise.

(3) Exemptions. This Subdivision shall not apply to any of the following:

(A) to solicitations related to business that is being conducted on the subject premises by the owner or lawful tenants;

(B) to solicitations related to the lawful towing of a vehicle; or

(C) to solicitations related to emergency repairs requested by the operator or other occupant of a vehicle.

(c) Public Transportation Vehicles and Stops.

(1) "Public transportation vehicle" shall mean any vehicle, including a trailer bus, designed, used or maintained for carrying 10 or more persons, including the driver; or a passenger vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire.

(2) Any person who solicits, asks or begs in any public transportation vehicle, or within ten feet of any designated or posted public transportation vehicle stop, is guilty of a violation of this section if:

(A) He or she remains there after being asked to leave by the owner, driver, or operator of a public transportation vehicle; the agent of the owner, driver or operator of a public transportation vehicle; the owner or manager of a public transportation facility; the agent of the owner or manager of a public transportation facility; a member of a security force employed by the public transportation facility; or by a peace officer, as defined in Chapter 4.5 of Title 3 of the California Penal Code (commencing with Pen. Code, § 830); or

(B) Within the immediately preceding 30 days, he or she engaged in a solicitation at that location and had been asked to leave by a person specified in Paragraph (A), above.

(C) Paragraph (B) above is not violated if a person who has been requested to leave enters the property within the designated period and solicits, asks, or begs with the express authorization of a person specified in Paragraph (A) above.

(d) Restaurants. Any person who solicits, asks, or begs in any outdoor or indoor dining area of a restaurant or other establishment serving food for immediate consumption is guilty of a violation of this section if:

(1) He or she remains there after being asked to leave by the owner, manager or supervisor of the restaurant or other food establishment; the agent of the owner, manager or supervisor of the restaurant; a member of a security force employed by the restaurant; or by a peace officer, as defined in Chapter 4.5 of Title 3 of the California Penal Code (commencing with Pen. Code, § 830), acting at the request of any of the persons specified in this subdivision; or

(2) Within the immediately preceding 30 days, he or she engaged in a solicitation at that location and had been asked to leave by a person specified in Paragraph (1) above.

(3) Paragraph (2) above is not violated if a person who has been requested to leave enters the property within the designated period and

solicits, asks, or begs with the express authorization of a person specified in Paragraph (1) above.

**4.54.120 PENALTY.** A violation of this section is punishable as a misdemeanor or infraction, chargeable at the City Attorney's discretion. Nothing in this Article shall limit or preclude the enforcement of other applicable laws.

**4.54.125 SEVERABILITY.** The provisions of this Article are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Article, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

### **Article 3 Drug Paraphernalia**

**4.54.200 PURPOSE.** The illegal use of controlled substances within the City creates serious social, medical and law enforcement problems. The illegal use of such substances by persons under eighteen years of age is a matter of great public interest. It is causing serious physical and psychological damage to the youth of this community, and impairment of educational achievement and of the efficiency of the educational system, increases in non-drug related crime and a threat to the ability of the community to ensure future generations of responsible and productive adults, all to the detriment of the health, safety and welfare of the residents of Elk Grove.

The proliferation of the display of drug paraphernalia in retail stores within the City, and the distribution of such paraphernalia intensifies and otherwise compounds the problem of illegal use of controlled substances within this community.

A ban only upon the display and distribution of drug paraphernalia to persons under eighteen years of age would not be practical. The person who displays or distributes drug paraphernalia would have difficulty determining who could lawfully view or receive drug paraphernalia. The already thinly staffed law enforcement agencies would be subjected to intolerable added enforcement burdens by adding age of a person who views or receives paraphernalia as an element of a prohibition upon display and distribution. A significant number of high school students are eighteen years of age or older. It would be lawful to distribute paraphernalia to some students attending the same school in which the distribution to other students would be prohibited. Permitted display and distribution to adults within the community would symbolize a public tolerance of illegal drug use, making it difficult to explain the rationale of programs directed against similar abuse by youth. The problem of illegal consumption of controlled substances by adults within this community is significant and substantial, necessitating a cessation of the encouragement of drug abuse which the display and distribution of drug paraphernalia create.

This Article is a measure which is necessary in order to discourage the illegal use of controlled substances within the City.

**4.54.205 DEFINITIONS.** As used in this Article, the following terms shall be ascribed the following meanings:

(a) "Business" means a fixed location, whether indoors or outdoors, at which merchandise is offered for sale at retail.

(b) "Controlled substance" means those controlled substances set forth in Sections 11054, 11055, 11056, 11057 and 11058 of the California Health and Safety Code, identified as Schedules I through V, inclusive.

(c) "Display" means to show to a patron or place in a manner so as to be available for viewing or inspection by a patron.

(d) "Distribute" means to transfer ownership or a possessory interest to another, whether for consideration or as a gratuity. "Distribute" includes both sales and gifts.

(e) "Patron" means a person who enters a business for the purpose of purchasing or viewing as a shopper merchandise offered for sale at the business.

**4.54.210 SAME - DRUG PARAPHERNALIA.** As used in this Article, the terms "drug paraphernalia" mean all equipment, products, and any materials of any kind which are intended by a person charged with a violation of this Article for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of any law of the state. "Drug paraphernalia" includes, but is not limited to, all of the following:

(a) Kits intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices intended for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances intended for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, intended for use in cutting controlled substances;

- (g) Separation gins and sifters intended for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
- (h) Blenders, bowls, containers, spoons and mixing devices intended for use in compounding controlled substances;
- (i) Capsules, balloons, envelopes, and other containers intended for use in packaging small quantities of controlled substances;
- (j) Containers and other objects intended for use in storing or concealing controlled substances; and
- (k) Objects intended for use in injecting, inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
  - (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls,
  - (2) Water pipes,
  - (3) Carburetion tubes and devices,
  - (4) Smoking and carburetion masks,
  - (5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand,
  - (6) Miniature cocaine spoons and cocaine vials,
  - (7) Chamber pipes,
  - (8) Carburetor pipes,
  - (9) Air-driven pipes,
  - (10) Bongs.

**4.54.215 PROOF.** In determining whether an object is "drug paraphernalia", a court or other authority may consider, in addition to all other logically relevant factors, the following:

- (a) Statements by an owner or by anyone in control of the object concerning its use,
- (b) The proximity of the object to controlled substances,
- (c) The existence of any residue of controlled substances on the object,

- (d) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver to persons whom he knows, intend to use the object to facilitate a violation of the laws of the state relating to controlled substances,
- (e) Instructions, oral or written, provided with the object concerning its use,
- (f) Descriptive materials, accompanying the object which explain or depict its use.
- (g) National and local advertising concerning its use,
- (h) The manner in which the object is displayed for sale,
- (i) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise,
- (j) The existence or scope of legitimate uses for the object in the community, and
- (k) Expert testimony concerning its use.

**4.54.220 DISPLAY OF DRUG PARAPHERNALIA.** Except as authorized by law, it is unlawful for any person to willfully maintain or operate any business knowing or under circumstances where one reasonably should know that drug paraphernalia is displayed at such business.

Except as authorized by law, it is unlawful for any person who is the owner of a business, an employee thereof or one who works at such business as an agent of the owner, to willfully display drug paraphernalia at such business.

**4.54.225 DISTRIBUTION OF DRUG PARAPHERNALIA.** Except as authorized by law, it is unlawful for any person to willfully distribute to another person drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, product, process, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of any law of the state.

**4.54.230 EXCEPTIONS.** No provision of this Article shall be deemed, whether directly or indirectly, to authorize any act which is otherwise prohibited by any law of the state or require any act which is otherwise prohibited by any law of the state. Nor shall any provision of this Article be deemed, whether directly or indirectly, to prohibit any act or acts which are prohibited by any law of the state.

#### **Article 4 Fireworks**

**4.54.300 GENERAL PROHIBITION AGAINST POSSESSION, SALE OR USE OF FIREWORKS.** Except as otherwise provided in this Article, no person shall possess, sell, use, display or explode any rocket, firecracker, roman candle, squib, torpedo, torpedo cane, fire balloon, wire core sparkler, wooden core sparkler, black cartridge or other combustible device or explosive substance or any kind of fireworks, by whatsoever name known, within the City.

**4.54.310 EXCEPTION - CERTAIN PUBLIC DISPLAYS.** Public displays of fireworks may be given with a written permit issued by the fire chief, or the fire chief's designee, of the fire district within which the display is to be given so long as such display takes place under the supervision and direction of a State of California licensed fireworks operator.

**4.54.320 EXCEPTION - SAFE AND SANE FIREWORKS.** It shall not be unlawful to possess, sell, use, display or discharge within the City those fireworks as are defined and classified as "safe and sane fireworks" in Part 2 (commencing with Section 12500) of Division 11 of the California Health and Safety Code during that time period beginning at 12:00 noon on June 28 and ending at 10.00 p.m. on July 5 of the same year.

**4.54.330 LICENSE TO SELL FIREWORKS REQUIRED.** It shall be unlawful for any person to sell "safe and sane fireworks" within the City without a valid City business license authorizing such sales.

**4.54.340 WHOLESALE STORAGE OF FIREWORKS.** The wholesale storage of fireworks shall be unlawful in the City without valid permits for such storage from the fire district in whose jurisdiction the storage site is located and the Chief Building Inspector. Any such storage is limited to the period from June 1st through July 15th of each year.

**4.54.350 LICENSE RESTRICTED.**

(a) No City business license authorizing the sale of "safe and sane fireworks" shall be issued to any person, firm, corporation, organization or group other than organizations which are exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701i or 23701w of the Revenue and Taxation Code provided that the organization satisfies the following criteria:

- (1) It has its principal and permanent meeting place in the City of Elk Grove;
- (2) It has been organized and established in the City of Elk Grove for a continuous period of at least one (1) year immediately preceding the application for a permit; and
- (3) It has a bona fide membership of at least twenty (20) members.

(b) No organization shall submit more than two applications for licenses to sell fireworks within the City. Submittal of more than two such applications shall be grounds for denial of all applications.

(c) City business licenses authorizing the sale of "safe and sane fireworks" shall not be transferable to another organization.

(d) Transfer of temporary stands from the location for which the license was initially issued may be made provided that the application is made to the City City Manager on or before the first day of June, provided further that any such location change has been approved in writing by the fire district having jurisdiction, the Chief Building Inspector, and otherwise complies with all provisions of this Article regulating the location of temporary fireworks stands.

#### **4.54.360 APPLICATION.**

(a) All applications for a City business license to sell fireworks shall be in writing to the City Manager on forms supplied by the City. Applications shall be received and filed with the City Manager on or before the second Tuesday in April of each year. Applications shall specify the proposed location of the fireworks stand, the name, address and telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored, such other information as may be required by the City Manager, and an application fee in an amount periodically set by the City Council.

(b) The application shall be made in triplicate. The original of the application shall be retained by the City Manager, one copy shall be transmitted to the fire district in whose jurisdiction the proposed fireworks stand will be located, and one copy shall be sent to the City Building Inspection Division.

(c) Applicants for a license shall be notified by the City Manager of the tentative approval or denial of the application for a City business license by the first Monday in May of each calendar year. Within two weeks of the notification of the tentative approval of the City business license, the applicant shall furnish to the City's Risk Manager evidence of insurance providing comprehensive general liability coverage written on an occurrence basis, including but not limited to premises/operations, personal injury contractual liability, independent contractors, and products/completed operations, with a \$1 million combined single limits for bodily injury and property damage. The insurance policy shall designate the City, its officers, agents, employees and volunteers as additional insureds as to products sold and to premises/operations of the named insured. The insurance policy shall further be endorsed to provide that any insurance and/or self insurance maintained by the City of Elk Grove shall apply in excess of, and not contribute with, insurance provided by the applicant. The City Risk Manager shall be the certificate holder. In the event of non-renewal or cancellation of the insurance policy, thirty (30) days advance notice shall be provided to the the City's Risk Manager. The insurance policy shall be limited to the specific location for which the City business license is

issued. The City Manager shall issue the license to the applicant upon the presentation and approval of required proof of insurance.

(d) A copy of the City business license shall be transmitted to the fire district in whose jurisdiction the proposed fireworks stand will be located.

(e) The continued validity of any City business license issued pursuant to this Article shall be subject to the requirement that at least one of the responsible adults listed in the licensee's application shall attend a fireworks stand operator seminar conducted by the fireworks industry and approved by a fire department or fire district within the City. The failure of a licensee to have such a responsible individual attend such safety seminar shall subject the City business license to revocation.

**4.54.370 DENIAL OF LICENSE.** (a) The City Manager shall issue the City business license to sell fireworks unless:

(1) The City Manager finds in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit a determination respecting compliance with the requirements of this Article;

(2) The City Manager finds in writing that the applicant is not in compliance with any of the requirements of this Article;

(3) The City Manager finds in writing that the applicant falls within the provisions of Section 4.54.420(c) of this Article; or

(4) Either the fire district in whose jurisdiction the proposed stand will be located or the City Building Inspection Division fails to approve the application.

(b) Any denial of a license pursuant to this section may be appealed pursuant to the procedures set forth in Section 4.54.420(b) of this Article.

**4.54.380 OPERATION OF STAND.**

(a) No person shall sell fireworks to any person under the age of eighteen.

(b) Sale of fireworks shall begin no earlier than 12:00 noon on June 28th and shall not continue after 10:00 p.m. on July 5th of the same year. Sale of fireworks shall be permitted only from 9:00 a.m. to 10:00 p.m. daily.

(c) No person other than the licensee organization shall operate the stand for which the license is issued or share or otherwise participate in the profits of the operation of such stand.

(d) No person other than the individuals who are members of the licensee organization or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of fireworks at such stand.

(e) No person under the age of eighteen shall sell or participate in the sale of fireworks.

(f) No person shall be paid any consideration by the licensee or any wholesale distributor of "safe and sane" fireworks for selling or otherwise participating in the sale of fireworks at such stand except compensation may be paid for security personnel during non-sale hours and to the party authorizing location of the stand on its property.

(g) Fireworks stands shall be removed from the temporary locations by noon on July 18th, and all accompanying litter shall be cleared from such locations by that date and time.

**4.54.390 TEMPORARY FIREWORKS STAND.** All retail sales of "safe and sane" fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is hereby prohibited. Temporary stands shall be subject to the following provisions:

(a) No fireworks stand shall be located within twenty-five feet of any other building or within one hundred feet of any gasoline pump or distribution point.

(b) Fireworks stands need not comply with the provisions of the applicable Building Code except all stands shall be erected under the supervision of the Chief Building Inspector, who shall require that stands be constructed in a manner that will reasonably insure the safety of attendants and patrons and that any electrical installations shall comply with all applicable codes.

(c) No stand shall have a floor area in excess of seven hundred and fifty square feet.

(d) Each stand shall have at least two exits. Each stand in excess of forty feet in length shall have at least three exits spaced approximately equidistant apart except in no case shall the distance between exits exceed twenty feet. Exit doors shall be not less than twenty-four inches wide and six feet and two inches in height and shall swing in the direction of exit travel.

(e) Each stand shall be provided with two (2) two and one-half gallon "water-type" (minimum rating 2A) fire extinguishers in good working order and easily accessible for use in case of fire.

(f) Fireworks stands shall be located on property zoned SC, LC, GC, AC, TC, M-1 or M-2, or in any other zoning classification if the County's Chief Building Inspector certifies in writing to the City Manager that the operation of a fireworks

location in such other zoning classification will not endanger the health and safety of the community or create a fire hazard to surrounding properties.

#### **4.54.400 GENERAL REQUIREMENTS FOR LICENSEES.**

(a) Stands shall not be located closer than six hundred feet apart, unless separated by a principal arterial roadway.

(b) All weeds and combustible material shall be cleared from the location of the stand to a distance of at least twenty-five feet surrounding the stand.

(c) "NO SMOKING" signs shall be prominently displayed on and in the fireworks stand.

(d) Each stand must have an adult watchman in attendance and in charge thereof when the stand is being used for sale, dispensing or storage of fireworks.

(e) All unsold stock of fireworks in the hands of the retailer after 10:00 p.m. on the 5th day of July shall be returned to the distributor or wholesaler and removed from the City within ten days. On closing of stands, all litter shall be removed from the premises.

(f) No fuel-powered generator or similar equipment shall be allowed within fifty (50) feet of a fireworks stand.

**4.54.410 ENFORCEMENT.** The division of authority for enforcement of this Article shall be as follows:

(a) The chief of any fire protection district or his designated representatives shall have authority to enforce this Article and issue citations for violations in their respective districts.

(b) The City fire warden shall have authority to enforce this Article in any area lying without any fire protection district.

(c) The City fire warden shall have authority to enforce this Article in any fire protection district upon request of the chief of the fire protection district or the governing body thereof.

#### **4.54.420 REVOCATION OF LICENSE - APPEAL.**

(a) The City Manager, or the City Manager's designee, may revoke, immediately and without notice or hearing, the license of any licensee who violates the provisions of Section 4.54.360(e), Section 4.54.380(a), (b) or (e), or Section 4.54.400(d). If the revocation occurs between June 22nd and July 5th, the City Manager shall inform the licensee that the licensee may seek review of the City Manager's decision by the City Manager, or the City Manager's designee, on the next business day. At the earliest opportunity on the next business day after the

revocation, the City Manager shall provide the City Manager with written notice that a fireworks business license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. If requested by the licensee, the City Manager, or the City Manager's designee, shall meet with the licensee and the City Manager on that day to review the City Manager's decision. The decision of the City Manager or his designee shall be final. If the revocation occurs before or after the specified period, the appeal procedures of subsection (b) shall apply.

(b) The City Manager, or the City Manager's designee, may revoke the license of any licensee who violates any provision of this Article not specified in subsection (a). Such revocation shall not take effect for five days, during which time the licensee may seek review of the City Manager's decision by submitting a written request for review to the City Manager. The City Manager shall provide the City Manager with written notice that a fireworks license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. The City Manager, or the City Manager's designee, shall meet with the licensee and the City Manager to review the City Manager's decision. The decision of the City Manager or his designee shall be final.

(c) Any licensee whose permit has been revoked pursuant to subsections (a) or (b) hereof shall be barred from receiving a license under this Article for five (5) years from the date of revocation.

#### **4.54.430 PENALTY; INFRACTION.**

(a) Notwithstanding the provisions of Section 1.01.190 or any other section of this Code, and with the exception of the fourth and subsequent violation of this Article within one (1) year as provided in subdivision (c) of this section, the violation of any of the provisions of this Article is an infraction subject to the procedures set forth in Penal Code Sections 19.6 and 19.7.

(b) Every violation of any provision of this Article constituting an infraction is punishable as follows:

(1) a fine not exceeding one hundred (\$100) dollars for a first violation;

(2) a fine not exceeding two hundred (\$200) dollars for a second violation of this Article within one year; and

(3) a fine not exceeding five hundred (\$500) dollars for a third violation of this Article within one year.

(c) The fourth and each subsequent violation of this Article within one (1) year shall constitute a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than six (6) months, or both.

**4.54.440 SEIZURE OF FIREWORKS.** The Chief, or the Chief's designee, of the fire district in whose jurisdiction a fireworks stand is located may seize, take, remove or cause to be removed, at the expense of the licensee, all stocks of fireworks offered or exposed for sale, stored or held in violation of this Article when such violation creates an imminent threat to public health or safety.

**4.54.450 CONCURRENT AUTHORITIES.** This Article is not the exclusive regulation for fireworks within the City. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore and hereafter enacted by the County, the State, or any other legal entity or agency having jurisdiction.

## **Article 5**

### **Public Convenience Determination For Alcohol Licenses**

**4.54.500 APPLICATION FOR DETERMINATION OF PUBLIC CONVENIENCE FOR SALE OF ALCOHOL.** Any person whose application for any alcohol license is subject to a determination of public convenience and necessity by the City pursuant to Business and Professions Code section 23958.4, shall submit an application to the City for a determination whether or not the public convenience and necessity would be served by the granting of such license. Such application shall be made on forms approved by the City Manager and shall contain such information as required by him or her. At a minimum, any application shall contain that information required by §110-01 of the Zoning Code of the City of Elk Grove. The application shall be accompanied by payment of a fee to be established by resolution of the City Council calculated to offset the costs of the review and determination.

#### **4.54.510 REVIEW OF APPLICATIONS.**

(a) Upon receipt of such request for a determination of public convenience and necessity or notice of an application for an alcohol license from the Department of Alcohol Beverage Control ("ABC"), the City Manager shall refer such application to the departments and advisory bodies of the City for review and comment.

(b) At a minimum, the Chief of Police shall determine whether there are existing problems regarding criminal activity at the applicant premises or in the area surrounding the applicant premises. If the Chief of Police determines that there are such existing problems with criminal activity he shall report such problems, in writing, to the City Manager.

(c) At a minimum, the Department of Community Services shall determine whether the applicant premises are within the appropriate land use designations and have received all required entitlements to permit the type of sale of alcoholic beverages described in the application. The Department shall report its determination, in writing, to the City Manager.

(d) At a minimum, the Department of Services Development shall also determine whether there is a pending zoning enforcement action regarding the applicant premises. If the Department determines that there is a pending enforcement action, it shall report such, in writing, to the City Manager.

(e) At a minimum, the City personnel responsible for Business Licenses shall determine whether any required business license has been issued and is in good standing for the applicant premises. If the City personnel determine that a license is required and has not been issued or is not in good standing, they shall report such, in writing, to the City Manager.

(f) At a minimum, the Chief Building Inspector shall determine whether there are any building code violations at the applicant premises and shall report such, in writing, to the City Manager.

(g) The City Manager shall also determine whether any protests were lodged with the ABC in relation to the applicant's request for a license with that body.

(j) If the written reports required by this section are not received by the City Manager within fifteen (15) days from the date the application is forwarded to such departments and advisory bodies, it shall be presumed that there are no objections from those departments or advisory bodies of the City.

#### **4.54.520 HEARING REQUIRED.**

(a) Proceedings to determine the public convenience and necessity of issuing any alcohol license subject to Business and Professions Code section 23958.4(b)(2) shall be scheduled before the City Council. Notice of the hearing shall be given in the same manner as required by Section 110-04 of the Zoning Code of the City of Elk Grove.

(b) The hearing shall be held without regard to the technical rules of evidence and all persons desiring to appear shall be permitted to do so. The City Manager or his or her designee shall present the results of all written reports from the City departments and advisory bodies. The alcohol license applicant shall be required to demonstrate, by substantial evidence that the public convenience or necessity will be served by the issuance of a license.

(c) The hearing may be continued from time. At the conclusion of the hearing, the City Council shall determine, within the limits of Business and Professions Code section 23958.4(b)(2) whether the public convenience will be served by the issuance of a license for the alcohol license applicant premises. The determination shall be reduced to writing by the City Manager and shall be served by mail upon the alcohol license applicant and ABC.

(d) The City Council may determine that the public convenience or necessity will be met only if certain conditions (specifically authorized by Business and Professions Code section 23800 to 23805 (particularly section 23800(a) and (e)

and 23801) are imposed upon any license issued by the Department of Alcoholic Beverage Control. Such conditions shall be included in the City Council's decision and shall be submitted by the City within the time periods specified in Business and Professions Code in order to preserve the rights of the City to seek imposition of such conditions.

END OF TITLE 4

**Section 5: No Mandatory Duty of Care.**

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**Section 6: Severability.**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

**Section 7: Effective Date and Publication.**

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to Government Code section 36933(c)(1).

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 14<sup>th</sup> Day of December 2005.

\_\_\_\_\_  
DANIEL BRIGGS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

## RESOLUTION

### A RESOLUTION OF THE CITY COUNCIL OF ELK GROVE: REVISING THE BUSINESS LICENSE FEE; AND AMENDING THE FISCAL YEAR 2005-06 BUDGET FOR INCREASED BUSINESS LICENSE REVENUES AND EXPENSES

**WHEREAS**, the City staff is proposing to eliminate most exemptions from the regular business license requirement. This would result in an expansion of the number and types of businesses that would be subject to the business registration requirement; and

**WHEREAS**, to meet the increased workload from the proposed business licenses changes; and

**WHEREAS**, the current business license fee has remained unchanged since prior to the City of Elk Grove incorporation of July 2000.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove:

1. The fees for Business Licenses collected by the City as set forth in Exhibit "A" attached hereto, are hereby approved.
2. Revenues: The Fiscal Year 2005-06 General Fund Revenue Budget is hereby amended by increasing Business License revenues by \$40,000 (101-0000-321-01-00)
3. Expenses: The Accounting Division Fiscal Year 2005-06 General Fund Expenditure Budget is hereby amended by increased \$40,000

PASSED AND ADOPTED by the City Council of the City of Elk Grove, California this 9th day of November 2005.

\_\_\_\_\_  
DANIEL BRIGGS, MAYOR,  
City of Elk Grove

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
PEGGY E. JACKSON,  
City Clerk

\_\_\_\_\_  
ANTHONY MANZANETTI,  
City Attorney

## **Exhibit A**

### **City of Elk Grove**

### **Business License Fee**

#### **Regular Business Licenses**

The fee for an initial General Business License is \$110 for a two year term and \$75 every two years thereafter.

#### **Special Business License**

The fee for a Special License remains unchanged at \$125 for a one year term

#### **Other**

The fee for an Employee Permit remains unchanged at \$75 for a one year term. The fee for a background check remains unchanged at \$44.

## ORDINANCE NO. 26-2009

### AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADOPTING A MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES

The City Council of the City of Elk Grove does ordain as follows:

#### Section 1: Purpose and Authority

The purpose of this urgency ordinance is to create an immediate moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries.

The City of Elk Grove has the authority to adopt this ordinance pursuant to California Constitution Article XI, section 7 and California Government Code section 65858.

#### Section 2: Findings.

##### A. California Environmental Quality Act

The City Council hereby finds and determines that the adoption of this ordinance would not be a "project" under the California Environmental Quality Act because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. Therefore, this project is exempt under 14 California Code Regulations sections 15060(c)(2) and (3), 15061(b)(3), 15262 and 15378.

##### B. Moratorium

In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 ("CUA" or the "Act"). The Act was subsequently codified as California Health and Safety Code section 11362.5. The Act was designed to provide a defense to persons charged with possessing or cultivating marijuana for the personal medical use of patients who have received a recommendation from a physician that the use of marijuana may be beneficial in the treatment of that patient. CUA further prevented criminal prosecution of doctors who recommend the use of marijuana by patients for medical purposes.

The state legislature subsequently enacted the "Medical Marijuana Program", also codified as Health and Safety Code section 11362.7 (the "Program"). The Medical Marijuana Program provides guidance for the use and cultivation of medical marijuana. The hallmark of the Program is that it prohibits the arrest of any qualified patient (or that patient's primary caregiver) for the possession, transportation, delivery or cultivation of medical marijuana. In order to qualify for this immunity, the person must possess an identification card issued by the State Department of Health Services through a voluntary program. However, at this time, the State of California has yet to implement a statewide identification card program for qualified patients and their primary caregivers.

Despite CUA and the Program, the possession, sale and distribution of marijuana are

still criminal offenses under both California state and Federal law. Moreover, no provision of California law authorizes the sale or distribution of cannabis by medical marijuana dispensaries to any primary care giver, a qualified patient, or a person with a valid identification card obtained under the auspices of the Program.

Neither CUA nor the Program expressly authorize or address the role of dispensaries in the scheme of providing medical marijuana to qualified patients and/or their primary caregivers. Despite this, local agencies throughout California have seen medical marijuana dispensaries established in their communities. Once established, these locations have created a number of secondary effects associated with them, including:

- Illegal drug activity and drug sales in the vicinity of dispensaries
- Robbery of persons leaving dispensaries;
- Driving under the influence of controlled substances obtained from dispensaries;
- Persons acquiring marijuana from a dispensary and then selling it to non-qualified persons;
- Burglaries and robberies; and
- Increased vacancies in the commercial areas near such dispensaries.

These impacts have been compiled in an extensive report prepared by the California Police Chiefs Association. A copy of that report is attached to this Ordinance as Exhibit "A" and is incorporated herein by this reference. The City Council of the City of Elk Grove hereby finds that the report contains persuasive anecdotal and documented evidence that medical marijuana dispensaries pose a threat to the public health, safety and welfare.

At present, the City of Elk Grove Zoning Code does not contain any explicit provisions contemplating the approval of medical marijuana dispensary facilities within the City of Elk Grove. Moreover, the City has experienced a recent increase in the number of contacts received by the City about opening medical marijuana dispensaries. The City Council hereby finds that it is in the best interest for the health, safety and welfare of the residents of the City of Elk Grove to prevent potentially harmful secondary effects of medical marijuana dispensaries to adopt this urgency ordinance to allow City staff time to study the impacts of permitting medical marijuana dispensaries, as well as to determine which zoning districts may be appropriate for such use, and what level of discretionary review may be required for approval of such use.

### Section 3: Moratorium.

There shall be an interim moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries. As used in this ordinance, "medical marijuana dispensary" includes, but is not limited to any site, facility, location, use, cooperative business that distributes, sells, exchanges, processes, delivers, gives away or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers or physicians, pursuant to 1) CUA and the Program or 2) any state regulations adopted in furtherance thereof. As used in this ordinance, "marijuana" shall mean cannabis and all parts of that plant. Based on the findings contained in this ordinance, no permit, license, or other applicable entitlement for use,

which has as its result the final approval or allowance of a medical marijuana dispensary within the City of Elk Grove, shall be granted or approved by any employee, department, or commission of the City for a period of forty-five days (45) days immediately following the effective date of this ordinance unless appealed or extended by a later enacted ordinance.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 6: Effective Date

This Ordinance is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

**ORDINANCE:**       **26-2009**  
**ADOPTED:**         December 9, 2009  
**EFFECTIVE:**       December 9, 2009

  
\_\_\_\_\_  
PATRICK HUME, MAYOR of the  
CITY OF ELK GROVE

ATTEST:  
  
\_\_\_\_\_  
SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
SUSAN COCHRAN, CITY ATTORNEY

Date signed: December 17, 2009

**EXHIBIT A**

**WHITE PAPER ON MARIJUANA DISPENSARIES**

**by**

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S  
TASK FORCE ON MARIJUANA DISPENSARIES**

## ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice  
Jacob Appelsmith, Office of the California Attorney General  
John Avila, California Narcotics Officers Association  
Phebe Chu, Office of San Bernardino County Counsel  
Scott Collins, Los Angeles County District Attorney's Office  
Cathy Coyne, California State Sheriffs' Association  
Lorrac Craig, Trinity County Sheriff's Department  
Jim Denney, California State Sheriffs' Association  
Thomas Dewey, California State University—Humboldt Police Department  
Dana Filkowski, Contra Costa County District Attorney's Office  
John Gaines, California Department of Justice/Bureau of Narcotics Enforcement  
Craig Gundlach, Modesto Police Department  
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

Nate Johnson, California State University Police  
Mike Kanalakis, Monterey County Sheriff's Office  
Bob Kochly, Contra Costa County Office of District Attorney  
Tommy LaNier, The National Marijuana Initiative, HIDTA  
Carol Leveroni, California Peace Officers Association  
Kevin McCarthy, Los Angeles Police Department  
Randy Mendoza, Arcata Police Department  
Mike Nivens, California Highway Patrol  
Rick Oules, Office of the United States Attorney  
Mark Pazin, Merced County Sheriff's Department  
Michael Regan, El Cerrito Police Department  
Melissa Reisinger, California Police Chiefs Association  
Kimberly Rios, California Department of Justice, Conference Planning Unit  
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement  
Crystal Spencer, California Department of Justice, Conference Planning Unit  
Sam Spiegel, Folsom Police Department  
Valerie Taylor, ONDCP  
Thomas Toller, California District Attorneys Association  
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

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# WHITE PAPER ON MARIJUANA DISPENSARIES

by

## CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

### EXECUTIVE SUMMARY

#### INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

#### FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

## **CALIFORNIA LAW**

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

## **PROBLEMS POSED BY MARIJUANA DISPENSARIES**

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

## **LOCAL GOVERNMENTAL RESPONSES**

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

## **LIABILITY**

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

## **ENFORCEMENT OF MARIJUANA LAWS**

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

# WHITE PAPER ON MARIJUANA DISPENSARIES

by

## CALIFORNIA POLICE CHIEFS ASSOCIATION

Editor: Dennis Tilton, M.A.Ed., M.A.Lit., M.C.J., J.D.

Adjunct Professor of Criminal Justice, Political Science, & Public Administration, Upper Iowa University  
Sheriff's Legal Counsel (Retired), San Bernardino County Sheriff's Department

### INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

### FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9<sup>th</sup> Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (*See Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.<sup>1</sup> The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”<sup>2</sup>

*Gonzales v. Raich* addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.<sup>3</sup> “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”<sup>4</sup> (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.<sup>5</sup> California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.<sup>6</sup>

## **CALIFORNIA LAW**

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.<sup>7</sup> The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician . . . .”<sup>8</sup> The codified section is known as the Compassionate Use Act of 1996.<sup>9</sup> Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.<sup>10</sup> This act expanded the definitions of “patient” and “primary caregiver”<sup>11</sup> and created guidelines for identification cards.<sup>12</sup> It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.<sup>13</sup> It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,<sup>14</sup> as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

## 1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.<sup>15</sup> If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.<sup>16</sup>

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

## 2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.<sup>17</sup> A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

## 3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.<sup>18</sup> He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.<sup>19</sup> (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).) “Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: “One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party ‘who has consistently assumed responsibility for the housing, health, or safety’ of that purchaser as section 11362.5(e) requires.”)

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as “primary caregivers.” Those included in the list clearly show the Legislature’s intent to restrict the definition to one involving a significant and long-term commitment to the patient’s health, safety, and welfare. The only facilities which the Legislature authorized to serve as “primary caregivers” are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

#### **4. Cooperatives and Collectives**

According to the California Attorney General’s recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that “Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions” for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California’s marijuana laws.

Further, the common dictionary definition of “collectives” is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”<sup>20</sup> Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal or state law.

## LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.<sup>21</sup>

## STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.<sup>22</sup> Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.<sup>23</sup> Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.<sup>24</sup> These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.<sup>25</sup> Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.<sup>26</sup> Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”<sup>27</sup> Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.<sup>28</sup> Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

## HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.<sup>29</sup>

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the “contribution” will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the available evidence, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient.”<sup>30</sup> The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety.**”<sup>31</sup> The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health: the responsibility for the patient’s health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business’s relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant “primary caregiver” relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient’s act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

## **ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES**

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

### **ANCILLARY CRIMES**

#### **A. ARMED ROBBERIES AND MURDERS**

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.<sup>32</sup> And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”<sup>33</sup>

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.<sup>34</sup> And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.<sup>35</sup> He did not survive.<sup>36</sup>

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.<sup>37</sup>

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.<sup>38</sup> Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.<sup>39</sup>

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.<sup>40</sup>

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.<sup>41</sup>

## **B. BURGLARIES**

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.<sup>42</sup> And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.<sup>43</sup>

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.<sup>44</sup> Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.<sup>45</sup> After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise . . . .”<sup>46</sup>

## **C. TRAFFIC, NOISE, AND DRUG DEALING**

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,<sup>47</sup> as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.<sup>48</sup> Sharing just purchased marijuana outside dispensaries also regularly takes place.<sup>49</sup>

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,<sup>50</sup> “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.<sup>51</sup> Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old . . . .”<sup>52</sup> Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”<sup>53</sup>

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.<sup>54</sup> And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.<sup>55</sup> It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

#### **D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS**

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.<sup>56</sup> The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.<sup>57</sup> Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,<sup>58</sup> which seem to go hand in hand with medical marijuana cultivation and dispensaries.<sup>59</sup>

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.<sup>60</sup> The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.<sup>61</sup> Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.<sup>62</sup>

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.<sup>63</sup> Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,<sup>64</sup> and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.<sup>65</sup>

#### **E. POISONINGS**

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.<sup>66</sup> The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.<sup>67</sup>

## **OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES**

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.<sup>68</sup>

## **SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE**

### **A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS**

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."<sup>69</sup> Other individuals just make up their own phony doctor recommendations,<sup>70</sup> which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.<sup>71</sup> Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.<sup>72</sup>

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

## **B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS**

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to “high priced McMansions . . .”<sup>73</sup> Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.<sup>74</sup> In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.<sup>75</sup> Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the “THC-rich ‘B.C. bud’ strain” of marijuana originally produced in British Columbia “can be grown only in controlled indoor environments,” and the Canadian market is now reportedly saturated with the product of “competing Canadian gangs,” often Asian in composition or outlaw motorcycle gangs like the Hells Angels.<sup>76</sup> Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.<sup>77</sup> With a street value of \$3,000 to \$5,000 per pound” for high-potency marijuana, and such multiple harvests, “a successful grow house can bring in between \$4.5 million and \$10 million a year . . .”<sup>78</sup> The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.<sup>79</sup>

## **C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES**

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift “no code” electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, “Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord.” Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.<sup>80</sup> Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, “We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints.” House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.<sup>81</sup>

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.<sup>82</sup> Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.<sup>83</sup> To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.<sup>84</sup>

#### **D. INCREASED ORGANIZED GANG ACTIVITIES**

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.<sup>85</sup> In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.<sup>86</sup>

#### **E. EXPOSURE OF MINORS TO MARIJUANA**

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.<sup>87</sup> Dispensaries also sell marijuana to minors.<sup>88</sup>

#### **F. IMPAIRED PUBLIC HEALTH**

Indoor marijuana grow operations emit a skunk-like odor,<sup>89</sup> and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,<sup>90</sup> all of which are dangerous to any children or adults who may be living in the residence,<sup>91</sup> although many grow houses are uninhabited.

## **G. LOSS OF BUSINESS TAX REVENUE**

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

## **H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL**

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,<sup>92</sup> and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.<sup>93</sup>

## **ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS**

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

## **POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES**

### **A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS**

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.<sup>94</sup>

## **B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS**

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.<sup>95</sup> Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.<sup>96</sup>

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.<sup>97</sup> And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.<sup>98</sup> It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.<sup>99</sup> To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.<sup>100</sup>

## **C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS**

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

**“Categories:**

1. Personal Use
2. Cooperatives or Collectives

**Medical Marijuana for Personal Use:** An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
  - a. Cultivation lighting shall not exceed 1200 watts;
  - b. Gas products (CO<sub>2</sub>, butane, etc.) for medical marijuana cultivation or processing is prohibited.
  - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
  - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
  - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
  - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
  - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
  - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
  - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
  - b. Include written permission from the property owner.
  - c. City Building Official must inspect for California Building Code and Fire Code.
  - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
  - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

**Medical Marijuana Cooperatives or Collectives.**

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
  - a. A 300 foot radius from any existing residential zoning district,
  - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
  - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
  - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
  - b. Operating hours.
  - c. Site, floor plan of the facility.
  - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
  - e. Screening, registration and validation process for qualified patients.
  - f. Qualified patient records acquisition and retention procedures.
  - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
  - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
  - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
  - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
  - c. Display the client rules and/or regulations at each building entrance.
  - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
  - e. Persons under the age of eighteen (18) are precluded from entering the premises.
  - f. No on-site display of marijuana plants.
  - g. No distribution of live plants, starts and clones on through Use Permit.
  - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
  - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
  - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
  - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

## LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

## **A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES**

### **1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY**

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

## The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

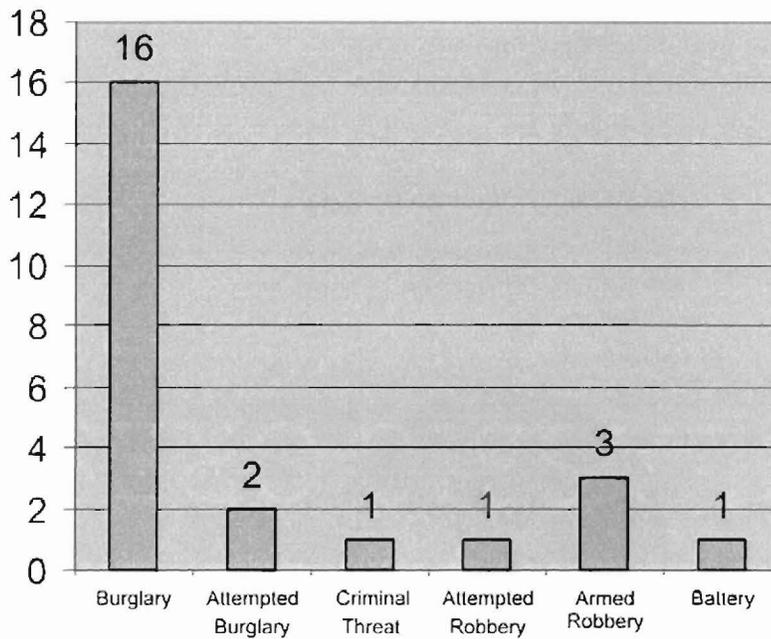
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law and California law.

**Press Materials:**

**Reported Crime at Marijuana Dispensaries  
From January 1, 2005 through June 23, 2006**



**Information showing the dispensaries attracted crime:**

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

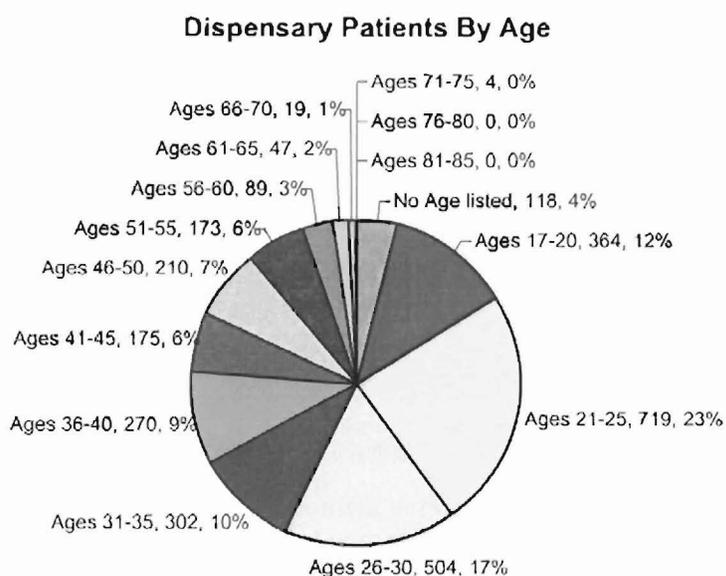
Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

**Why these businesses were deemed to be criminal—not compassionate:**

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

## **2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY**

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

## **3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES**

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

#### **A. Alameda County**

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

#### **B. Santa Clara County**

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

#### **C. San Francisco County**

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

#### **D. Crime Rates in the Vicinity of MariCare**

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

#### **E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante**

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

#### **F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County**

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars “as a joke.” They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend “Brandon,” who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a “blunt” (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician’s recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing “honey oil” for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special “honey oil” extractor tube. The butane extraction operation **exploded** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the “honey oil” with marijuana and butane that they brought up from one of Estes’ San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the “designated driver.” When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12<sup>th</sup> Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.<sup>101</sup> A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

#### **4. SANTA BARBARA COUNTY**

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

#### **5. SONOMA COUNTY**

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held in January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

## **6. ORANGE COUNTY**

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

## PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

### QUESTION

1. **Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

### ANSWER

1. **Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

### ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.<sup>1</sup> Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

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<sup>1</sup> As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."<sup>2</sup> If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

## QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

## ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.<sup>3</sup>

## ANALYSIS

### A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

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<sup>2</sup> A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

<sup>3</sup> Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.<sup>4</sup>

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

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<sup>4</sup> Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

## B. State Law

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).<sup>5</sup> Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

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<sup>5</sup> Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

### QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

### ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

### ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

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1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

## QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

## ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

## ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.")) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

## QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

## ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

## ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

## OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.<sup>6 102</sup>

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

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<sup>6</sup> Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

## CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.<sup>103</sup> Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

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## ENDNOTES

- <sup>1</sup> U.S. Const.. art. VI, cl. 2.
- <sup>2</sup> U.S. Const., art. I, sec. 8, cl. 3.
- <sup>3</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- <sup>4</sup> *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
- <sup>5</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
- <sup>6</sup> Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19,0,4987571.story>
- <sup>7</sup> See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- <sup>8</sup> Health and Safety Code section 11362.5(b)(1)(A). All references hereafter to the Health and Safety Code are by section number only.
- <sup>9</sup> H&S Code sec. 11362.5(a).
- <sup>10</sup> H&S Code sec. 11362.7 *et. seq.*
- <sup>11</sup> H&S Code sec. 11362.7.
- <sup>12</sup> H&S Code secs. 11362.71–11362.76.
- <sup>13</sup> H&S Code sec. 11362.77.
- <sup>14</sup> H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4<sup>th</sup> 747 at p. 786.
- <sup>15</sup> H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.
- <sup>16</sup> H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
- <sup>17</sup> H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.
- <sup>18</sup> *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.
- <sup>19</sup> *Id.* Emphasis added.
- <sup>20</sup> Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.
- <sup>21</sup> Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.
- <sup>22</sup> For a statewide list, see <http://canorml.org/prop/cbclist.html>.
- <sup>23</sup> Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.
- <sup>24</sup> H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4<sup>th</sup> 747 at p. 764.
- <sup>25</sup> *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.
- <sup>26</sup> *People v. Urziceanu* (2005) 132 Cal.App.4<sup>th</sup> 747; see also H&S Code sec. 11362.765.
- <sup>27</sup> Israel Packel, 4-5. Italics added.
- <sup>28</sup> H&S Code sec. 11362.7(d)(1).
- <sup>29</sup> See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.
- <sup>30</sup> H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2),(3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4<sup>th</sup> 1383, 1395.
- <sup>31</sup> *People v. Mower*, 28 Cal.4th at 476. Emphasis added.
- <sup>32</sup> Glenda Anderson, "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home; No Suspects but Officials Believe Killing Related to Pot Growing," *Santa Rosa Press Democrat*, 19 November 2005, available at <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/1033/>
- <sup>33</sup> "Medical Marijuana Shop Robbed," *Santa Barbara Independent*, 10 August 2006, available at <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>
- <sup>34</sup> Mark Scaramella, "No Good Deed Goes Unpunished," *Anderson Valley Advertiser*, 16 June 2004, available at <http://www.theava.com/04/0616-cerelli.html>

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- <sup>35</sup> Ricci Graham, "Police Arrest Suspect in Deadly San Leandro Pot Club Robbery," *Oakland Tribune*, 8 August 2006, available at [http://findarticles.com/p/articles/mi\\_qn4176/is\\_20060808/ai\\_n16659257](http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257)
- <sup>36</sup> Ricci Graham, "Man Faces Murder Charge in Pot Robbery," *Oakland Tribune*, 24 August 2005, available at <http://www.highbeam.com/doc/1P2-7021933.html>
- <sup>37</sup> Ricci Graham, "Another Medical Marijuana Clinic Robbed," *Oakland Tribune*, 10 September 2005, available at [http://findarticles.com/p/articles/mi\\_qn4176/is\\_20050910/ai\\_n15809189/print](http://findarticles.com/p/articles/mi_qn4176/is_20050910/ai_n15809189/print)
- <sup>38</sup> Laura Clark, "Pot Dispensary Owner Slain at Home." *Ukiah Daily Journal*, 19 November 2007, available at <http://www.marijuana.com/drug-war-headline-news/24910-ca-pot-dispensary-owner-slain-home.html>
- <sup>39</sup> Laura Clark, "Breaking News: Medical Marijuana Supplier Les Crane Killed," *Ukiah Daily Journal*, 19 November 2005; Laura Clark, "Les Crane Murder Investigation Continues," *Ukiah Daily Journal*, 27 November 2005; Glenda Anderson, "Laytonville Marijuana Guru Shot to Death," *Santa Rosa Press Democrat*, 19 November 2005; Glenda Anderson, "Pot Activist Likely Knew Killers: Police Believe Gunmen Who Robbed Laytonville Man Familiar With Home," *Santa Rosa Press Democrat*, 20 November 2005, available at <http://www.equalrights4all.us/content/view/192/50/>
- <sup>40</sup> Mark Scaramella, "The Mendo Pot Chronicles," *Anderson Valley Advertiser*, 3 October 2007, available at <http://www.theava.com/04/0616-cerelli.html>
- <sup>41</sup> Kirk Johnson, "Killing Highlights Risk of Selling Marijuana, Even Legally," *New York Times*, 13 March 2007, available at <http://www.nytimes.com/2007/03/02/us/02cannabis.html?ex=1181880000&en=c609936094adda50&ei=5070>
- <sup>42</sup> Tami Abdollah & Richard Winton, "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times*, 23 January 2007, available at [http://www.californiapolicechiefs.org/nav\\_files/marijuana\\_files/bellflower\\_shooting\\_death.pdf](http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf)
- <sup>43</sup> Will Bigham, "Claremont Marijuana Dispensary Burglarized," *Inland Valley Daily Bulletin*, 27 January 2007, available at [http://www.dailybulletin.com/ci\\_5104514](http://www.dailybulletin.com/ci_5104514)
- <sup>44</sup> Planning Commission Agenda, available at <http://www.el-cerrito.org>; see also Alan Lopez, "El Cerrito Moves to Ban Dispensaries," *Contra Costa Times*, 24 June 2006, available at <http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm>
- <sup>45</sup> Fred Ortega, "City Bans Outlets for Medical Marijuana," *San Gabriel Valley Tribune*, 17 August 2006, available at <http://www.lca-uk.org/lcaforum/viewtopic.php?f=6&t=2436&start=0&sid=15b6da115a0da43facb17644195cbb>
- <sup>46</sup> Ortega.
- <sup>47</sup> Greg Beato, "Pot Clubs in Peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA?" *Reason Magazine*, February 2007, available at <http://www.reason.com/news/show/118314.html>; Craig T. Steckler, *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006; Tim Miller, *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 13 June 2007.
- <sup>48</sup> Jeff McDonald, "15 Held in Raids on Pot Stores," *San Diego Union-Tribune*, 7 July 2006, available at [http://www.signonsandiego.com/uniontrib/20060707/news\\_7m7pot.html](http://www.signonsandiego.com/uniontrib/20060707/news_7m7pot.html)
- <sup>49</sup> McDonald; Beato.
- <sup>50</sup> Cal. H&S Code sec. 11362.5.
- <sup>51</sup> Ethan Stewart, "The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities," *Santa Barbara Independent*, 3 May 2007, available at <http://independent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/>; see also Adam Ashton, "DEA Busts Pot Store Day After Council Talk," *Modesto Bee*, 28 September 2006.
- <sup>52</sup> McDonald.
- <sup>53</sup> Stewart.
- <sup>54</sup> Stewart.
- <sup>55</sup> Stewart.
- <sup>56</sup> National Drug Intelligence Center, *Domestic Cannabis Cultivation Assessment 2007*, February 2007; available at <http://www.usdoj.gov/ndic/pubs21/22486/>; Jaxon Van Derbeken, Charlie Goodyear, & Rachel Gordon, "3 S.F. Pot Clubs Raided in Probe of Organized Crime," *San Francisco Chronicle*, 23 June 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL>; LAPD report information, 2007.

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<sup>57</sup> Van Derbeken, *et al.*

<sup>58</sup> Kate Heneroty, "Medical marijuana indictment unsealed," *Jurist*, 24 June 2005, available at <http://jurist.law.pitt.edu/paperchase/2005/06/medical-marijuana-indictment-unsealed.php>; Stacy Finz, "19 Named in Medicinal Pot Indictment: More Than 9,300 Marijuana Plants Were Seized in Raids," *San Francisco Chronicle*, 24 June 2005, available at <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/24/BAGV9DEC4C1.DTL>

<sup>59</sup> Organized Crime Behind 'Medical' Marijuana Dispensary in California," *Pushingback*. 29 September 2006, available at [http://pushingback.com/blogs/pushing\\_back/archive/2006/09/29/791.aspx](http://pushingback.com/blogs/pushing_back/archive/2006/09/29/791.aspx); "Ashton.

<sup>60</sup> City of San Diego, *Crime Statistics*, 2007, available at <http://www.sandiego.gov>

<sup>61</sup> National Drug Intelligence Center, *Marijuana*, January 2001, available at <http://www.usdoj.gov>

<sup>62</sup> George Anastasia, "Viet Gangs on the Rise Again—The Emerging American Underworld—Gangs' Plant-filled Houses a Growing Part of Drug Trade," *Chronicle of Boredom*, 18 April 2007.

<sup>63</sup> Will Bigham, "Houses Linked to Asian Gangs," *Inland Valley Daily Bulletin*, 23 September 2007, available at [http://www.dailybulletin.com/newsci\\_6980682](http://www.dailybulletin.com/newsci_6980682)

<sup>64</sup> Bigham, 23 September 2007.

<sup>65</sup> Feds Came and Went—Now What? *Humboldt County News*, 30 June 2008, available at <http://news.humcounty.com/archives/2008/6>

<sup>66</sup> LAPD Report Number DR#060625000, 16 August 2006.

<sup>67</sup> LAPD Report Number DR#060625001, 16 August 2006.

<sup>68</sup> Tim Miller, City of Anaheim Police Department: Special Operations Division Memorandum re Marijuana Dispensary (MMD) Ban Ordinance, 25 October 2006; Johnson; Craig T. Steckler, City of Fremont Police Department; Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts, 20 June 2006.

<sup>69</sup> Stewart.

<sup>70</sup> Johnson.

<sup>71</sup> Ashton.

<sup>72</sup> "What has the U.S. DEA said about medical marijuana? " Medical Marijuana ProCon.org, 2005; "What has federal law enforcement said about medical marijuana?" Medical Marijuana ProCon.org., 2009, available at <http://medicalmarijuana.procon.org/viewanswers.asp?questionID=000630>

<sup>73</sup> Jim Avila, "Marijuana McMansions: Cops Say Organized Crime Is Sending Families Into the Suburbs to Grow Marijuana," ABC News, 14 June 2007, available at <http://abcnews.go.com/print?id=3242760>

<sup>74</sup> Avila; Anastasia; "DEA Raids Miami Grow House," CBS5.com, 30 April 2008, available at <http://cbs5.com/national/dea.raid.miami.2.712958.html>

<sup>75</sup> Anastasia.

<sup>76</sup> Bigham, 23 September 2007; Ethan Baron, "Angel Linked to Grow-op," *The Province (CNBC)*, 22 May 2005, available at <http://www.mapinc.org/newstcl/v05/n823/a02.html>

<sup>77</sup> Bigham, 23 September 2007.

<sup>78</sup> Bigham, 23 September 2007.

<sup>79</sup> Heather Allen, "Marijuana Grow Houses Flourish as Southwest Florida Market Drops," *HeraldTribune.com*, 24 July 2007, available at <http://www.heraldtribune.com/article/20070724/NEWS/707240498>

<sup>80</sup> Eric Bailey and Tim Reiterman, "Where Mary Jane is the girl next door," *Los Angeles Times*, 31 May 2008, available at <http://articles.latimes.com/2008/may/31/local/me-pot31>

<sup>81</sup> Eureka House Fire the Result of You-know-what," *Humboldt County News*, 7 September 2008, available at <http://news.humcounty.com/>; written remarks of Arcata Police Chief Randy Mendosa, 1 March 2009.

<sup>82</sup> Jesse McKinley, "Marijuana Hotbed Retreats on Medicinal Use," *New York Times*, 9 June 2009, available at [http://www.nytimes.com/2008/06/09/us/pot.html?\\_r=1&em&ex=1213329](http://www.nytimes.com/2008/06/09/us/pot.html?_r=1&em&ex=1213329)

<sup>83</sup> Deputies: Fire Damages Holiday Marijuana Grow Home, *tampabay.com*, 15 February 2008, available at <http://blogs.tampabay.com/breakingnews/2008/02/holiday-fire-ma.html>

<sup>84</sup> Don Ruane, "Grow Houses Can Impact Utility Bills, Public Safety," *News-press.com*, 12 April 2008, available at

<http://www.news-press.com/apps/pbcs.dll/article?AID=/20080412/NEWS0103/804120394>

<sup>85</sup> "DEA Raids Miami Grow House."

<sup>86</sup> Sandy Louey, "Arrests Take Toll on Local Gang," *The Sacramento Bee*, 14 August 2008, available at <http://www.sacbee.com/elkgrove/v-print/story/1152310.html>

<sup>87</sup> Avila.

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- <sup>88</sup> Scott Glover, "Morro Bay Pot Dispensary Owner Found Guilty of Federal Charges," *Los Angeles Times*, 6 August 2008, available at <http://articles.latimes.com/2008/aug/06/local/me-pot6>
- <sup>89</sup> Bailey and Reiterman.
- <sup>90</sup> Janis Ramsay, "Special Report: Grow-op House Can Still Be Dream Home: Realtor Says," *The Barrie Advance*, 25 August 2008, available at <http://www.mapinc.org/drugnews/v08/n818/a06.html>
- <sup>91</sup> Avila.
- <sup>92</sup> Bailey and Reiterman.
- <sup>93</sup> Steve Davis, "Grow Security," *Cannabis Culture Magazine*, 6 August 2004, available at <http://www.cannabisculture.com//articles/3441.html>
- <sup>94</sup> Bailey and Reiterman.
- <sup>95</sup> See *People v. Urziceanu*, 132 Cal.App.4th 747.
- <sup>96</sup> City of Pleasant Hill Presentation to Its Planning Commission by Planning Division Staff on April 24, 2007.
- <sup>97</sup> Office Consolidation: By-law 361-2004 of the City of Brampton, Ontario, Canada.
- <sup>98</sup> Bill McCollum, "Landmark Bill Targeting Marijuana Grow Houses Becomes Law," Attorney General Bill McCollum News Release, 17 June 2008, available at <http://myfloridalegal.com/newsrel.nsf/newsreleases/AFAE7E2BCC1688D18525746B0070D23B>
- <sup>99</sup> "Asian Gangs Move Grow-ops," *The Asian Pacific Post*, 27 September 2007, available at [http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003 asian\\_gangs\\_move\\_grow\\_ops.do.html](http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003 asian_gangs_move_grow_ops.do.html)
- <sup>100</sup> See Asian Gangs Move Grow-ops.
- <sup>101</sup> See "Does Marijuana Contribute to Psychotic Illnesses?" *Current Psychiatry Online* 6(2), February 2007.
- <sup>102</sup> See, e.g., [http://www.californiapolicechiefs.org/nav\\_files/research/ordinances.html](http://www.californiapolicechiefs.org/nav_files/research/ordinances.html)
- <sup>103</sup> National Drug Intelligence Center.

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**CERTIFICATION**  
**ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 26-2009**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )     ss  
CITY OF ELK GROVE         )

*I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing Urgency Ordinance, published and posted in compliance with State law, was duly approved and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 9, 2009 by the following vote:*

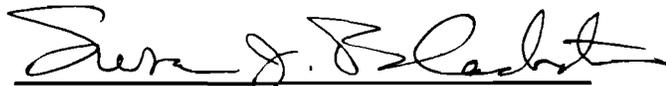
**AYES :**        **COUNCILMEMBERS:**     *Hume, Scherman, Cooper, Davis, Detrick*

**NOES:**       **COUNCILMEMBERS:**     *None*

**ABSTAIN:**   **COUNCILMEMBERS:**     *None*

**ABSENT:**    **COUNCILMEMBERS:**     *None*

*A summary of the ordinance was published pursuant to GC 36933(c) (1).*



**Susan J. Blackston, City Clerk**  
**City of Elk Grove, California**

## ORDINANCE NO. 27-2009

### AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE REPEALING ELK GROVE MUNICIPAL CODE CHAPTER 4.16

The City Council of the City of Elk Grove does ordain as follows:

#### Section 1: Purpose and Authority

The purpose of this urgency ordinance is to repeal Chapter 4.16 of the Elk Grove Municipal Code, "Medical Marijuana Dispensaries". The City has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7.

#### Section 2: Findings.

On December 9, 2009, the City Council of the City of Elk Grove adopted an urgency ordinance creating a moratorium on the issuance of land use entitlements for medical marijuana dispensaries within the City limits of the City of Elk Grove. In adopting the moratorium, the City Council made the following findings:

*In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 ("CUA" or the "Act"). The Act was subsequently codified as California Health and Safety Code section 11362.5. The Act was designed to provide a defense to persons charged with possessing or cultivating marijuana for the personal medical use of patients who have received a recommendation from a physician that the use of marijuana may be beneficial in the treatment of that patient. CUA further prevented criminal prosecution of doctors who recommend the use of marijuana by patients for medical purposes.*

*The state legislature subsequently enacted the "Medical Marijuana Program", also codified as Health and Safety Code section 11362.7 (the "Program"). The Medical Marijuana Program provides guidance for the use and cultivation of medical marijuana. The hallmark of the Program is that it prohibits the arrest of any qualified patient (or that patient's primary caregiver) for the possession, transportation, delivery or cultivation of medical marijuana. In order to qualify for this immunity, the person must possess an identification card issued by the State Department of Health Services through a voluntary program. However, at this time, the State of California has yet to implement a statewide identification card program for qualified patients and their primary caregivers.*

*Despite CUA and the Program, the possession, sale and distribution of marijuana are still criminal offenses under both California state and Federal law. Moreover, no provision of California law authorizes the sale or distribution of cannabis by medical marijuana dispensaries to any primary care giver, a qualified patient, or a person with a valid identification card obtained under the auspices of the Program.*

*Neither CUA nor the Program expressly authorize or address the role of dispensaries in the scheme of providing medical marijuana to qualified patients and/or their primary caregivers. Despite this, local agencies throughout California have seen medical marijuana dispensaries established in their communities. Once established, these locations have created a number of secondary effects associated with them, including:*

- ✓ Illegal drug activity and drug sales in the vicinity of dispensaries*
- ✓ Robbery of persons leaving dispensaries;*
- ✓ Driving under the influence of controlled substances obtained from dispensaries;*
- ✓ Persons acquiring marijuana from a dispensary and then selling it to non-qualified persons;*
- ✓ Burglaries and robberies; and*
- ✓ Increased vacancies in the commercial areas near such dispensaries.*

*These impacts have been compiled in an extensive report prepared by the California Police Chiefs Association. A copy of that report is attached to this Ordinance as Exhibit "A" and is incorporated herein by this reference. The City Council of the City of Elk Grove hereby finds that the report contains persuasive anecdotal and documented evidence that medical marijuana dispensaries pose a threat to the public health, safety and welfare.*

*At present, the City of Elk Grove Zoning Code does not contain any explicit provisions contemplating the approval of medical marijuana dispensary facilities within the City of Elk Grove. Moreover, the City has experienced a recent increase in the number of contacts received by the City about opening medical marijuana dispensaries. The City Council hereby finds that it is in the best interest for the health, safety and welfare of the residents of the City of Elk Grove to prevent potentially harmful secondary effects of medical marijuana dispensaries to adopt this urgency ordinance to allow City staff time to study the impacts of permitting medical marijuana dispensaries, as well as to determine which zoning districts may be appropriate for such use, and what level of discretionary review may be required for approval of such use.*

At the present time, Chapter 4.16 creates a statutory scheme where an applicant could obtain a City of Elk Grove business license to operate a medical marijuana dispensary. Because of the inherent conflict between the lack of zoning regulation and the possibility of the issuance of a license to conduct such a business within the City of Elk Grove, the City Council of the City of Elk Grove hereby finds that the public peace, safety and health require the immediate repeal of Chapter 4.16 of the Elk Grove Municipal Code in order to avoid the identified negative impacts associated with the commencement and continuation of medical marijuana dispensaries in the City of Elk Grove.

### Section 3: Application.

Chapter 4.16 of the Elk Grove Municipal Code is hereby repealed in its entirety.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 6: Effective Date and Publication

This Ordinance is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

**ORDINANCE:** 27-2009  
**ADOPTED:** December 9, 2009  
**EFFECTIVE:** December 9, 2009



PATRICK HUME, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



SUSAN J. BLACKSTON, CITY CLERK



SUSAN COCHRAN, CITY ATTORNEY

Date signed: December 17, 2009

**CERTIFICATION**  
**ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 27-2009**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )     ss  
CITY OF ELK GROVE         )

*I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing Urgency Ordinance, published and posted in compliance with State law, was duly approved and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 9, 2009 by the following vote:*

**AYES :**        **COUNCILMEMBERS:**     *Hume, Scherman, Cooper, Davis, Detrick*

**NOES:**        **COUNCILMEMBERS:**     *None*

**ABSTAIN:**   **COUNCILMEMBERS:**     *None*

**ABSENT:**     **COUNCILMEMBERS:**     *None*

*A summary of the ordinance was published pursuant to GC 36933(c) (1).*

  
\_\_\_\_\_  
**Susan J. Blackston, City Clerk**  
**City of Elk Grove, California**

**ORDINANCE NO. 41-2005**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
REPEALING TITLE 4 AND CHAPTER 5.04 OF THE ELK GROVE MUNICIPAL CODE  
AND ENACTING A NEW TITLE 4 REGARDING BUSINESS LICENSING AND  
RELATED MATTERS.**

The City Council of the City of Elk Grove does ordain as follows:

**Section 1: Purposes and Authority.**

Under California Constitution art. XI, Sec. 7, the City of Elk Grove may enact ordinances to preserve and protect the public safety, health, and welfare. To this end, the City Council of the City of Elk Grove has undertaken a comprehensive revision of Title 4 of the Municipal Code that regulates businesses as part of the licensing of business.

**Section 2: Repeal of Title 4 and Chapter 5.04.**

Title 4 and Chapter 5.04 of the Elk Grove Municipal Code are hereby repealed.

**Section 3: Enactment of New Title 4.**

A new Title 4 is hereby enacted and added to the Elk Grove Municipal Code to read as follows:

**TITLE 4**

**BUSINESS REGULATION**

Chapters:

***General Provisions for Licenses and Permits***

- 4.02 General Provisions for Business Licenses
- 4.04 Solicitation Licenses and Permits
- 4.06 General Business Licenses
  - Article 1 - Applicability and Issuance
  - Article 2 - Denial and Revocation
- 4.10 Special Business Licenses and Employee Permits
  - Article 1 - Applicability and Issuance
  - Article 2 - Denial and Revocation
  - Article 3 - Additional Special License Requirements

***Particular Special Business Licenses***

- 4.15 Taxicabs
- 4.16 Medical Cannabis Dispensaries
- 4.20 Cardrooms
- 4.21 Bingo Games
- 4.22 Bingo Parlors
- 4.23 Bingo Suppliers

- 4.25 Pawnbroker, Secondhand Dealers and Junk Dealers
- 4.26 Junk Tire Storage
  - Article 1 - Special Business License Required
  - Article 2 - Requirements-Services
  - Article 3 - Penalties
- 4.27 Tobacco Retailers
- 4.30 Adult-Related Establishments
  - Article 1 - General Provisions
  - Article 2 - Licenses and Permits
- 4.31 Adult-Oriented Businesses
  - Article 1 - General Provisions
  - Article 2 - Definitions
  - Article 3 - Adult-Oriented Business Licenses
  - Article 4 - Adult-Oriented Business Employee Permits
  - Article 5 - Denial, Suspension, and Revocation of License or Permit
  - Article 6 - Development and Performance Standards
  - Article 7 - Enforcement
- 4.35 Outdoor Festivals
  - Article 1 - General Provisions and Requirements
  - Article 2 - Special Business License
- 4.36 - 4.50 *Reserved for Special Business Licenses*

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## CHAPTER 4.02

### GENERAL PROVISIONS FOR BUSINESS LICENSES

#### Sections:

- 4.02.010 Purposes.
- 4.02.015 Organization of Title.
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- 4.02.110 Laws Not Enforced.
- 4.02.115 Statutory References.
- 4.02.120 Effective Date.
- 4.02.125 Severability.
- 4.02.130 Continuity.

**4.02.010 PURPOSES.** The purposes of this Title are to regulate businesses and other enterprises within the City in order to insure compliance with City ordinances and State laws, protect the public, health, safety, and welfare in the event of a disaster, prevent disturbances of neighborhoods and nuisances, and otherwise, protect the health, safety and welfare of the residents of the City.

A vast array of City Ordinances and State laws administered and enforced by City officials regulate the location, construction, improvements in, off-street parking for and other aspects of business-associated enterprises with fixed locations. Such regulation is for the purpose of protecting members of the public against building, safety and other hazards, adverse environmental impacts, risks to health and of public nuisance, risks of fire, disasters, and other life-threatening dangers, and other threats to the public peace, health, safety and welfare.

A purpose of this Ordinance and each of its chapters is to license all enterprises within the City's jurisdiction in order to maintain certain vital information about such enterprises operating within the City that could be detrimentally affected by or could be essential to provide assistance in the event of an extraordinary natural or man-made disaster.

Additionally, other purposes of this Ordinance and each of its chapters are to license enterprises that typically generate significant ordinance enforcement effort, promote improved enforcement of related Ordinances, reduced overall enforcement costs, provide a higher level of protection of the public, and reduce the risk that well-intentioned business operators are prejudiced by the unexpected enforcement of regulations at a time when compliance is least convenient.

Additional purposes of this Ordinance and each of its chapters are to license enterprises that generate economic activity to promote and protect the economic health and safety of the City by providing an economic data base about enterprises operating within the City so as to allow public officials to plan and anticipate economic threats to the well being of the City.

The purposes set forth herein are incorporated into every chapter of this title and each chapter may or may not set forth additional specific purposes for regulation of particular types of businesses.

The City Council does hereby declare that it finds any one of these manifold purposes sufficient in and of itself for justification for the adoption of this Ordinance and independently each of its chapters, and it further declares that it would have adopted this Ordinance and independently each of its chapters in their entirety based upon any one of the above-stated purposes, and invalidation of any one purpose or more of the above purposes would not have caused the City Council not to adopt the entire Ordinance or independently each of its chapters.

**4.02.015 ORGANIZATION OF TITLE.** The provisions of this Title 4 are organized as follows:

(a) This Chapter 4.02 contains introductory and master provisions governing the application of the balance of the Chapters in this Title.

(b) Chapter 4.04 establishes, defines the applicability of, and proscribes procedures and the basis for issuance, denial, renewal and revocation of the Solicitation License and Solicitor Permits for door-to-door, cold-calling solicitation and similar solicitation methods.

(c) Chapter 4.06 establishes, defines the applicability of, and prescribes procedures and the basis for issuance, denial, renewal and revocation of the General Business License.

(d) Unless a different or more specific provision is provided for in Chapters 4.15 through 4.50, Chapter 4.10 establishes, defines the applicability of, and prescribes procedures and the basis for issuance, denial, renewal and revocation of the Special Business License and Employee Permits.

(e) Chapters 4.15 through 4.50 establish special procedural and substantive regulations applicable to specified business enterprises required to obtain a Special Business License and personnel thereof required to obtain Employee Permits.

(f) Chapter 4.54 contains regulations and prohibitions applicable to specified business enterprises or solicitation activities.

**4.02.020 DEFINITIONS.** Unless the context indicates otherwise, the definitions of terms contained in Sections 4.02.021 through 4.02.050 shall govern the meaning of those terms as used in this Title.

**4.02.021 SAME- "SOLICITATION ACTIVITY"** - shall mean actions of any person who attempts to sell, solicit or take orders for goods, wares, merchandise, books, periodicals, subscriptions, photographs, and any personal service by going from private residence to private residence, or by appointment arranged by an unsolicited contact with a resident of the private residence, or by any other similar method and not from a fixed business location within the City.

**4.02.022 SAME- "SOLICITOR"** - shall mean a person who engages in solicitation activities as a sole business owner or as an agent, representative, employee, or independent contractor to a person or entity required to obtain a solicitation license.

**4.02.023 SAME- "SOLICITATION PERMIT"** - shall mean a Permit issued by the Chief of Police to a solicitor and required pursuant to the provisions of Chapter 4.04.

**4.02.024 SAME- "BUSINESS"** - shall mean any enterprise or endeavor by a Person operated or conducted for profit or non-profit purposes.

**4.02.025 SAME- "EMPLOYEE PERMIT"** - shall mean a Permit issued by the Chief of Police or other designated official to certain personnel retained as employees,

independent contractors or otherwise to perform specified duties or functions by particular types of enterprises required by Chapters 4.10 through 4.50 to possess a Special Business License for the purpose of insuring protection of the public health, safety or welfare.

**4.02.030 SAME- "FIXED LOCATION"** - shall mean a particular place where an enterprise is either regularly conducted or kept open, or is conducted or kept open on four or more days during any consecutive thirty-day period. An enterprise operated from a residence shall be deemed to be conducted at a fixed location.

**4.02.035 SAME- "GENERAL BUSINESS LICENSE"** - shall mean a license issued by the City Manager and required pursuant to the provisions of Chapter 4.06 below, in order to insure compliance with specified ordinances, prevent disturbances of neighborhoods and nuisances, and prevent safety hazards.

**4.02.040 SAME- "PERSON"** - shall mean a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture or other individual or entity carrying on a business for which a Permit or License must first be procured, and shall include any officer, employee, agent or other representative by or through whom the business is operated or conducted.

"Person" shall not include a public agency or any officer, employee or agent thereof while acting in the capacity as such.

**4.02.045 SAME- "CONVICTED"** - or "conviction" in relation to the outcome of criminal charges shall include a plea of nolo contendere.

**4.02.050 SAME- "SPECIAL BUSINESS LICENSE"** - shall mean a license issued by the Chief of Police or other designated official and required pursuant to the provisions of Chapters 4.10 through 4.50 for specified types of businesses which are potentially injurious to the public interest, are not regulated by the State in such a manner as to preempt local regulation, and which the health, safety and welfare of the community demand be operated by responsible persons in compliance with all laws, including any special regulations applicable to such businesses.

**4.02.055 AUTHORITY OF CITY OFFICERS.** Whenever reference in this Title is made to the City Council or any department, office, division, officer or official, the reference shall be deemed to be to, respectively, the City Council, or a department, office, division, officer or official of the City.

Whenever in this Title an authority or power is vested in or a duty is imposed upon an officer or official, a City employee subordinate to the officer or official to whom an appropriate delegation has been made shall be entitled to exercise the power or authority and perform the duty.

**4.02.060 LICENSE FEES.** The City Council may, by resolution and from time to time, prescribe fees for the issuance and renewal of Solicitation Licenses, Solicitor Permits, General Business Licenses, Special Business Licenses and Employee

Permits, fees for special oversight of some Special Business Licenses, and fees for the filing of appeals relating to denial of such Permits or Licenses or the suspension or revocation thereof. Such fees shall be for the sole purpose of defraying costs incurred in the administration of this Title, and shall be prescribed in amounts yielding revenues which do not exceed the costs of administration by each office and department charged with responsibility under this Title. To the extent the City Council determines to be practical, such fees may be varied in amounts for different types of permits or licenses, types of businesses, issuance and renewal, and on the basis of other factors, for the sole purpose of apportioning relative regulatory costs to parties regulated. Commercial enterprises subject to Unrelated Business Taxable Income under sections 511 to 515 of the Internal Revenue Code not exempted by 4.06.010(a) and operated by certain types of non-profit organizations may be exempted from fees authorized herein, if a contribution from the general or another fund supported by tax revenues is made by the City Council to underwrite the costs of regulation.

Fees related to the costs which a department incurs in reviewing and acting upon a particular type of application for a license or permit may be made payable within a general fee chargeable by the City Manager, or may be charged individually by the department reviewing and acting upon the application as a condition precedent to processing of the approval required from that department.

All fees for the issuance and renewal of permits and licenses shall be paid at the time of and with the filing of the application with the City Manager or pursuant to a request for approval by another department charged with the responsibility of reviewing the application. All fees for an appeal shall be paid at the time of and with the filing of the appeal. No application or request for approval or appeal shall be deemed valid or complete until all prescribed fees have been paid.

**4.02.065 TRANSFERABILITY.** A Solicitation License, General Business License or Special Business License shall not be transferable or assignable from one person to another.

Each such license shall terminate and be deemed to have no further force or effect upon: (a) a transfer from one person to another of the whole ownership of the business or enterprise; or, (b) a change of the whole function or operation for which the permit or license has been issued.

During the term of a General Business License or a Special Business License and within thirty (30) days of the occurrence thereof, the holder shall file in writing with the City Manager notice of: (a) the transfer from one person to another of the whole ownership of the business or enterprise, or, (b) a change of the whole function or operation for which the permit or license has been issued.

**4.02.070 TRANSFERABILITY - PARTIAL CHANGE IN OWNERSHIP SPECIAL BUSINESS LICENSE.** During the term of a Special Business License the holder of the permit or license shall file in writing with the Chief of Police notice of each:

- (a) addition or deletion of a general or limited partner, when the holder is a partnership;
- (b) addition or deletion of a joint venturer, when the holder is a joint venture;
- (c) transfer of more than one-half of one percent of the voting shares of stock, when the holder is a commercial corporation;
- (d) change of directors, when the holder is either a for profit or non-profit corporation;
- (e) change of membership in management committee composed of persons holding ownership interests, when the holder is a partnership or joint venture;
- (f) change in membership of a governing body or other board or committee to which management is entrusted, when the holder is an unincorporated association; and
- (g) change in president or general manager, vice-president or chief assistant manager, secretary and treasurer, or any officer with equivalent or similar authority.

The holder of a license or permit shall provide in writing such detailed information respecting any such change as the Chief of Police may require.

A termination of a Special Business License shall be deemed to have occurred whenever the Chief of Police determines that effective management or control of the holder has been transferred in significant part to a person whose character or business responsibility was not reviewed at the time the license was issued, and when written notice of the Chief of Police's determination and of termination of the license is served on the holder. The effective date of termination shall be fifteen days following the date of service of the notice of termination except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.075 TRANSFERABILITY - PARTIAL CHANGE IN OWNERSHIP**

**GENERAL BUSINESS LICENSE.** During the term of a General Business License the holder shall file in writing with the City Manager notice of each: (a) addition or deletion of a general partner, when the holder is a partnership; (b) addition or deletion of a joint venturer, when the holder is a joint venture; and (c) transfer of more than ten percent of the voting shares of stock, when the holder is a commercial corporation.

A termination of the license shall be deemed to have occurred whenever the City Manager determines that a change in ownership has occurred in significant part to another person and when written notice of the determination and of termination is served upon the holder. The effective date of termination shall be fifteen days following the date of service of the notice of termination except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.076 TRANSFERABILITY - PARTIAL CHANGE IN FUNCTION GENERAL BUSINESS LICENSE.** During the term of a General Business License the holder of the permit or license shall file in writing with the City Manager notice of any change in the business function, operation, or enterprise for which the permit or license has been issued. The holder shall provide in writing such detailed information relating to any alteration in the business function, operation, or enterprise as the City Manager may require.

A termination of the license shall be deemed to have occurred when the City Manager determines that any such change materially alters the business function, operation, or enterprise for which the license has been issued in a manner which requires a new investigation of the applicability of or compliance with the laws enforced through the license, and when written notice of the determination and of termination is served upon the holder.

The effective date of termination shall be fifteen days following the date of service of notice of termination except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.080 TERM.** General Business Licenses shall expire when the person to whom the License is issued ceases operations authorized thereby. The term of a General Business License shall be two years from the date of issuance. Licenses previously issued under prior provisions of this section prescribing a three year term shall expire three years from the date of issuance and shall then be reissued upon qualification for a two year term.

Solicitation Licenses and Special Business Licenses shall expire when the person to whom the License is issued ceases operations authorized thereby. The term of a Solicitation License, Special Business License, a Solicitor Permit, and an Employee Permit shall be one year from the date of issuance.

**4.02.085 ADMINISTRATION.** Except as otherwise provided, the City Manager is charged with the responsibility of administering General Business Licenses, and shall be authorized from time to time to promulgate and enforce such rules or regulations consistent with the purposes, intent, and express terms of this Title as he or she deems necessary to implement such purposes, intent and express terms. Whenever in this Title the City Manager is charged with responsibility to administer a particular provision, the City Manager may delegate such responsibility to other departments and subordinate personnel of the City.

Except as otherwise provided, the Chief of Police is charged with the responsibility of administering Special Business Licenses, and shall be authorized from time to time to promulgate and enforce such rules or regulations consistent with the purposes, intent and express terms of this Title as he or she deems necessary to implement such purposes, intent and express terms. No rules or regulations promulgated by the City Manager or Chief of Police, or amendments thereof, shall be

enforced or become effective until thirty (30) calendar days following the date on which the proposed rules or regulations are filed with the Clerk of the City Council.

**4.02.090 NOTICES.** Any notice or other writing authorized or required by this Title shall be deemed served and effective for all purposes on the date when it is reduced to writing and is either personally delivered to the party to whom it is directed or is deposited in the United States mail, postage prepaid, and addressed to the party to whom it is directed. When under the provisions of this Title any notice or other writing is authorized or required to be filed, it shall not be deemed to have been filed until it is received in the office of the official with whom filing is required.

Whenever a provision in this Title requires a public hearing to be conducted, notice of the time, date, place and purpose of the hearing shall be published at least once not later than ten calendar days in advance of the date of commencement of the hearing in a newspaper of general circulation which is published within the County. The same type of notice shall also be served on each Licensee whose License would be affected by the action taken at the conclusion of the hearing.

**4.02.095 HEARING AUTHORITY.** Whenever the term "Hearing Authority" is utilized in this Title, it shall be deemed to refer to a person assigned the responsibility of conducting a hearing by the City Manager. The City Manager shall be authorized to assign hearing responsibilities from time to time to:

(a) City management personnel who the City Manager finds are qualified by training and experience to conduct such hearings;

(b) Any attorney who the City may employ for the purpose of conducting administrative hearings;

(c) Attorneys engaged in practice within the Sacramento community who are retained by contract to conduct such hearings; or

(d) Administrative Law Judges assigned to the State of California Office of Administrative Hearings.

The City Manager is hereby authorized to contract in the name of the City for the retention of hearing services either by attorneys engaged in private practice or the Office of Administrative Hearings at rates which do not exceed those payable by the City for the legal defense of tort liability claims within financial limitations established by the City's annual budget.

**4.02.100 VIOLATIONS.** Except as otherwise specifically provided, pursuant to the provisions of Government Code Section 36900 , violation of any of the provisions contained in this Title shall constitute an infraction subject to a fine of one hundred (\$100.00) dollars for each day or any portion thereof a violation continues.

Violation of any of the following provisions of this Title following service at the business of a written notice by an enforcing official advising of the violation and ordering

a cessation thereof, shall pursuant to the provisions of Section 1.01.190 of Title 1 of this Code, constitute a misdemeanor: Sections 4.06.005, 4.06.006, 4.10.005, 4.15.015, 4.16.010, 4.20.010, 4.21.005, 4.22.020, 4.23.025, 4.25.005, 4.34.200, 4.34.210, 4.35.205, 4.54.010, 4.54.020, 4.54.105, 4.54.220, 4.54.225, 4.54.300, 4.54.330 and 4.54.340. As used in this Paragraph, an enforcing official includes the Chief of Police, City Manager and any other City officer charged with the responsibility of administering the provisions of this Title. Pursuant to the provisions of Section 836.5 of the Penal Code, City personnel acting under the direction and control of the City Manager, shall be authorized to enforce and arrest persons without a warrant for violations of those provisions within those Chapters and Articles of this Title which are assigned, respectively, to the administrative responsibility of the City Manager.

Violation of any of the provisions of this Title may be remedied by injunction or other civil proceedings commenced in the name of the City by the City Attorney. In prosecution of criminal violations of this Title, the City Attorney may, in his or her discretion, reduce the charge of a misdemeanor to an infraction.

**4.02.105 INSPECTION.** The City Manager and Chief of Police are charged with the responsibility of enforcing the provisions of this Title, and to that end may inspect any and all types or classes of businesses which are by this Title licensed and regulated. The City Manager, Chief of Police, and their deputies or subordinate personnel may enter any place of business which is subject to the provisions of this Title for the purpose of inspection for compliance with this Title.

The City Manager and Chief of Police may, during the term of a license, require the licensee to complete a license information update form for the purpose of assuring continued compliance with this Title. The licensee shall, within fifteen (15) calendar days of the date of mailing by the City Manager of such an information form, file the completed form with the City Manager or to the Chief of Police, whichever officer has requested the information update form.

**4.02.110 LAWS NOT ENFORCED.** There are many ordinances and other laws applicable to businesses licensed under Chapters 4.06 through 4.50 which are not sought to be enforced under that licensing process. Such laws include, but are not limited to, building, fire, electrical and other codes and regulations contained in Chapter 4.54 of this Title, and noise control, sewage disposal and other health measures. It has been determined that the administrative costs of enforcing such laws would result in fee levels which are so high as to exceed the benefits produced by such enforcement.

Neither the issuance of a General Business License nor a Special Business License shall be deemed to constitute a representation that the business so licensed or the premises upon which it is situated complies with such ordinances or other laws. Nor shall the existence of such an unrevoked License be deemed to preclude any criminal or civil remedy for violation of such ordinances or laws, including, but not limited to, the closure of the business if otherwise warranted under remedies sought to be invoked. The possession of either a General Business License or Special Business License shall

not be deemed to relieve the holder of the requirement to apply for or obtain any other License or Permit required by ordinance or statute.

**4.02.115 STATUTORY REFERENCES.** Any reference to a state or federal statutory or regulatory provision contained in this Title shall be interpreted to refer to such provision as it may be amended or renumbered from time to time.

**4.02.120 EFFECTIVE DATE.** The provisions of this Title shall become effective February 1, 2006.

**4.02.125 SEVERABILITY.** The provisions of this Title are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Title, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this title, or the validity of its application to other persons or circumstances.

**4.02.130 CONTINUITY.** Except as specifically amended or changed in the repeal and reenactment of this Title, the reorganization or renumbering of this Title shall not be construed as a substantive change and the regulation of businesses in the City is continued as was construed under prior law without substantive change.

## CHAPTER 4.04

### SOLICITATION LICENSES AND PERMITS

#### Sections:

- 4.04.000 Purposes.
- 4.04.010 Solicitation License and Solicitor Permit Required.
- 4.04.015 Exemptions.
- 4.04.020 Statement of Exemption.
- 4.04.025 Solicitation License Application.
- 4.04.030 Solicitation License Issuance.
- 4.04.035 Conditions on Solicitation License and Permit.
- 4.04.040 Solicitors.
- 4.04.045 Solicitor Permit.
- 4.04.050 Renewal.
- 4.04.055 Suspension or Revocation.
- 4.04.060 Appeal.

**4.04.000 PURPOSES.** City Council finds that door-to-door solicitation, including appointments arranged through cold calling residents of the City, historically have generated complaints regarding the sale of goods, services, securities, investments, and other products. With unfortunate frequency, many solicitation schemes prey upon the elderly and infirm of the community. Without the requirement that such solicitors obtain a permit from the City, residents are exposed to higher risk of unfair sales and business practices by businesses and organizations with no physical presence in the City and therefore less accountability for their business practices. For these reasons, the City Council a licensing of such businesses and their solicitor agents is required to protect the public, safety, and welfare.

**4.04.010 SOLICITATION LICENSE AND SOLICITOR PERMIT REQUIRED.** It is unlawful for any person or entity to engage in, conduct or carry on any business, exhibition, occupation or service that is based upon solicitation activities as defined in Section 4.02.021, without first having, upon written application, procured a solicitation license from the City Manager.

It is unlawful for any person employed or working on behalf of a business engaged in a solicitation business to engage in the solicitation activities as defined in Section 4.02.021, without first having, upon written application, procured a solicitor permit from the City Manager.

**4.04.015 EXEMPTIONS.** This Chapter does not apply to:

(a) Girl Scouts, Camp Fire Girls, Boy Scouts, Little League members and members of similar organizations when soliciting on behalf of such organizations;

(b) Persons who represent a fixed place of business in the City who regularly make deliveries, normally not involving personal contact with customers for the purpose of making sales or obtaining orders, over an established route and who only occasionally make calls on persons residing within the area covered by such route for the purpose of obtaining additional customers for such regular deliveries. The foregoing provisions intended to cover only such persons as milk delivery persons, newspaper delivery persons and other persons engaged in substantially similar activities;

(c) Persons soliciting charitable contributions on behalf of any nonprofit corporation or nonprofit voluntary unincorporated association organized for charitable purposes.

(d) Persons who go from private residence to private residence for political purposes or for the purpose of influencing legislation.

**4.04.020 STATEMENT OF EXEMPTION.**

(a) Every person claiming to be entitled to exemption from the payment of any license fee or from any other requirement provided for in this Chapter upon the ground that such license casts a burden upon his or her right to engage in commerce with foreign nations or among the several states, or conflicts with the laws of the United

States respecting interstate commerce, shall file a verified statement with the City Manager, disclosing the interstate or other character of his or her business entitling such exemption. The statement shall contain the name and location of the company or firm for which the orders are to be solicited or secured, the name of the nearest local or state manager, if any, and his or her address, the kind of goods, wares or merchandise to be delivered, the place from which the same are to be shipped or forwarded, the method of solicitation or taking orders, the location of any warehouse, factory or plant within the state, the method of delivery, the name and location of the residence of the applicant, and any other facts necessary to establish such claim of exemption. A copy of the order blank, contract form or other papers used by such person in taking orders shall be attached to the affidavit. The affidavit may be filed by a firm on behalf of one or more employees or representatives of the firm who are subject to the requirements of this Chapter.

(b) If the City Manager determines that a license fee is not applicable with respect to any person because of interstate commerce requirements, a license fee shall not be required and the person may be issued an exempt license. Such license shall be valid only for the purpose of authorizing solicitation of orders to be filled directly from another state. Any person who is eligible for a license pursuant to this section shall be subject to all applicable provisions of this chapter.

**4.04.025 SOLICITATION LICENSE APPLICATION.** A person may apply for a solicitation license by filing an application with the City Manager and paying the required fees. The City Manager shall forward the application for the solicitation license to the Chief of Police for investigation in the same manner as provided for a Special Business License under 4.10.035.

**4.04.030 SOLICITATION LICENSE ISSUANCE.**

The City Manager shall issue a solicitation license unless he or she finds that:

(a) The City Manager finds in writing that the application is not complete despite requests for supplemental information;

(b) The City Manager finds in writing that the application or any supplementary material contains false information;

(c) The City Manager finds in writing that any of the following persons has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially injure another; and the City Manager concludes that by reason of the crime or act there is a substantial risk that the applicant would not conduct the enterprise in a law abiding manner or in a manner which does not subject patrons of the enterprise to risk of harm or criminal, deceitful or otherwise unethical practices:

- (1) A general or limited partner of a partnership which possesses an ownership interest in the enterprise;
- (2) A joint venturer in a joint venture which possesses an ownership interest in the enterprise and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this Section would apply if the partnership or corporation were the sole owner of the enterprise;
- (3) A sole proprietor when the enterprise is a sole proprietorship;
- (4) An owner of more than one-half of one percent of the voting shares of stock when a commercial corporation possesses an ownership in the enterprise;
- (5) A director, when either a commercial or non-profit corporation possesses an ownership in the enterprise;
- (6) A member of a management committee when a partnership or joint venture possesses an ownership interest in the enterprise;
- (7) A member of a governing body or other Board or committee to which management is entrusted, when an unincorporated association possesses an ownership interest in the enterprise; or,
- (8) A president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm possessing an ownership interest in the enterprise.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.01 et seq.

(d) The City Manager finds in writing that when the applicant or enterprise is a "contractor," as that term "contractor" is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, the applicant has failed to provide sufficient proof, as determined by the City Manager, that the applicant is licensed to engage in the business as a contractor, by the State of California, Contractors' State License Board, and that the license is presently valid, effective, not suspended, and in good standing.

**4.04.035 CONDITIONS ON SOLICITATION LICENSE AND PERMIT.** Every solicitation license issued by the City Manager shall include the following conditions:

(a) Solicitation activities shall not be conducted by any license holder or any solicitor between the hours of 9:00 p.m. to 8:00 a.m. the following day weekdays, 9:00 p.m. on Fridays to 9:00 a.m. on Saturdays, and 9:00 p.m. on Saturdays to 10:00 a.m. on Sundays;

(b) Every solicitor shall carry on his or her person the City-issued solicitor permit at all times when conducting solicitation activities and shall produce such permit to any law enforcement officer upon demand; and

(c) Any other condition reasonably related to protection of the public interest in solicitation activities.

**4.04.040 SOLICITORS.** The employees, agents, solicitors or representatives of any firm, irrespective of the form of organization, may be covered under a single license obtained by and issued in the name of the firm as long as each such person holds a valid solicitor permit issued pursuant to Section 4.04.045.

**4.04.045 SOLICITOR PERMIT.**

(a) It is unlawful for any solicitor to conduct solicitation activities within the City without having first obtained a solicitor permit pursuant to this section.

For the purposes of this section the word "solicitor" includes all employees, agents, solicitors or representatives of any firm, irrespective of the form of organization, subject to the solicitation license requirement of this Chapter.

(b) A solicitor may file a written application for a solicitor's permit with the City Manager, giving the name and address of the applicant, the firm or organization which he represents, a description of the purpose for which the applicant proposes to conduct solicitation activities and such other information the City Manager and Chief of Police may require.

(c) The City Manager shall refer the applicant to the Chief of Police who shall fingerprint and photograph the applicant and obtain reports from the state Department of Justice of any record regarding the applicant which is available from those agencies. After an applicant has been fingerprinted and photographed by the Chief of Police, the applicant shall be issued temporary permit by the City Manager, valid for forty-five (45) days, unless the Chief of Police, based on a check of any immediately available record or source of information regarding the character of the applicant or the business responsibility of the firm which he represents disapproves the issuance of a temporary permit. If the Chief of Police disapproves, his reasons for disapproval shall be specified in writing, a copy of which shall be delivered to applicant. When he or she receives the reports, the Chief of Police shall forward them to the City Manager together with any other relevant information from the Chief of Police's files regarding the applicant and the firm which the applicant plans to represent in the City.

(d) On the face of each permit, including temporary permits, there shall be placed each of the following:

- (1) The solicitor's permit number;
- (2) The solicitor permit holder's name and address;
- (3) The name and address of the firm or organization which the holder represents;
- (4) A physical description of the holder or a photo ID;
- (5) The expiration date of the permit.

(e) While engaged in solicitation activities, the solicitor's permit shall be carried on the person of solicitor who, upon demand, shall show such permit to any person authorized to enforce this chapter.

**4.04.050 RENEWAL.** Not later than forty-five (45) days prior to expiration of the term of a Solicitation License or a Solicitor's Permit, the City Manager shall transmit to the licensee or permit holder by mail an application for renewal. The application for renewal shall be on such a form, and include such information, as prescribed and required by the City Manager.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the immediately preceding License. The City Manager may provide an option for businesses to renew and pay license and permit fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a solicitation license or solicitor's permit renewal electronically, the Licensee consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the renewal was submitted with a manual signature consistent with Civil Code section 1633.1 et seq

**4.04.055 SUSPENSION OR REVOCATION.**

A Solicitation License issued pursuant to this Chapter may be immediately suspended or revoked during its term if the City Manager finds in writing that one or more of the following grounds exist:

- (a) That information in the latest application was untrue;
- (b) That the City Manager or the Chief of Police has acquired information supporting a finding that one of the persons listed in Section 4.04.045(c) has a new criminal conviction or a criminal conviction previously undisclosed;
- (c) That the Licensee or any one of the Licensee's Solicitors has violated one or more conditions imposed; or
- (d) That the Licensee or any one of the Licensee's Solicitor's has violated any term, condition or requirement or prohibition established by this Chapter or

Chapter 4.02, which are applicable to the License or the holder, or any administrative regulation promulgated thereunder, or any other applicable law.

**4.04.060 APPEAL.** Any person aggrieved by any decision or action of any City officer or employee may file a written notice of appeal with the City Manager within fifteen days following of the date of issuance of written notice of such decision or action. Any such appeal shall be conducted by the City under the provisions of sections 4.10.115 to 4.10.150 to the extent equally applicable to determination of an appeal of a denial of initial application or renewal, or the proposed suspension or revocation of a solicitation license or solicitor's permit under this Chapter.

## **CHAPTER 4.06**

### **GENERAL BUSINESS LICENSES**

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**Article 1**  
**Applicability and Issuance**

**4.06.000 PURPOSES.** The purposes of this Chapter are set forth in Section 4.02.010.

**4.06.005 LICENSE REQUIRED.** Except as provided by Section 4.06.010, no person shall operate or conduct at a fixed location within the City any enterprise whatsoever, including but not limited to, a manufacturing, fabricating, processing, assembly or repair; wholesaling or storage; lodging, rental housing, or other temporary or permanent housing; entertainment; service; retailing; educational; hospital or other medical care; or business or professional office enterprise; home occupation or family contractor's business; or other facility to which members of the general public are invited; or adult-related uses as defined in this Title; unless under and by authority of a valid, unexpired and unrevoked General Business License authorizing the enterprise issued pursuant to the provisions of this Chapter. It is intended by this Chapter to license, unless expressly exempted, every enterprise operated at a fixed location which is of a type described by this section, whether the enterprise is operated for commercial, non-profit, charitable or other purposes, and whether the enterprise is operated or conducted independently or in association with or at the same location as an enterprise or activity for which a License is not required.

A person shall be deemed to operate or conduct an enterprise and violate this Section if the person, without a required General Business License in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for or in charge of the enterprise for which the License is required.

**4.06.006 TEMPORARY CONCESSIONS.** No person shall operate or conduct within the City a Temporary Concession, whether or not the Temporary Concession is conducted at a fixed location, unless under and by authority of a valid, unexpired and unrevoked General Business License issued pursuant to the provisions of this Chapter authorizing the Temporary Concession at the location where it operates.

As used in this Section, and except as hereinafter expressly provided, a "Temporary Concession" is any out-of-doors retail sales operation, whether conducted for an hour or less, a day, or longer, established for the purpose of selling flowers, produce, Christmas trees or greens, clothing, paintings or other artistic products, books or other written materials, or other goods from a table, stand, temporary sheltered enclosure, cart, motor vehicle or similar equipment.

A "Temporary Concession" shall not be deemed to include:

(a) The sale of Christmas trees or greens in connection with and on the same premises as a supermarket, hardware or home maintenance or repair store, or other established business, if a temporary structure and electrical wiring are not employed in connection with such sales;

(b) Residential “garage sales” conducted for the purpose of disposing household goods formerly utilized in a home which have become surplus where such garage sale is conducted on the residential premises where the goods to be sold were utilized;

(c) The sale from stands of fireworks preceding and in connection with the celebration of the Fourth of July as such temporary sales are permitted as provided in Chapter 4.54;

(d) The sale of agricultural products on the site where the product is grown; and

(e) The sale or offering for sale or distribution from public sidewalks or pedestrian circulation areas of shopping centers or malls of products to pedestrians who are traversing such areas or patrons of retail stores.

The exemption of the above activities from the temporary concessions licensing requirement shall not be deemed to authorize any activity which is illegal under other laws or to exempt any such activities from other applicable laws; or to deprive the owner or occupant of private property of any otherwise applicable right to consent to such activity.

Notwithstanding the provisions of Section 4.02.085, the Chief of Police shall enforce the provisions of this Section by citing and charging pursuant to the provisions of Section 4.02.100 such persons who violate this Section.

**4.06.010 EXEMPTIONS.** A business license shall be issued to the following enterprises at no charge and marked as “EXEMPT” upon the completion of an application that demonstrates to the satisfaction of the City Manager that the business qualifies for an exemption provided in law including, but not limited to, the following California constitutional or statutory exemptions:

(a) Any non-profit organization exempt from tax as provided in section 501(c)(3) of the Internal Revenue Code (churches, educational institutions, charitable organizations, and scientific organizations) to the extent of its tax-exempt activities, however, no exemption is granted to any commercial business activity of a 501(c)(3) organization for which it has Unrelated Business Taxable Income as provided in section 511-515 of the Internal Revenue Code (bookstores, coffeeshops, child care centers, etc.);

(b) Any apartment, rooming house, duplex, and other residential facility in which living units are rented or leased solely on a term of thirty days and longer;

(c) Any agricultural activities such as the growing of crops or raising of livestock and all the auxiliary and ancillary uses incidental to operation of a farm or ranch, however, no exemption is granted to any wholesaling, processing or storage of products of multiple farms or other cooperative marketing arrangement;

(d) Any sale of produce (vegetables, nuts, fruits, etc.) raised on the same parcel of land from a roadside stand served by no public utility services on a seasonable basis not to exceed four (4) months;

(e) Any enterprise that solely manufactures, sells, purchases, possesses or transports alcoholic beverages as provided in Cal. Constitution, art. XX, § 22;

(f) Any enterprise operating as a bank or financial corporation subject to the in lieu taxes payable to the State under California Revenue and Taxation Code section 23182

(g) Any enterprise operating solely as an intercity transportation business for household goods or other property for hire that is under the jurisdiction of the Public Utilities Commission pursuant to Public Utilities Code section 5327;

(h) Any commercial traveler whose business is limited to goods, wares, and merchandise sold or dealt in at wholesale as provided in California Business and Professions Code section 16002;

(i) Any enterprise operating solely as a real estate auctioneer whose principal place of business is located outside the City as provided in California Business and Professions Code section 16002.1;

(j) Any cafe musician who plays a musical instrument at any retail establishment where food or alcoholic beverages are sold or given away as provided in California Business and Professions Code section 16000.5;

(k) Any enterprise operating solely for the solicitation of donations for the support of veterans by federally chartered veterans' organizations specified in Title 36 of the United States Code as provided in California Business and Professions Code section 16001.7

(l) Any person honorably discharged or honorably relieved veteran who is unable to earn a livelihood from manual labor as provided in California Business and Professions Code section 16001.5;

(m) Any blind person operating a vending facility as provided in California Welfare and Institutions Code section 19633;

(n) Any residential care facility or residential day care home of six or less people, or a small family day care of eight children or less as provided in California Health and Safety Code sections 1523.1(b), 1566.2, 1568.05(b), 1569.185, 1596.803 or 1597.45;

(o) Any professional services business, not based at a location within the City, whose work in the corporate limits, in the judgment of the City Manager, constitutes such a de minimus contact with the City that the imposition of the regulatory fee would

unfairly burden intercity business as provided in *City of San Jose v. Ruthroff & Englekirk Consulting Structural Engineers, Inc.* (1982) 131 Cal.App.3d 462; and

(p) Any Adult-Oriented Business as defined and regulated in Chapter 4.31.

**4.06.055 HOME OCCUPATIONS.** Unless exempt under Section 4.06.010, a General Business License shall be required for any business, enterprise or activity which is operated or conducted as a Home Occupation. A General Business License shall also be required for a family contractor's business.

As used in this Chapter, a "Home Occupation" shall mean and include any commercial use conducted in a dwelling unit which is also utilized for residential purposes. The terms "Family Contractor's Business" shall mean a business operated at or from a residence which employs only members of the resident's family, and which may include the storage of contractor's equipment or supplies at the residence of one of the family members engaged in the business.

**4.06.060 ZONING ENFORCEMENT.** The administration of the General Business License under the provisions of this Chapter shall assist the City Manager and the Community Services Director or any successor City division to enforce the provisions of the City of Elk Grove Zoning Code, as those provisions may hereafter be amended, and the terms, conditions and requirements of rezoning ordinances and any and all contracts associated therewith, variances, conditional use permits and other legislative and administrative approvals issued pursuant to the Zoning Code.

**4.06.065 NUMBER OF LICENSES.** In instances where space within an office building, shopping center, warehouse, department store or other structure or property is leased for business or commercial use, each tenant of the premises operating an enterprise required to be licensed hereunder shall apply for and obtain a General Business License.

When a particular enterprise has more than one fixed location or branch within the City, a separate General Business License shall be required for each location or branch.

Certain types of persons required to obtain General Business Licenses hereunder are also required to obtain a Special Business License or other license or permit under this or other Titles. The issuance of a Special Business License or other license or permit for an enterprise shall not be deemed to excuse the requirement that a General Business License be obtained, and the provisions of this Chapter are declared to be independently applicable to each enterprise to which the provisions of this Chapter apply.

The provisions of this Chapter shall also be deemed to be independently applicable to any enterprise required to be licensed hereunder which is also required by any State or other law to obtain a license, permit or certificate.

**4.06.070 APPLICATION FILING.** All applications for General Business Licenses shall be filed in the office of the City Manager, or in the office of his or her designee.

**4.06.075 APPLICATION CONTENTS.** The application for a General Business License shall be filed on a form and contain such information as is prescribed by the City Manager, including the following:

- (a) The name and address of the person or entity who owns the enterprise for which application is made;
- (b) A complete description of the enterprise to be conducted at the location for which the license is sought;
- (c) The address of the location for which the license is sought;
- (d) The assessor's parcel number;
- (e) The number of employees reporting to and/or located at the business site. If the business is seasonal, the highest and lowest number of employees reporting to and/or located at the business site with the corresponding month or months of the year for each period;
- (f) The number of electronic, mechanical and video games to be operated in the business;
- (g) Whether or not the applicant or enterprise is a contractor, as that term is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, and if such contractor is licensed as a contractor by the State of California, Contractors' State License Board, with a license in good standing, and the License Number and Class thereof; and,
- (h) Such other and further information as is deemed necessary to enforce the City of Elk Grove Zoning Ordinance, and administer the provisions of this Chapter.

The City Manager may provide an option for businesses to initially apply and pay business license fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a business license application electronically, the applicant consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the application was submitted with a manual signature consistent with Civil Code section 1633.1 et seq.

**4.06.080 INVESTIGATION.** The City Manager shall refer the application for review by:

- (a) The City Manager and the Community Services Director; and

- (b) The Chief of Police, if the enterprise requires a Special Business License.

The City Manager and Community Services Director shall examine the application for the purpose of determining whether the enterprise complies with the City of Elk Grove Zoning Ordinance, and whether any conditions should be attached to issuance of the License. Inspection of the site shall be conducted as necessary to determine applicability, compliance with, or the adequacy of corrections to achieve compliance with such laws.

**4.06.085 ISSUANCE.** The City Manager shall act upon an application not later than forty-five (45) days after the date a complete application is validly filed except where Section 4.06.206 of this Chapter is applicable. An application is complete and deemed validly filed when all information requested on the application form is provided by the applicant and any associated fees paid. The City Manager shall act upon the application by issuing the license unless one of the following occurs:

- (a) The City Manager, the City Manager, or the Community Services Director find in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit determinations respecting compliance with the City of Elk Grove Zoning Ordinance;

- (b) The City Manager or the Community Services Director finds in writing that the enterprise at the location proposed would violate the City of Elk Grove Zoning Ordinance, and that such violation or violations must be corrected in advance of the conduct of the enterprise; or

- (c) With respect to an enterprise required by Chapter 4.10 to obtain a Special Business License, the Special Business License has not been issued; or,

- (d) Pursuant to Business and Professions Code Section 16100 subdivision (c), when the applicant or enterprise is a “contractor”, as that term is defined in Section 7026, et seq., of the Business and Professions Code, and the as determined by the City Manager the applicant has failed to provide sufficient proof that he or she holds a State of California Contractor's License presently valid, effective, not suspended, and in good standing.

Unless issued to a Temporary Concession not operated from a fixed location, a General Business License issued under this Chapter shall authorize the holder thereof to operate or conduct a business enterprise only on such property the address of which is stated on the license. In the event the licensee ceases to use the property for the business, activity or enterprise listed, the License shall have no further force or effect and becomes void.

**4.06.090 CONDITIONS.** Upon recommendation by the City Manager or the Community Services Director, the City Manager may issue the General Business License upon such conditions as are necessary to ensure safety and prevent the enterprise from disturbing the peace and tranquility of the neighborhood in which it is located. Such conditions may include the following:

(a) With respect to minor and correctable violations of the City of Elk Grove Zoning Ordinance, that the holder of the License correct the violation within a prescribed period of time;

(b) Limitations upon hours or days of operation; when required in order to prevent disturbance of the peace and quiet of a neighborhood caused by the enterprise or the patrons thereof at a particular location;

(c) The provision of adequate off-street parking to prevent the enterprise from inconveniencing neighbors or causing traffic disruptions at a particular location;

(d) The installation of on-site improvements required to prevent operation of the enterprise from disturbing its neighbors at a particular location; or

(e) Other conditions related to operations or improvements demonstrated under the particular circumstances to be necessary in order to prevent hazards, disturbance of the peace, quiet or safety of the neighborhood or other nuisance.

Such conditions may be imposed at the time a General Business License is initially issued, upon renewal of the License, or at any time during the term of the License.

**4.06.095 PROCEDURE FOR IMPOSITION.** Any condition imposed pursuant to the provisions of Section 4.06.090, together with the written reasons therefor, whether established at the time of issuance, at the time of renewal or during the term of a general business license, shall be served upon the applicant or holder in a written notice.

The conditions shall become effective fifteen (15) days following the date of service of the notice thereof except if an appeal is filed within the time and in the manner prescribed, the conditions shall not become effective until the appeal is finally determined.

**4.06.100 CONTENTS AND DISPLAY OF LICENSES.** The General Business License shall include but not be limited to a complete description of the enterprise for which it is issued, the date of issuance and date of expiration, and a description of any and all conditions upon which the license has been issued. The License shall be conspicuously posted at the place of business in full public view.

**4.06.105 APPLICATION FOR RENEWAL.** Not later than forty-five (45) days prior to expiration of the term of a General Business License, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be on such a form, and include such information, as prescribed and required by the City Manager, including the following:

(a) A description of any change in the type of business conducted on the premises since the last License was issued; and

(b) A description of any and all improvements which the applicant has made upon the premises since the last License was issued.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the immediately preceding License. The City Manager may provide an option for businesses to renew and pay business license fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a business license renewal electronically, the Licensee consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the renewal was submitted with a manual signature consistent with Civil Code section 1633.1 et seq.

**4.06.110 PROCESSING AND ISSUANCE - RENEWAL.** An application for renewal shall be investigated and processed in the manner prescribed by Section 4.06.080. The City Manager shall act upon the application for renewal not later than thirty days after the date a valid application is filed unless the applicant has filed with him or her, before expiration of the 30 days, written notice of a request for extension of the time within which action is taken on the application for renewal by the City Manager on grounds that such additional time is required by the applicant to prepare and present plans or other information, obtain zoning variances or other permits, remodel the premises or make other corrections necessary to comply with the City of Elk Grove Zoning Ordinance or for other similar reasons. The City Manager may, pursuant to such a notice request, extend the time within which action is required by the City Manager on the application to such a period as the he or she deems reasonable and appropriate to accomplish the corrections. The City Manager shall act upon the application for renewal within the 30 day period, or the extended period of time, as applicable, by issuing the renewed license unless:

(a) One or more of the conditions identified in Section 4.06.085 apply; or,

(b) The City Manager finds in writing that one or more conditions applicable to the preceding license at the same location have been violated, and it is determined pursuant to the provisions of Section 4.06.090 that such conditions shall also be applicable to the renewed license.

With respect to any application for renewal which is filed on or before the date of expiration of the immediately preceding License, the City Manager shall extend the term of the immediately preceding License, without charge, during the period of any investigation required in order to determine whether the License should be renewed.

**4.06.115 UNDETECTED VIOLATIONS.** Under Sections 4.06.085 and 4.06.110 the City Manager is required to issue new and renewed General Business Licenses in the absence of any identified deficiencies or violations of laws. Such action is required within limited time periods in order to promote expeditious processing of applications and reduce damaging delays to applicants in awaiting administrative determinations.

The mandates of Sections 4.06.085 and 4.06.110 may result in the issuance of General Business Licenses notwithstanding the existence of violations of the laws sought to be enforced. Therefore, neither the issuance nor receipt of a General Business License shall constitute evidence of compliance with the City of Elk Grove Zoning Ordinance, or, as required pursuant to Section 16100 of the Business and Professions Code, evidence of compliance with the licensing provisions of contractors, as contractors are defined in Business and Professions Code section 7026, or valid licensure by the Contractors State License Board, or a representation or assurance to the recipient upon which reliance is authorized or intended by the City that the enterprise for which the License is issued or the property or premises upon or in which it is housed complies with such laws.

## **Article 2 Denial and Revocation**

**4.06.200 GROUNDS FOR DENIAL.** The City Manager shall deny an initial application for or application for renewal of a General Business License if any written finding of Section 4.06.085 applies.

The City Manager shall also deny an application for renewal upon a finding that one or more conditions applicable to the preceding License at the same location have been violated, if, pursuant to the provisions of Section 4.06.090, it is determined that such conditions should also be applicable to the renewed License.

**4.06.205 METHOD OF DENIAL.** A denial of an initial application or application for renewal of a General Business License by the City Manager shall be in writing, with the reasons stated therefor. Written notice of the denial, together with a copy of the provisions of this Chapter, shall be served upon the applicant pursuant to the provisions of Section 4.02.090.

Denial of an initial application or application for renewal of a General Business License shall relate solely to the location at which the enterprise is proposed, and shall not affect the conduct of such enterprise at another location within the City.

With respect to denial of an application for renewal or termination, the immediately preceding General Business License shall be deemed to be in full force and effect for a period of fifteen days following the date of service upon the applicant of the notice of denial or of termination. In the event the applicant files an appeal from the denial or termination in the manner and within the time prescribed by Section 4.06.210, the immediately preceding General Business License shall continue in full force and effect during the pendency of the appeal, until the date of final decision by the appellate authority.

**4.06.206 REQUEST FOR EXTENSION.** The denial of an initial application or application for renewal of a General Business License shall be set aside by the City Manager if the applicant has filed with the him or her a timely written notice of a request for extension of time within which action is taken on grounds that additional time is

required to prepare and present plans or other information, obtain zoning variances or other permits, remodel the premises or make other corrections for the purpose of remedying violations of the City of Elk Grove Zoning Ordinance or for other similar reasons. Such written request for extension shall be filed with the City Manager not later than fifteen days after the date of service of the notice of denial prescribed in Section 4.06.205. The City Manager shall by regulation establish reasonable periods of time to grant a licensee or applicant extension in order for the licensee or applicant to complete the tasks enumerated above in this section.

If the period of extension elapses without correction of the deficiencies for which the extension was granted, within fifteen (15) days from the last day of that period of extension, the City Manager shall deny the application pursuant to the procedure set forth in Section 4.06.205. If the deficiency for which the extension was granted is corrected, the City Manager shall issue the General Business License no later than fifteen (15) days from the last day of the period of extension as provided in Section 4.06.085 or Section 4.06.110.

**4.06.210 APPEALS.** The holder of a General Business License or applicant therefor may file an appeal from the following:

- (a) The denial of an initial application for or application for renewal of a General Business License pursuant to the provisions of Section 4.06.200;
- (b) The imposition of conditions at the time of issuance of an initial or renewed General Business License or during the term thereof, pursuant to the provisions of Section 4.06.095; or
- (c) The termination of a General Business License as a result of a change in ownership or a business function pursuant to the provisions of Sections 4.02.075 or 4.02.076.

Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the City Manager not later than fifteen days after the date of service of the notices prescribed by Sections 4.02.075, 4.02.076, 4.06.095, or 4.06.205, as the case may be. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which complaint is made shall be deemed to have been waived.

**4.06.215 APPEAL HEARING.** Not later than twenty (20) days following the date of filing an appeal within the time and in the manner prescribed by Section 4.06.210, the Hearing Authority shall conduct a hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date and place of the hearing shall be served upon the appellant not later than ten (10) days preceding the date of the hearing.

During the hearing, the burden of proof shall be upon the City Manager. The provisions of the California Administrative Procedure Act (commencing at Section 11500 of the Government Code) shall not be applicable to such hearings; nor shall

formal rules of evidence in civil or criminal judicial proceedings be applicable. At the conclusion of the hearing, the Hearing Authority shall prepare a written decision which either shall grant or deny the appeal, and contains findings of fact and conclusions of law. The written decision, including a copy thereof, shall be filed with the City Manager and served by the Hearing Authority upon the appellant not later than ten (10) days following the date on which the hearing is closed.

**4.06.220 FINALITY OF DETERMINATION.** The decision by the Hearing Authority shall become final upon the date of filing and service with respect to any appeal from either denial of an initial application for a General Business License pursuant to Section 4.06.200 or termination of a License as a result of a change in ownership or change in function pursuant to Section 4.02.075 or 4.02.076.

With respect to an appeal from either denial of an application for renewal of a General Business License pursuant to Section 4.06.200 or from the imposition of conditions upon a License pursuant to Section 4.06.095, the decision by the Hearing Authority shall become final fifteen days following the filing and service thereof unless review of the decision by the City Council is requested either by the City Manager or appellant. Such review may be requested by filing with the Clerk of the City Council a written request for review not later than fifteen calendar days following the date of filing and service of the Hearing Authority's decision. The request for review shall state in detail the reasons therefor and error alleged in the Hearing Authority's decision, and shall have attached thereto a copy of the decision.

**4.06.225 REVIEW BY CITY COUNCIL.** Upon receipt by the Clerk of the City Council of the request for review, a hearing shall be scheduled before the City Council within sixty (60) days. The City Council shall be authorized to deny the introduction of evidence and decide the matter after oral argument presented during the hearing, or to admit supplementary evidence with respect to challenges or particular findings, or reject the findings and conclusions and conduct a de novo hearing. The determination by the City Council granting or denying the appeal shall be final, and shall be accompanied by findings of fact and conclusions of law, which may consist of an adoption by reference of those by the Hearing Authority. The decision of the City Council shall become final upon its filing with the Clerk of the City Council and service upon the City Manager and the applicant or licensee pursuant to Section 4.02.090 hereof. Pursuant to the granting of an appeal, the City Council shall be authorized to order the issuance, renewal or continuance of a license upon such terms and conditions as in the discretion of the City Council are deemed to be necessary and appropriate.

**4.06.230 GROUNDS FOR REVOCATION.** Any General Business License issued pursuant to this Chapter may be revoked during its term upon one or more of the following grounds:

(a) That the enterprise is operated in a manner or is housed on premises or within a building which violates or is in violation of City of Elk Grove Zoning Ordinance;

(b) That the holder of the License has violated one or more conditions upon which the License has been issued; or,

(c) That the enterprise is that of contractor as defined in Section 7026, et seq., of the Business and Professions Code, and the City Manager finds that the licensee possesses no State of California Contractor's License presently valid, effective, not suspended, and in good standing .

**4.06.235 METHOD OF REVOCATION.** The City Manager may revoke a General Business License by issuing a written notice of revocation, stating the reasons therefor, and serving same, together with a copy of the provisions of this Chapter, upon the holder of the License. The revocation shall become effective fifteen days after the date of service, unless the holder of the License files an appeal within the time and in accordance with the provisions of Section 4.06.240. If such an appeal is filed, the revocation shall not become effective until a final decision on the appeal is issued.

**4.06.240 APPEAL OF REVOCATION.** Within fifteen days following the date on which the notice of revocation is served, the holder of the License may file a written appeal with the City Manager, stating the reasons therefor. If such an appeal is not filed within the time and in the manner prescribed above, the right to review of the revocation shall be deemed to have been waived.

A hearing on such appeal shall be conducted by the Hearing Authority. Notice of the time, date and place of the hearing shall be served upon the appellant not later than ten (10) days before the commencement thereof. The burden of proof shall be upon the City Manager. Except as provided herein to the contrary, the hearing shall be scheduled and conducted in the manner and a decision shall be issued and served as prescribed by Section 4.06.215 and Section 4.06.220. The decision shall become final as prescribed, and be subject to review by the City Council at the request of either the City Manager or appellant, pursuant to the procedure for review prescribed by Section 4.06.220.

Any review by the City Council shall be scheduled, conducted in the manner, determined, and have the effect prescribed by Section 4.06.225. A hearing shall be held promptly but not later than sixty (60) days from the date of filing of a request for review with the Clerk of the City Council.

**4.06.245 EFFECT OF REVOCATION.** With respect to any enterprise required by the provisions of Chapter 4.10 of this Title to possess a Special Business License, revocation of the Special Business License shall automatically and without notice also revoke each General Business License issued for the same business at each location at which the enterprise is located.

With the foregoing exception, revocation of a General Business License shall terminate only the privilege of doing business at the location to which the License relates.

**4.06.250 OTHER PROCEDURES.** Any administrative remedy, including an appeal procedure, applicable to the interpretation, administration or enforcement of this Title and the City of Elk Grove Zoning Ordinance shall be exhausted. The failure to exhaust such a remedy shall constitute grounds for denial of an appeal under this Article.

**4.06.255 JUDICIAL REVIEW OF ADMINISTRATIVE DETERMINATION.**

An applicant for, or holder of, a General Business License may seek immediate judicial review in any court of competent jurisdiction as provided by law of any determination rendered by the City Council pursuant to Section 4.06.225 hereof upon such determination becoming final.

## **CHAPTER 4.10**

### **SPECIAL BUSINESS LICENSES AND EMPLOYEE PERMITS**

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**Article 1**  
**Applicability and Issuance**

**4.10.000 PURPOSES.** There are certain types of enterprises which require special investigation, review and regulation in order to ensure that the public health, safety and welfare is adequately protected. The necessity to conduct such investigation, review and regulation arises for reasons which include, but are not necessarily limited to, the following:

(a) the tendency of certain types of enterprises to engage, whether intentionally or unintentionally, in the promotion of crime, whether through the sale of stolen goods or otherwise;

(b) the tendency of certain types of enterprises to be placed where criminal activity occurs either by virtue of the type of clientele attracted or for other reasons;

(c) the fact that patrons of particular types of enterprises are vulnerable to fraudulent charging or other practices either because of the nature of the business, the type of service or merchandise offered, the circumstances under which the merchandise or service is purchased, or for other reasons;

(d) the fact that certain types of enterprises create health or safety risks which require special regulation; and

(e) the fact that certain types of enterprises require access to private property, particularly residential property, or frequent residential neighborhoods, generating high risks to the safety of persons and property.

Other types of enterprises provide services essential to the health, safety or welfare of the community, and require special regulation in order to insure delivery of such services in a volume, manner and quality sufficient to insure protection of the community.

The purposes of this Chapter are to establish special regulations applicable to the types of enterprises regulated hereunder, and to regulate such enterprises through a Special Business Licensing procedure in order to protect and safeguard the health, safety and welfare of the residents within the City.

**4.10.005 LICENSE REQUIRED.** No person shall, unless under and by authority of a valid unexpired and unrevoked Special Business License, conduct or operate within the City, whether singularly or in connection with another type of enterprise, the following:

(a) Any enterprise or activity for which a Special Business License is required by Chapter 4.15 through 4.50, inclusive;

(b) Antique Dealers - in firearms, jewelry, art objects, furniture or other valuables;

- (c) Automobile Dismantlers - and marketers of used parts for automobiles;
- (d) Automobile Repairs - when the person or firm makes calls at the home or business of the customer to make repairs;
- (e) Circuses and Carnivals - including the maintenance of animals for display to, riding by or petting by children;
- (f) Sales of Concealable Firearms - including gunpowder;
- (g) Home Repair Services - consisting of services related to the repair or maintenance of single family residential dwellings, mobilehomes, or gardens by persons who are not licensed to perform such services by the State of California, including businesses offering energy-saving appliances, equipment, or services, whether in connection with solar, wind or other power;
- (h) Purchase or Sale of Metals - including precious and scrap metals;
- (i) Auto Towing - consisting of persons who engage in the business of towing automobiles which require repair, are abandoned on public rights of way, or are parked illegally;
- (j) Repossession or Storage of Automobiles - or any other thing of value;
- (k) The Operator of Each Booth - in a bazaar, flea market, farmer's market, or other similar type of auction established for the purpose of selling merchandise, including food, for private gain;
- (l) Private Security Companies;
- (m) Tree Trimmers;
- (n) Motorcycle Sales - including the sale of new and used parts;
- (o) Wrecking Yards - including automobile dismantling and the buying and selling of automobiles of scrap metal or parts;
- (p) Dating and Introduction Services;
- (q) Swimming Pool Cleaning Services;
- (s) Janitorial, Maid, or Carpet Cleaning Services;
- (t) Pool Halls - one pool table or more is a pool hall;
- (u) Itinerant Food Vendors;
- (v) Movie and Television Productions;

(w) Dance Clubs, Halls, and Public Dances.

A person shall be deemed to operate or conduct an enterprise or activity and violate this Section and, if applicable, corresponding prohibitions in Chapters 4.15 through 4.50, inclusive, if the person, without a Special Business License in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for or in charge of the enterprise or activity for which the License is required.

Notwithstanding the foregoing businesses required to obtain a Special Business License, the City will accept on a reciprocal basis a Special Business License or Employee Permit from the County of Sacramento for businesses that are based outside of the City but deliver mobile-based business services to the residents of the City including, but not limited to, Carpet Cleaners, Janitorial or Maid Service, Lawn Care or Tree Trimming, Auto Towing and Repossession, Mobile Auto Repair, Taxicabs, Massage, Private Security, and Home Repair.

**4.10.010 NUMBER OF LICENSES REQUIRED.** If a person conducts or operates more than one of the types of enterprises described by Section 4.10.005, a separate Special Business License shall be required for each type of enterprise which the person operates or conducts.

A person who operates or conducts more than one store, office, outlet or other branch of a particular type of enterprise described by Section 4.10.005 shall not be required to obtain more than one Special Business License for that type of enterprise, regardless of the number of stores, offices, outlets or branches operated or conducted.

**4.10.015 BUSINESS LOCATION.** Except as otherwise expressly provided, a Special Business License shall be required for each particular type of enterprise described by Section 4.10.005 which is operated or conducted within the City, whether or not the enterprise is operated at a fixed location within the City.

An enterprise shall be deemed to be operated or conducted within the City if representatives of the enterprise offer or sell goods or services or provide services within the City, whether the enterprise is operated from a fixed location within another jurisdiction, and whether the enterprise has a fixed location at all.

**4.10.020 SPECIAL REGULATIONS.** Certain of the types of enterprises described by Section 4.10.005 are subjected to special regulations governing their operations. These regulations are set forth in Chapters 4.15 through 4.50. Except as otherwise provided, the provisions of this Chapter shall be fully applicable to the enterprises identified by Chapters 4.15 through 4.50.

The provisions of this Chapter shall be independently applicable to any enterprise described by Section 4.10.005 which are also regulated under the provisions of Chapter 4.06. The issuance of a General Business License to an enterprise described by Section 4.10.005 shall not excuse the enterprise from the requirement that a Special Business License be obtained pursuant to the provisions of this Chapter. The

issuance of a Special Business License shall not be deemed to relieve the holders of a requirement, under Chapter 4.06, that a General Business License be obtained. A Special Business License shall not be deemed to authorize operation of an enterprise business at a particular location, if a General Business License is required and there is no such License in full force and effect.

**4.10.025 APPLICATION FILING.** All applications for Special Business Licenses shall be filed with the City Manager. The City Manager shall receive any fee required for the application, assure that the application is complete, and refer the application to the Chief of Police for processing, investigation, review and action. The City Manager shall verify pursuant to Section 16100 of the Business and Professions Code that before the City issues a special business license to an enterprise as a “contractor,” as that term is defined in Section 7026, Article 2, Chapter 9, Division 3 of the Business and Professions Code, that the applicant or licensee is licensed by the State of California, Contractors' State License Board.

**4.10.030 APPLICATION CONTENTS.** The application for a Special Business License shall be filed on a form and contain such information as is prescribed by the City Manager and the Chief of Police, including the following:

- (a) A complete description of the type, nature and extent of the enterprise to be conducted and for which application is made;
- (b) The address of each location from which the enterprise for which application is made will be operated;
- (c) The name and address of the person who owns the enterprise for which application is made;
- (d) Such information as is necessary to permit the determinations prescribed by Section 4.10.040(c);
- (e) Identification of each type and location of enterprise conducted by the owner within the City;
- (f) Whether or not the applicant or enterprise is a “contractor”, as that term is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, and if such contractor is licensed as a contractor by the State of California, Contractors' State License Board, with a license in good standing, and the License Number and Class thereof;
- (g) Such other and further information as is deemed necessary to administer the provisions of this Chapter; and
- (h) An affirmation under penalty of perjury that the information contained in the application is true and correct.

**4.10.035 INVESTIGATION.** The Chief of Police shall conduct such investigation of the background of the owner or owners and persons managing or supervising the enterprise as is deemed appropriate. The Chief of Police shall evaluate each application to determine whether the operation of the enterprise would involve an unreasonable risk to the health, safety or general welfare of the public. Those persons described by Section 4.10.040(c) shall be fingerprinted and photographed; and consideration shall be given to the criminal record, if any, and character of the owner and other persons connected with the enterprise, the business responsibility of the firm and the owner, and the manner in which the owner intends to conduct the enterprise.

**4.10.040 ISSUANCE.** The Chief of Police shall issue the Special Business License within ninety (90) days after the date of application unless either

(a) The Chief of Police finds in writing that the applicant fails to provide information in connection with the application requested by the Chief of Police as a basis for enabling the Chief of Police to make his or her determination;

(b) The Chief of Police finds in writing that any of the material statements made in the application or any information submitted supplementary thereto is incorrect or untrue;

(c) The Chief of Police finds in writing that any of the following persons has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would not conduct the enterprise in a law abiding manner or in a manner which does not subject patrons of the enterprise to risk of harm or criminal, deceitful or otherwise unethical practices:

(1) A general or limited partner of a partnership which possesses an ownership interest in the enterprise;

(2) A joint venturer in a joint venture which possesses an ownership interest in the enterprise and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this Section would apply if the partnership or corporation were the sole owner of the enterprise;

(3) A sole proprietor when the enterprise is a sole proprietorship;

(4) An owner of more than one-half of one percent of the voting shares of stock when a commercial corporation possesses an ownership in the enterprise;

(5) A director, when either a commercial or non-profit corporation possesses an ownership in the enterprise;

(6) A member of a management committee when a partnership or joint venture possesses an ownership interest in the enterprise;

(7) A member of a governing body or other Board or committee to which management is entrusted, when an unincorporated association possesses an ownership interest in the enterprise; or,

(8) A president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm possessing an ownership interest in the enterprise.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.01 et seq.;

(d) The Chief of Police makes any finding in writing authorized as a basis for denial of the License by Chapters 4.15 through 4.50, or finds in writing that the applicant does not satisfy any requirement applicable to the enterprise for which application is made established by Chapters 4.15 through 4.50; or,

(e) The Chief of Police finds in writing that when the applicant or enterprise is a "contractor," as that term "contractor" is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, the applicant has failed to provide sufficient proof, as determined by the Chief of Police, that the applicant is licensed to engage in the business as a contractor, by the State of California, Contractors' State License Board, and that the license is presently valid, effective, not suspended, and in good standing.

If an application does not show on its face a basis for denial, the Chief of Police may, in his or her sole discretion, issue a Temporary Special Business License for a period not to exceed ninety days, pending processing and investigation of the application and final determination thereof.

**4.10.045 CONDITIONS.** The Chief of Police may issue a Special Business License upon such conditions relating to method or manner of operation of the enterprise as he or she deems necessary to adequately protect members of the public in their patronage or dealings with the enterprise, or to reduce the incidence, detect the commission of, or identify perpetrators of crime. Such conditions may be imposed at the time a Special Business License is initially issued, upon renewal of the License, or at any time during the term of the License.

Any condition imposed pursuant to the provisions of this Section, whether established at the time of issuance, at the time of renewal or during the term of a Special Business License, shall be embodied, together with the reasons therefor, in a

written notice which is served upon the applicant or holder. The condition shall become effective fifteen days following the date of service of the notice thereof except if an appeal therefrom is filed within the time and in the manner prescribed, the condition shall not become effective until the appeal is finally determined.

**4.10.050 CONTENT AND DISPLAY OF LICENSES.** The Special Business License shall contain but not be limited to a complete description of the enterprise, authorized by the License, the name of the enterprise so licensed, the name and address of the owner or owners of the enterprise, the address of each location of the business covered by the License, and any conditions upon which the License is issued. The License shall be conspicuously posted at each location of the enterprise in full public view.

**4.10.055 CHANGES IN STATUS.** During the term of any Special Business License issued hereunder, in addition to the information required by Section 4.02.070, the holder of the License shall file in writing with the Chief of Police any changes in or new locations of the enterprise so licensed. The Chief of Police shall issue an amended License which shows any changed or new locations of the enterprise so licensed.

**4.10.060 RENEWAL OF LICENSES.** Not later than forty-five (45) days prior to expiration of the term of a Special Business License, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the City Manager and the Chief of Police.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding License. The Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate. The Chief of Police shall extend the term of the immediately preceding License during the period of any investigation or examination required in order to determine whether the License should be issued.

The Chief of Police shall act upon the application for renewal not later than thirty (30) days after the date a valid application is filed. The renewed License shall be issued unless:

(a) The Chief of Police finds in writing that one or more of the conditions identified in Section 4.10.040 apply;

(b) The Chief of Police finds in writing that the Licensee has violated any term, condition, requirement, or prohibition imposed by this Chapter, Chapter 4.02, or Chapters 4.15 through 4.58 of Title 4 which are applicable to the License or the holder, or any administrative regulations promulgated thereunder, or any other applicable law; or,

(c) The Chief of Police finds in writing that one or more conditions applicable to the preceding License have been violated.

**4.10.065 EMPLOYEE PERMITS.** With respect to certain types of enterprises described by Section 4.10.005, protection of the public health, safety and welfare require that personnel retained by the enterprises to perform specified functions or duties be of good moral character, not have been convicted of particular criminal offenses, and, in certain instances, possess minimum skills necessary to insure public safety. Personnel required to possess such minimum qualifications are identified by the provisions of Chapters 4.15 through 4.50. The procedures set forth in this Chapter relating to Employee Permits shall be applicable to all personnel required by Chapter 4.15 through 4.50 to possess minimum qualifications which are subject to review by the Chief of Police.

**4.10.070 PERMIT REQUIRED.** Whenever under the provisions of Chapters 4.15 through 4.50, personnel of a particular enterprise are required to meet minimum qualifications or possess a permit or license, it shall be unlawful for a person to perform the duties or functions specified and unlawful for the holder of a Special Business License to permit the person to perform such duties or functions unless the person has first applied for and obtained an Employee's Permit.

**4.10.075 APPLICATION FILING.** Applications for an Employee's Permit shall be filed with the City Manager. The City Manager shall receive any fee required for the application, assure that the application is complete, and refer the application to the Chief of Police for processing, investigation, review and action.

**4.10.080 APPLICATION CONTENTS.** The application for an Employee's Permit shall be filed on a form and contain such information as is prescribed by the Chief of Police, including the following:

- (a) The name, current residential address and e-mail address, if any, of the applicant;
- (b) The name and address of the business which has retained the services of the applicant for which the Permit is required; and
- (c) A description of the duties or function which the applicant is to perform for the business.

**4.10.085 INVESTIGATION.** The Chief of Police shall conduct such investigation of the background of the applicant for an Employee's Permit as is necessary in order to determine whether the minimum qualifications which have been prescribed are satisfied and as otherwise deemed appropriate. Such investigation shall include the fingerprinting and photographing of the applicant.

**4.10.090 ISSUANCE OF PERMIT.** Except as hereinafter provided, the Chief of Police shall issue the Employee's Permit within thirty (30) days after the date the application is filed unless he or she finds in writing that the applicant is disqualified for the Permit under regulations prescribed by Chapters 4.15 through 4.50. If the Chief of Police's investigation has not been completed by the date issuance of the Permit is required, but that portion of the investigation which has been completed has disclosed

no basis for denial of the Permit, the Chief of Police shall issue a Temporary Employee's Permit, the term of which shall extend no longer than one hundred twenty (120) days from the date of issuance. A Temporary Employee's Permit shall expire upon either the date of expiration of its term, the date of issuance of an Employee's Permit, or the date of service of notice that an Employee's Permit has been denied. While in force and effect, a Temporary Employee's Permit shall otherwise be accorded the same status as an Employee's Permit.

**4.10.095 INCIDENTS OF EMPLOYEE PERMITS.** An Employee's Permit shall not be transferable or assignable from one person to another. The Permit shall contain such information as the Chief of Police requires, including the permit holder's name and address, the name and address of the enterprise or enterprises retaining his or her services for which the Permit is issued, the expiration date of the Permit, a description of the duties or functions which the Permit authorizes to be performed, and a physical description of the Permit holder.

The holder of an Employee Permit shall carry same on his or her person at all times services authorized by the Permit are being performed, and shall display the Permit for inspection upon request by any peace officer.

Applications for renewal shall be filed, processed and Permits issued in the manner and pursuant to the standards and procedures prescribed by Sections 4.10.075 through 4.10.090.

## **Article 2 Denial and Revocation**

**4.10.100 GROUNDS FOR DENIAL - LICENSES.** The Chief of Police shall deny an initial application for a Special Business License if written findings in Section 4.10.040 are made.

The Chief of Police shall deny an application for renewal of a Special Business License if any of the written findings described by Section 4.10.060 are made.

**4.10.105 GROUNDS FOR DENIAL - PERMITS.** The Chief of Police may deny an initial application for or application for renewal of an Employee Permit if the Chief of Police finds in writing that the applicant therefor is disqualified for the Permit under the provisions of Chapters 4.15 through 4.50.

**4.10.110 METHOD OF DENIAL.** A denial of an initial application or application for renewal of either a Special Business License or Employee Permit by the Chief of Police shall be in writing, with the reasons stated therefor. Written notice of the denial, together with a copy of the provisions of this Chapter and any provisions of Chapters 4.15 through 4.50 which are applicable to the License or Permit, shall be served upon the applicant pursuant to the provisions of Section 4.02.080.

Denial of an initial application or application for renewal of a Special Business License shall prohibit operation of the enterprise at any location within the City.

With respect to denial of an application for renewal of a Special Business License or Employee Permit or termination of a Special Business License pursuant to Section 4.02.070, the License immediately preceding Special Business License or the Permit immediately preceding the Employee Permit shall be deemed to be in full force and effect for a period of fifteen days following the date of service upon the applicant of the notice of denial or termination. In the event the applicant files an appeal from the denial or termination in the manner and within the time prescribed by Section 4.10.115, the immediately preceding Special Business License or Employee Permit shall continue in full force and effect during the pendency of the appeal, until the date of final decision by the appellate authority.

**4.10.115 APPEALS.** The holder of a Special Business License or Employee Permit or applicant therefor may file an appeal from the following:

(a) The denial of an initial application for or application for renewal of a Special Business License or Employee Permit pursuant to the provisions of Sections 4.10.100 or 4.10.105;

(b) The imposition of conditions at the time of issuance of an initial or renewed Special Business License or during the term thereof, pursuant to the provisions of Section 4.10.045; or

(c) The termination of a Special Business License as a result of a change in ownership, pursuant to the provisions of Section 4.02.070.

Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the Chief of Police not later than fifteen days after the date of service by the Chief of Police of the notices prescribed by Sections 4.02.070, 4.10.045 or 4.10.110, as the case may be. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which complaint is made shall be deemed to have been waived.

**4.10.120 APPEAL HEARING.** Not later than thirty (30) days following the date of filing an appeal within the time and in the manner prescribed by Section 4.10.115, the Hearing Authority shall conduct a hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date and place of the hearing shall be served upon the applicant not later than ten (10) days preceding the date of the hearing.

During the hearing, the burden of proof shall be upon the Chief of Police. The provisions of the California Administrative Procedure Act (commencing at Section 11500 of the Government Code) shall not be applicable to such hearing; nor shall formal rules of evidence in civil or criminal judicial proceedings be applicable. At the conclusion of the hearing, the Hearing Authority shall prepare a written decision which either grants or denies the appeal, and contains findings of fact and conclusions. Notice of the written decision, including a copy thereof, shall be filed with the Chief of Police

and served upon the appellant not later than ten (10) days following the date on which the hearing is closed.

**4.10.125 FINALITY OF DETERMINATION.** A decision by the Hearing Authority pursuant to Section 4.10.120 shall become final fifteen (15) days following the filing and service thereof unless review of the decision by the City Council is requested either by the Chief of Police or appellant. Such review may be requested by filing with the Clerk of the City Council a written request for review not later than fifteen (15) calendar days following the date of service of the Hearing Authority's decision. The request for review shall state in detail the reasons therefor and error alleged in the Hearing Authority's decision, and shall have attached thereto a copy of the decision.

**4.10.130 REVIEW BY CITY COUNCIL.** Upon receipt by the Clerk of the request for review, a hearing shall be scheduled promptly before the City Council but no later than sixty (60) calendar days following the date of filing of the notice of appeal. The City Council shall be authorized to deny the introduction of evidence and decide the matter after oral argument presented during the hearing, or to admit supplementary evidence with respect to challenges or particular findings, or reject the findings and conclusions and conduct a de novo hearing. The determination by the City Council granting or denying the appeal shall be final, and shall be accompanied by findings of fact and conclusions, which may consist of an adoption by reference of those by the Hearing Authority. Pursuant to granting an appeal, the City Council shall be authorized to order the issuance of a license or permit upon such terms and conditions as in the discretion of the City Council are deemed to be necessary and appropriate.

**4.10.135 GROUNDS FOR REVOCATION AND SUSPENSION - LICENSES.** Any Special Business License issued pursuant to this Chapter may be suspended for not longer than one year or revoked during its term if the Chief of Police finds in writing that one or more of the following grounds exist:

(a) That information in the latest application was untrue as provided in Section 4.10.040(b);

(b) That the Chief of Police has acquired information supporting a finding that one of the persons listed in Section 4.10.040(c) has a new criminal conviction or a criminal conviction previously undisclosed;

(c) That the holder of the License has violated one or more conditions imposed pursuant to Section 4.10.045; or

(d) That the holder of the License has violated any term, condition or requirement or prohibition established by this Chapter, Chapter 4.02, or Chapters 4.15 through 4.54 which are applicable to the License or the holder, or any administrative regulation promulgated thereunder, or any other applicable law.

**4.10.140 GROUNDS FOR REVOCATION AND SUSPENSION - PERMITS.** Any Employee Permit issued pursuant to this Chapter may be suspended for not more

than one year or revoked during its term if the Chief of Police finds in writing the existence of grounds for revocation prescribed by Chapters 4.15 through 4.50.

**4.10.145 METHOD OF REVOCATION OR SUSPENSION.** The Chief of Police may commence proceedings for the suspension or revocation of a Special Business License or Employee Permit by issuing a written notice of suspension or revocation. The notice shall state the reasons for suspension or revocation and shall be served, together with a copy of the provisions of this Chapter and any provisions of Chapters 4.15 through 4.50 which are applicable to the License or Permit, upon the holder of the License or Permit. Except as provided below, the suspension or revocation shall become effective fifteen (15) days after the date of service unless the holder files an appeal within the time and in accordance with the provisions of Section 4.10.150. If such an appeal is filed the suspension or revocation shall not, except as provided below, become effective until a final decision on the appeal is issued.

A Special Business License or Employee Permit may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal pursuant to the commencement of proceeding for the suspension or revocation of the License or Permit, if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the License or Permit. In the event the Chief of Police orders a temporary suspension, the notice of suspension or revocation shall be delivered personally to each place of business licensed or to which the Permit relates, served upon the Licensee or Permittee, and shall contain the following:

- (a) The finding justifying the temporary suspension;
- (b) The time, date and place at which the Licensee or Permittee may appear in advance of the commencement of the temporary suspension for the purpose of responding to the Chief of Police to the charges in the notice; and
- (c) The time and date on which the temporary suspension commences, which shall not be earlier than twenty-four (24) hours following the time and date of delivery of the notice.

**4.10.150 APPEAL OF REVOCATION OR SUSPENSION.** Within fifteen (15) days following the date on which the notice of suspension or revocation is served, the holder of the Special Business License or Employee Permit may file a written appeal at the office of the Chief of Police stating the specific reasons therefor and grounds asserted for relief. If such an appeal is not filed within the time and in the manner prescribed above, the right to review of the suspension or revocation shall be deemed to have been waived.

A hearing on such appeal shall be conducted by the Hearing Authority within (30) days of the filing of such a notice of appeal. Notice of the time, date, and place of the hearing shall be served upon the appellant not later than ten (10) days before the commencement thereof. The burden of proof shall be upon the Chief of Police. The

hearing shall be conducted in the manner and a decision shall be issued and served as prescribed by Section 4.10.120. The decision shall become final as prescribed and be subject to review by the City Council at the instance of either the Chief of Police or appellant, pursuant to the procedure for review prescribed by Section 4.10.125. Any review by the City Council shall be scheduled, conducted in the manner, determined and have the effect prescribed by Section 4.10.130.

**4.10.155 EFFECT OF REVOCATION OR SUSPENSION.** The revocation of a Special Business License or Employee Permit shall terminate the right of the holder of the License or Permit to engage in the enterprise authorized by the License or perform the service authorized by the Permit, as the case may be, anywhere within the City for a period of five (5) years following the effective date of revocation. At the conclusion of such period, the former holder may file a written application for issuance of a new License or Permit with City Manager. Upon investigation by the Chief of Police and a new recommendation that must be reviewed by the City Council, the License or Permit may be granted or denied by the City Council. The City Council may, in its sole discretion, grant or deny the application pursuant to such terms and conditions as it may prescribe, and may, in addition to other matters, consider factors relating to the rehabilitation of the applicant in making its determination.

In the event of revocation of a Special Business License, neither the spouse, domestic partner, child, brother, sister or parent of the holder of the revoked License, nor a person possessing an ownership interest in the enterprise for which the License was revoked or who was an employee thereof, shall be entitled to issuance of a Special Business License for the enterprise except upon filing and review of a new written application filed with City Manager, investigation by the Chief of Police, and a new recommendation of the Chief of Police that must be reviewed by the City Council. The Chief of Police may recommend grant of the application to the City Council with such conditions in order to ensure that the person whose conduct constituted the basis for the revocation does not exercise any control or influence over the enterprise or the person to whom the license is issued or the Chief of Police may recommend denial of the application. The City Council may deny the application or grant it with such conditions, in its sole discretion, it deems necessary to protect the public health, safety, and welfare.

The suspension of a Special Business License or Employee Permit shall terminate the right of the holder of the License or Permit to engage in the enterprise authorized by the License or perform the service authorized by the Permit, as the case may be, anywhere within the City for a period of up to one (1) year following the effective date of the suspension. At the conclusion of the suspension, the license or permit is subject to the normal applicable renewal process.

## Article 3

### Additional Special License Requirements

#### Division 1 - Dances

**4.10.300 DEFINITIONS.** As used in this Division the following terms shall be ascribed the following meanings:

(a) "Dance club" means any club or association of persons which conducts dancing for its members or bona fide guests more often than once a month, and to which the public is not admitted.

(b) "Club dance" means any dance held by a dancing club.

(c) "Public dance" means a gathering of persons in or upon any premises where dancing is permitted with or without charge therefor, and to which premises the public is admitted.

(d) "Public dance hall" means a place where dancing is conducted, whether for profit or not for profit, and at which the public is allowed to dance, with or without charge.

**4.10.305 LICENSE REQUIRED.** No person shall operate a public dance, club dance, dancing club or a public dance hall in the City unless under and by authority of a valid, unexpired and unrevoked Special Business License issued pursuant to the provisions of this Chapter and Division authorizing public dances, club dances, a dance club, or public dance hall. In addition, such business is also required to apply for and obtain a Conditional Use Permit from the City Planning Department.

**4.10.310 ISSUANCE.** The Chief of Police shall issue the Special Business License unless, in addition to the grounds prescribed by Section 4.10.040, the City Planning Department finds in writing that it cannot make the appropriate findings and mitigation measures to justify the issuance of the Conditional Use Permit for the proposed club dance or dancing club.

**4.10.315 HOURS.** The Chief of Police may grant written permission for any dance hall, public dance or club dance to remain open between two a.m. and six a.m. on each New Year's Day. With the foregoing exception, and except as provided below, it shall be unlawful for the owner, operator, proprietor or sponsor of a public dance, club dance or public dance hall to authorize or conduct dancing at any time between the hours of two a.m. and twelve noon.

The City Council finds that the crime of operating a motor vehicle while under the influence of alcohol occurs with serious frequency at and immediately following two a.m., when bars close. For the purpose of reducing the incidence of such crime by delaying the departure of intoxicated persons until they have sobered, the Chief of Police shall, upon written request, issue or amend a Special Business License for a

public dance, club dance or public dance hall, or issue written permission if no such License is required, authorizing the conduct of dancing between two a.m. and four a.m., if the Chief of Police finds the following:

- (a) That the establishment where the dancing is conducted sells alcoholic beverages for on-site consumption in compliance with a license so authorizing issued by the California Alcoholic Beverage Control Board;
- (b) That the establishment where the dance is conducted will remain unlocked and available for routine and special inspections by law enforcement authorities during the extended dancing hours;
- (c) That no alcoholic beverages are either sold or consumed on the premises during the extended dancing hours; and
- (d) That the establishment where the dancing is conducted serves, during the extended dancing hours, a sit-down or buffet meal which is either prepared in an on-site kitchen or provided by a catering service.

The above requirements shall constitute on-going conditions of the authorization to conduct dancing during the extended hours, conditions of any Special Business License which has been issued, and the violation thereof shall constitute grounds for revocation of the permission and of any License.

**4.10.320 EXEMPTION.** Dances held by fraternal organizations, lodges, veterans' organizations, church groups, farm associations, for the members thereof or bona fide guests by schools for the students thereof, or by student groups under the supervision and control of the school authorities, shall be conducted in compliance with Section 4.10.315, but may be conducted without a Special Business License and shall not otherwise be subject to the provisions of this Division.

## **Division 2 - Poolhalls**

**4.10.330 LICENSE REQUIRED.** No person shall operate a poolhall without possessing a valid, unexpired and unrevoked Special Business License authorizing the poolhall issued pursuant to the provisions this Chapter and Division.

**4.10.335 POOLHALL.** As used in this Division, the term "poolhall" shall mean any place where one or more billiard, pool or combination tables are maintained, and where a charge is made for use of such tables by members of the general public.

**4.10.340 MINORS PROHIBITED.** Except as hereinafter provided, it shall be unlawful for an operator of a poolhall to permit any person who is under the age of eighteen years to be present in a poolhall at a time when pool or billiards are being played; and unlawful for a person under the age of eighteen years to be present in a poolhall at a time when pool or billiards are being played.

A person who is under the age of eighteen years may be present in a poolhall at a time when pool or billiards are being played if:

(a) The person is accompanied in the poolhall by his or her parent or legal guardian; or

(b) A written consent signed by the parent or legal guardian authorizing such presence is filed with the operator of the poolhall.

### **Division 3 - Movie and Television Productions**

**4.10.350 PURPOSES.** It is not uncommon for motion picture productions to necessitate or otherwise result in the disruption of motor vehicle traffic, the unusual utilization of public facilities, the employment of actual or potentially dangerous explosives or other activity which could endanger public safety, the creation of noise which disturbs the public quiet or convenience, the attraction of crowds of sightseers, or other circumstances which require the commitment of public resources in order to ensure adequate protection of the health, safety and welfare of the community.

The purposes of this Division are to provide for the licensing of motion picture productions in order to ensure that necessary public resources are provided at the times and in the manner required to protect the health, safety and welfare; that the Licensee bears the cost of such public resources; and that the motion picture productions are otherwise conducted under conditions and in a manner which avoids risk to the health, safety or welfare of the community.

**4.10.355 DEFINITIONS.** As used in this Division, the following terms shall have the following meaning:

“MOTION PICTURE PRODUCTION.” The terms “Motion Picture Production” shall mean and include any activity attendant to staging or filming or videotaping of commercial motion pictures or television shows, programs, or advertising.

“STILL PHOTOGRAPHY.” The terms “Still Photography” mean and include all activity attendant to staging or making commercial still photographs.

**4.10.360 CITY MANAGER.** The City Manager or his or her designee is charged with the responsibility of administering the regulations imposed by this Division, and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing motion picture productions, promulgate administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to motion picture productions and the issuance and administration of Special Business Licenses therefor, as are vested in the Chief of Police under Chapter 4.02 and Chapter 4.10. Any reference to the “Chief of Police” shall be deemed

to be a reference to the City Manager or his designee in relation to motion picture productions.

**4.10.365 LICENSE REQUIRED.** No person shall use any public or private property, facility or residence within the City for a motion picture production unless under and by authority of a valid, unexpired and unrevoked Special Business License authorizing the motion picture production issued pursuant to the provisions this Chapter and Division.

**4.10.370 EXCEPTIONS.** The provisions of this Division shall not be applicable to the following:

(a) Reporters, photographers or cameramen in the employ of a newspaper, news service, television station or similar entity engaged in the on-the-spot recording of news events concerning those persons, scenes or occurrences which will be published, telecast or broadcast;

(b) Any motion picture production at a studio located within the City;

(c) Commercial still photography.

**4.10.375 PROCESSING OF APPLICATION.** Upon receipt of a fully completed application, the City Manager shall provide copies thereof to the Chief of Police, the Chief of any Fire Protection District having jurisdiction over the geographical territory in which the motion picture production is to occur, and any other official whose jurisdiction or authority would be affected by the motion picture production. Each of these officials shall determine whether, with regard to their specific areas of responsibility, any conditions are necessary in order to ensure that the proposed motion picture production does not endanger the public health or safety, whether the commitment of any public resources (including staffing) is necessary in order to minimize disruption caused by or risk to the public health or safety resulting from the motion picture production, and, if so, the estimated cost thereof. Each such official shall submit to the City Manager within fifteen (15) calendar days following the date of filing of a completed application his or her written findings, determinations and requirements.

**4.10.380 ISSUANCE.** Notwithstanding the provisions of Section 4.10.040, the City Manager shall act upon the application not later than thirty (30) calendar days following the date of filing of the application, and the provisions of Section 4.10.040(c) shall not constitute grounds for denial of a Special Business License to conduct a motion picture production.

The City Manager shall issue the Special Business License within thirty (30) calendar days after the date on which the application is filed unless, in addition to the grounds prescribed by Section 4.10.040, either the Director of Public Works, the Chief of Police or the Chief of any Fire Protection District with jurisdiction over the territory in which the motion picture production is proposed finds in writing that the production would constitute a hazard to public safety, and that there are no conditions upon which the License could be issued which would eliminate the hazard.

**4.10.385 CONDITIONS.** Pursuant to the provisions of Section 4.10.045, the City Manager may issue a Special Business License authorizing a motion picture production upon conditions which relate to the following:

(a) The time, place or manner of conducting the motion picture production, for the purpose of reducing disruption of traffic, disruption of public services, disruption of the public peace or quiet, or the minimization of any hazard to the public safety which could result from the production;

(b) The deposit of such cash amounts as may be necessary to cover the costs of any public resources (including personnel) required to be provided by the City or any Fire Protection District with jurisdiction over the territory in which the production is proposed, required in order to facilitate the production or reduce the disruption of traffic, public peace and quiet or safety hazards arising therefrom;

(c) If the motion picture production involves a potential risk of a safety hazard to the public, a requirement that the Licensee enter into an agreement indemnifying the City and any Fire Protection District with jurisdiction over the area where the production will occur, and, in their capacities as such, their officers, employees and agents, against any liability which may arise out of or result from the production, secured by liability insurance in such amount as is required by the Risk Management Office of the Department of Personnel Management and in such form and by such an insurer as may be required by the City Attorney.

**4.10.390 DISRUPTION OF PRODUCTION.**

(a) No person, after first being warned to cease the conduct, shall engage in conduct intentionally designed to disrupt motion picture or television production undertaken pursuant to a license issued under the authority of this chapter.

(b) For purposes of this section conduct which disrupts motion picture or television production includes, but is not limited to:

(1) Creating or causing audible interference to the recording of sound;

(2) Interfering with the ability of a production to achieve consistent light levels by shining or reflecting light onto a set or at a camera or by utilizing some other artificial means to adversely affect lighting;

(3) Interfering with the entrance or egress of production equipment or personnel;

(4) Placing any obstacles at any location where production is occurring.

## Division 4 - Itinerant Food Vendors

**4.10.400 LICENSE REQUIRED.** No person shall operate lunch wagons, ice cream wagons or any other vehicle for the sale of food upon the streets within the City for the purpose of selling food within residential neighborhoods or commercial centers, unless under and by authority of a valid, unexpired and unrevoked Special Business License authorizing such activity issued pursuant to the provisions of this Chapter and this Article.

Licensees shall comply with the prohibitions contained in Section 4.54.020.

**4.10.405 DEFINITION - "ITINERANT FOOD VENDOR."** An itinerant food vendor is any person who sells food from a lunch or ice cream wagon, cart, or other vehicle while parked in residential neighborhoods or commercial centers.

**4.10.410 EMPLOYEE PERMIT REQUIRED.** No person shall, as an employee or other person performing services for an owner or proprietor, engage in Itinerant Food Vending without possessing a valid, unexpired and unrevoked Employee Permit issued pursuant to the provisions of this Chapter and this Article.

**4.10.415 APPLICATION FOR PERMIT.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to provide services identified by Section 4.10.400 shall contain a list of each conviction of the applicant, plea of guilty or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged and the offense of which the applicant was convicted.

**4.10.420 ISSUANCE OF PERMIT.** Upon receipt of an application for an Employee Permit to perform services as an Itinerant Food Vendor, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit unless he or she finds pursuant to Section 4.10.090 any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.10.415, or is otherwise incomplete;

(b) That information contained in the application is false or otherwise inaccurate; or

(c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would not perform his or her duties in a law-abiding manner or in a manner which does not subject patrons to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 482(a).

**4.10.425 REVOCATION OF PERMITS.** An Employee Permit may be suspended or revoked pursuant to Section 4.10.140 upon any of the following grounds:

(a) Violation of any of the duties, requirements or prohibitions contained in this Division;

(b) Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to Section 4.02.085;

(c) Misrepresentation of a material fact contained in the application; or

(d) That since issuance or renewal of the Permit the Chief of Police has acquired information supporting a finding under Section 4.10.420(c) in relation to the holder of the Permit.

## CHAPTER 4.15

### TAXICABS

#### Sections:

- 4.15.000 Purposes.
- 4.15.005 Definitions.
- 4.15.010 Application of Chapter.
- 4.15.015 Licenses and Permits Required.
- 4.15.020 Owner Operators.
- 4.15.025 Term of License.
- 4.15.030 Equipment Standards, Certificate, and Inspection.
- 4.15.035 Taximeter Accuracy and Certificate.
- 4.15.040 Rates and Charges.
- 4.15.045 Displays within Taxicabs.
- 4.15.050 Taxicab Markings and Identification.
- 4.15.055 Taxicab Equipment.
- 4.15.060 Passenger Services.
- 4.15.065 Administrative Regulation of Practices.
- 4.15.070 Duties of Special Business License Holders.
- 4.15.075 Specific Requirements for Taxicab Business -  
Special Business License.
- 4.15.080 Applications for Special Business Licenses.
- 4.15.082 Issuance or Renewal of Special Business Licenses.
- 4.15.085 Contents of Licenses - Supplementary Information.
- 4.15.090 Applications for Employee Permits.
- 4.15.095 Issuance or Renewal of Employee Permit.
- 4.15.097 Employee Permit Void Upon Termination of Employment.
- 4.15.099 Employee Permit - Controlled Substance and Alcohol Testing,  
Reporting Test Results.
- 4.15.100 Revocation or Suspension of Special Business Licenses.
- 4.15.105 Revocation or Suspension of Employee Permits.

**4.15.000 PURPOSES.** Taxis are an integral component of the public transportation system within the City of Elk Grove. They provide vital and necessary transportation services to the local and traveling business community, tourists, the elderly and handicapped, and others. Unethical business practices, deception of the traveling public, criminal conduct, or conditions which threaten the safety of passengers would damage the image of the City, impair tourism and harm the economic development and well being, deprive the public of vitally necessary transportation, require the commitment of inordinate financial resources to law enforcement, and otherwise be detrimental to the health, safety and welfare of the residents of the City.

Pursuant to the provisions of Section 5353(g) of the Public Utilities Code and Section 53075.5 of the Government Code, the purposes of this Chapter are to insure that the taxi industry delivers transportation services to the public in a lawful, ethical, safe and convenient manner for the protection and promotion of the health, safety, welfare and convenience of the residents of the City.

**4.15.005 DEFINITIONS.** Unless the provision or the context otherwise requires, the definitions set forth in this Section govern the construction of this Chapter 4.15.

(a) "Taxicab" - shall mean every motor-propelled vehicle, except sight-seeing and interurban buses, which is designed for carrying not more than eight persons excluding the driver, which is used solely or mainly for the transportation of passengers for compensation over the public streets of the City, irrespective of whether the operations extend beyond the boundaries of the City, and between such points and over such route as may be directed by the passenger.

(b) "Taximeter" - shall mean and embrace any instrument or device attached to a vehicle and designed or intended to measure mechanically the distance traveled by such vehicle, to record the time the vehicle is in waiting, and to indicate upon such record by figures or designs the fare to be charged in dollars and cents.

(c) "Taxicab Business" - shall mean the practice of owning or possessing an ownership interest in one or more taxicabs or providing direction, management or control, for the purpose of providing, assisting in the provision of, or coordinating the provision of taxicab services to members of the general public.

**4.15.010 APPLICATION OF CHAPTER.** Except as otherwise specifically provided, the provisions of this Chapter and Chapter 4.10 shall not apply to the operation of taxicabs transporting passengers: from a point outside the City to a destination within the City; or, en route from a point outside the City to a destination outside the City.

**4.15.015 LICENSES AND PERMITS REQUIRED.** Except as provided by Section 4.15.010, within the City: no person shall operate or conduct a Taxicab Business unless under and by authority of a valid, unexpired, and unrevoked Special Business License authorizing such Taxicab Business issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.15; and, no person shall operate a taxicab without a valid,

unexpired, and unrevoked Employee Permit issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.15.

**4.15.020 OWNER OPERATORS.** A person who owns or leases as lessee or possesses another ownership interest in a taxicab and who operates the taxicab, shall be required to qualify for and obtain an Employee Permit, and, unless the taxicab is covered by a Special Business License issued to another person, a Special Business License.

**4.15.025 TERM OF LICENSE.** The term of a Special Business License authorizing a Taxicab Business, and an Employee Permit, shall be one year.

**4.15.030 EQUIPMENT STANDARDS, CERTIFICATE, AND INSPECTION.**

(a) A taxicab shall be in compliance with applicable equipment standards provisions of the California Vehicle Code or any administrative regulations pertaining to safety issued by the Chief of Police pursuant to the provisions of Section 4.02.085.

(b) The holder of a Special Business License shall provide to the Chief of Police for each taxicab a State of California certificate of compliance or other writing, issued by a State of California certified examiner or examiners, dated not more than twelve months preceding the date of application or renewal of the License, whichever is applicable, and evidencing that the taxicab complies with prevailing lamp and brake equipment standards as provided in paragraph (a) of this Section. The certificate shall be maintained within the taxicab and shall be available for inspection upon request by any authorized representative of the City at any time. The Chief of Police shall accept (in lieu of a State of California certificate of compliance or other writing, issued by a State of California certified examiner or examiners), a certificate or other writing issued by the City or County of Sacramento, dated not more than twelve months preceding the date of application or renewal of the Special Business License, whichever is applicable, verifying compliance with any and all vehicle safety standards enforced by the City or County of Sacramento which are also enforced by the City of Elk Grove.

(c) It shall be unlawful for the holder of an Employee Permit to operate, and unlawful for the holder of a Special Business License to authorize, direct or otherwise allow operation of a taxicab which is not in compliance with paragraph (a) of this Section; or, which is not covered by an unexpired certificate required by paragraph (b) of this Section. When in possession and control of a taxicab, it shall be unlawful for the operator to fail to provide, upon request, to an authorized representative of the City an unexpired certificate as required by this paragraph (b) of this Section.

(d) The Chief of Police shall, in the Chief of Police's sole discretion, have the authority to require inspections of taximeters, lamps, brakes, and emission control, or other vehicle equipment, to verify compliance of the taxicab with applicable provisions of the California Vehicle Code, this Chapter, or any administrative regulation pertaining to safety issued by the Chief of Police pursuant to the provisions of Section 4.02.085. If it is found that the taxicab or equipment is in such condition that its operation is in

violation of the State Vehicle Code, the Chief of Police shall, in accordance with Section 24004 of the State Vehicle Code, prohibit the use of such taxicab, and the holder of the Special Business License Permit and the holder of the Employee Permit shall not use such taxicab, until such time as it has been brought into compliance with the State Vehicle Code. Continued use of the vehicle while in such violation of the State Vehicle Code shall be grounds for suspension and revocation of the Special Business License.

#### **4.15.035 TAXIMETER ACCURACY AND CERTIFICATE.**

(a) Each taximeter utilized in a taxicab shall at all times be of a type authorized by, comply in relation to accuracy with, and be operated and maintained in compliance with any and all statutes and administrative regulations of the State and any administrative regulations issued by the Chief of Police pursuant to the provisions of Section 4.02.085 and Section 4.15.065. The City will accept a certificate of inspection and testing of taximeters performed by the City or County of Sacramento and may demand a copy of such current inspection certificate. However, taximeters utilized in a taxicab shall, at any time, be subject to inspection and testing by the City or its delegate to determine compliance with the requirements of this Section.

(b) It shall be unlawful for any person holding an Employee Permit to operate a taxicab, and unlawful for any person holding a Special Business License to authorize, direct or otherwise allow operation of a taxicab, containing a taximeter which is not in compliance with or is utilized in violation of any and all statutes and administrative regulations of the State and any administrative regulations issued by the Chief of Police.

(c) The holder of a Special Business License shall provide to the Chief of Police for each taxicab a certificate or other written evidence issued by Sacramento County Department of Weights and Measures, or issued by a State of California registered device repairman, indicating that the taximeter has been tested not more than twelve months preceding the Special Business License application or renewal date, whichever is applicable, and certifying the accuracy of the taximeter attached to the taxicab.

**4.15.040 RATES AND CHARGES.** Each person holding a Special Business License shall file with the Chief of Police a written schedule, as prescribed by the Chief of Police, showing all rates and charges to be imposed in connection with services offered by taxicabs covered by the License. No rate or charge shown on such a filed schedule shall be increased, and no rate or charge not shown on such schedule shall be imposed, earlier than the day following the date upon which a new schedule of rates and charges showing the increase or additional rate or charge is filed with the Chief of Police. No rate or charge not shown on such schedule shall be imposed. Each change in a rate or charge shall be the subject of a new schedule which comprehensively shows all rates and charges, and the filing of supplementary schedules or amendments to schedules which do not show all rates and charges shall not constitute compliance with the requirements of this Section.

Each person holding a Special Business License or Employee Permit shall file with the Chief of Police, within ten calendar days following the receipt of written request by the Chief of Police, such written explanation of rates and charges identified in a filed schedule as is requested by the Chief of Police.

It shall be unlawful for any holder of an Employee Permit to charge or impose, and unlawful for the holder of any Special Business License to authorize, direct, or otherwise allow the charging or imposition of, a rate or charge for service in excess of those prescribed by or of a type which is not shown on a schedule which has been filed with the Chief of Police, and to charge or impose any rate from that schedule prior to the day after such schedule has been filed with the Chief of Police.

**4.15.045 DISPLAYS WITHIN TAXICABS.** It shall be unlawful for any person holding an Employee Permit to operate a taxicab, and unlawful for any person holding a Special Business License to authorize, direct, or otherwise allow operation of a taxicab, unless there is displayed within the taxicab in a location which may be viewed by any and all passengers, the following:

(a) A copy of the valid, unexpired and unrevoked Employee Permit held by the operator of the taxicab;

(b) A rate schedule identical to the rate schedule filed with the Chief of Police pursuant to Section 4.15.040 showing all rates and charges which may lawfully be levied or imposed; and

(c) The register display of any taximeter which is utilized.

**4.15.050 TAXICAB MARKINGS AND IDENTIFICATION.**

(a) Each taxicab shall be equipped with a top light containing light or lights which are affixed to the roof of the taxicab. The top light shall be illuminated in non-daylight hours when the taxicab is available for hire. The word "taxicab", "taxi", "cab", the business name of the owner, or the words identifying the vehicle as a taxicab shall be visible on the top light.

(b) Each taxicab covered by a Special Business License shall be painted with a uniform color scheme applicable to all taxicabs covered by the License and a business shall have the exclusive right to the color scheme used by its taxicabs within the jurisdiction of the County of Sacramento. The Chief of Police can review and require changes to any color scheme if he or she finds that such color scheme is too similar to that of another taxicab business and is likely to mislead or confuse the public as to the proper operator of a taxicab.

(c) There shall be displayed on each exterior side of a taxicab in full view of prospective customers the following:

(1) The business name and telephone number of the holder of the Special Business License for the taxicab, in letters not less than two inches in height and width; and

(2) A rate schedule in the following format:

FIRST MILE: (fee)\*

ADD'L MILES: (fee/mi.)\* \*Subject to time clock

All letters and numbers in the first two lines of the above format shall be not less than one-and-one-half inches in height and width. The third line of the above format shall be in letters not less than three-quarters of an inch in height and width. In letters not less than one-and-one-half inches in height and width and adjacent to the schedule required above, any additional types of fees to be charged and the amount of such fees, may be stated. The fees shall be identical to the ones filed with the Chief of Police pursuant to Section 4.15.040.

(d) It shall be unlawful for the holder of any Employee Permit to operate a taxicab, and unlawful for the holder of a Special Business License to authorize, direct, or otherwise allow the operation of a taxicab, which does not comply with the requirements of this Section.

#### **4.15.055 TAXICAB EQUIPMENT.**

(a) Each taxicab shall be equipped with an operative two-way radio dispatch system approved by the Federal Communications Commission for commercial use; and, an operative taximeter which is in compliance with the requirements of Section 4.15.035.

(b) It shall be unlawful for the holder of any Employee Permit to operate a taxicab, and unlawful for any holder of a Special Business License to authorize, direct, or otherwise allow operation of a taxicab, which does not contain an operative radio dispatch system, and a taximeter, as required above in paragraph (a) of this Section.

**4.15.060 PASSENGER SERVICES.** It shall be unlawful for any person who holds an Employee Permit to do, and unlawful for any person who holds a Special Business License to authorize, direct, or otherwise allow the operator of a taxicab to do, any of the following:

(a) Transport a greater number of passengers in a taxicab than the rated seat capacity of the taxicab;

(b) Fail to answer all calls received for taxicab services in the order of receipt of the calls;

(c) Refuse, upon request, to give a passenger of a taxicab a written receipt showing the fare due, and the miles and minutes employed;

(d) Drive passengers of a taxicab via indirect or circuitous routes for the primary purpose of obtaining higher fares or fees;

(e) Refuse to provide taxicab service on the basis of the short length of the prospective ride;

(f) Pick up additional passengers without the prior consent of any passenger who is already in the taxicab;

(g) Knowingly fail to report to the holder of the Special Business License for the taxicab all property of value left by a passenger in the taxicab within twenty-four hours of discovery of such property;

(h) Fail to throw the flag of the taxicab's taximeter to the non-recording position at the termination of each and every service;

(i) Fail to call attention of the passenger of a taxicab to the amount registered on a taximeter at the termination of each and every service; or,

(j) Throw the flag of a taximeter in a recording position when the taxicab is not actually engaged.

**4.15.065 ADMINISTRATIVE REGULATION OF PRACTICES.** Pursuant to administrative regulations issued under the provisions of Section 4.02.085, the Chief of Police shall be authorized to prohibit specified types and methods of calculating fees or other business practices in connection with the provision of taxicab services, and impose specific duties, obligations or prohibitions in connection with the provision of taxicab services, when the Chief of Police determines that such regulations are necessary to protect the public against deceptive, fraudulent, misleading, discriminatory, or other similar detrimental acts or omissions associated with the delivery of taxicab services.

**4.15.070 DUTIES OF SPECIAL BUSINESS LICENSE HOLDERS.** It shall be the duty and responsibility of each person who holds a Special Business License to:

(a) Fully advise and inform all operators of taxicabs covered by the License of the provisions of this Chapter, any and all administrative regulations issued hereunder, and any and all conditions upon which the Special Business License is issued; and,

(b) Direct, control and supervise operators of taxicabs covered by the License for the purpose of identifying, correcting and prohibiting future or repeated violations of the provisions of this Chapter, any administrative regulations issued hereunder, or any conditions upon which the Special Business License is issued.

**4.15.075 SPECIFIC REQUIREMENTS FOR TAXICAB BUSINESS - SPECIAL BUSINESS LICENSES.** Each person who holds a Special Business License shall during the entire term of the License:

(a) Maintain or be associated with an office situated within the geographical boundaries of the City where some person in charge can be contacted in person or by telephone weekdays from 8:00 a.m. to 5:00 p.m.;

(b) Maintain a two-way radio dispatch system approved by the Federal Communications Commission for commercial use which is in contact with all taxicabs covered by the License during all times the taxicabs are in service;

(c) Maintain in full force and effect at no cost to the City a comprehensive automobile and general liability insurance policy in an amount no less than \$350,000 single limit per occurrence; issued by an insurer rated A-VII or better by the A.M. Best's Insurance Guide, or an insurer approved by the City's Risk Manager; naming the City, and in their capacities as such its officers, employees and agents as insureds; covering all losses and damages as specified in this paragraph; stipulating that the policy will operate as primary insurance and that no other insurance effected by the City or other named insured will be called on to contribute to a loss covered thereunder; and providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the License, without thirty (30) days written notice to the City's Risk Manager from the insurance company prior to the effective date of such cancellation or change in coverage. Such service shall be by registered mail.

Notwithstanding the provisions of Section 4.02.100, violation of this paragraph by the holder of a Special Business License shall constitute a misdemeanor as provided by Section 1.01.190;

(d) Assume the defense of, and indemnify and hold harmless, the City and in their capacities as such, its officers, employees and agents from and against all actions, claims, losses, damages, liability, costs and expenses of every type and description, including, but not limited to, attorney's fees, to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, in whole or in part, the acts or omissions of the Licensee or the Licensee's agents, officers or employees, directly or indirectly arising from the operation of a taxicab. The foregoing is not intended to and shall not be construed to limit any responsibility or liability to which the Licensee may be subjected to under other laws;

(e) In the event of cancellation, expiration, or change in insurance coverage resulting in non-compliance with paragraph (c) of this Section, the Licensee shall notify the City of the cancellation, expiration, or change within three (3) days after its effective date by submitting a written notice to the City's Risk Manager. The giving of notice as provided herein shall not stay the temporary suspension of the Special Business License pursuant to Section 4.15.100(b), which suspension shall remain in effect until required insurance is reinstated, or as otherwise provided in Section 4.15.100.

In addition to any other requirements of this Chapter and Chapters 4.02 or 4.10, a Special Business License shall not be issued to any person who fails to demonstrate

to the satisfaction of the City's Risk Manager fulfillment of the requirements specified in this Section.

**4.15.080 APPLICATIONS FOR SPECIAL BUSINESS LICENSES.** In addition to the matters prescribed by Section 4.10.030 or 4.10.060, as applicable, an application for a Special Business License, or an application for the renewal of a Special Business License, to engage in the Taxicab Business shall contain the following:

(a) The name, business address and telephone number of the applicant, and if the applicant is not a natural person, a copy of the articles of incorporation, by-laws, partnership agreement or other written instrument by which the entity is established;

(b) A description of the manufacturer, model and model year, the vehicle identification number, the state vehicle license number, and the name and address of each person who is a registered owner, possessor of a leasehold interest, and possessor of any other ownership or security interest in each taxicab to be covered by the License;

(c) The serial number of each taximeter to be utilized in a taxicab, as required by Section 4.15.055(a), together with the State vehicle license number of the taxicab to which the taximeter is assigned;

(d) The serial number of each radio system to be utilized in a taxicab, as required by Section 4.15.055(a);

(e) A description of the color scheme by which each taxicab will be identified, as required by Section 4.15.050(b);

(f) A copy of certificates or other writings as required by Sections 4.15.030 and 4.15.035;

(g) A copy of the policy or policies of insurance required by Section 4.15.075(c);

(h) The written schedule of all rates and charges for hire of the taxicab as required by Section 4.15.040;

(i) The address and telephone number, and name of the person responsible for operation of the business office required by Section 4.15.075(a);

(j) The address and telephone number, and name of the person responsible for operation of the radio dispatch system required by Section 4.15.075(b).

**4.15.082 ISSUANCE OR RENEWAL OF SPECIAL BUSINESS LICENSES.** Upon receipt of an application for a Special Business License, or an application for the renewal of a Special Business License, the Chief of Police shall conduct such investigation pursuant to Section 4.10.035 or 4.10.060 as applicable, and as deemed necessary. The Chief of Police shall issue a Special Business License, or renewal,

unless the Chief of Police finds pursuant to Sections 4.10.040 or 4.10.060, as applicable, or unless the Chief of Police finds in writing any of the following:

(a) The applicant or license holder has failed to comply with the requirements specified in Sections 4.15.030; 4.15.035, 4.15.040, 4.15.045, 4.15.050, or 4.15.055;

(b) The applicant or license holder has failed to comply with the requirements specified in Section 4.15.075;

(c) The license holder or applicant has authorized, directed, or otherwise allowed operation of a taxicab for which the insurance coverage required by Section 4.15.075 is not in effect;

(d) The applicant or holder of a license has submitted a false declaration regarding testing for a controlled substance, alcohol, or both, required by this Chapter;

(e) The applicant or license holder has failed to notify the Chief of Police of the termination of employment of the holder of an Employee Permit within three (3) days of such termination;

(f) The applicant or license holder has authorized, directed, or otherwise allowed a person or employee without a valid Employee Permit to operate a taxicab;

(g) The applicant or license holder has failed to comply with any condition, requirement, or prohibition of this Chapter; or that there exists any basis established by Chapters 4.02, 4.10 or this Chapter for the denial or revocation of a Special Business License application or renewal, as applicable.

#### **4.15.085 CONTENTS OF LICENSES - SUPPLEMENTARY INFORMATION.**

Each Special Business License shall consist of a certificate which identifies the name and address of the applicant, the date of issuance and the date of expiration. Each such License shall have attached thereto a listing of the state vehicle license number, manufacturer, model, model year, vehicle identification number, of each taxicab which the License covers, and the serial number of each taximeter which the License covers.

During the term of any such License, the holder thereof shall immediately provide in writing to the Chief of Police changes in vehicles and taximeters to be covered by the License.

**4.15.090 APPLICATIONS FOR EMPLOYEE PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to operate a taxicab shall contain the following:

(a) The number of a valid California driver's license issued to the applicant, and the date of license expiration;

(b) A statement of whether the applicant's California driver's license has ever been revoked or suspended, and, if so, the reason or reasons for such revocation or suspension;

(c) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;

(d) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control of a motor vehicle;

(e) A declaration by a taxicab employer that the applicant is employed by or has an offer of employment by that employer to operate a taxicab, or a declaration that the applicant is a self-employed independent driver;

(f) A declaration by a taxicab employer that the applicant who is employed by or has an offer of employment with the employer, or by the applicant if the applicant is a self-employed independent driver, that the applicant has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;

(g) If the applicant is a self-employed independent driver, test results from the controlled substance (and alcohol for permit renewal) test shall be reported to the Chief of Police in accordance with Government Code section 53075.5 and are to be made a part of the application;

(h) The name of the taxicab business which the applicant is employed by or has an offer of employment from, or if the applicant is a self-employed independent driver, the name of the taxicab business the applicant is doing business as or leases the taxicab vehicle from;

(i) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

(j) A list of all prescription medicine which the applicant takes on a regular or episodic basis;

(k) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10.

**4.15.095 ISSUANCE OR RENEWAL OF EMPLOYEE PERMIT.** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit or renewal of the Permit pursuant to Section 4.10.090 unless the Chief of Police finds in

writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

- (a) That the application fails to contain information required by the Chief of Police or Section 4.15.090, or is otherwise incomplete;
- (b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;
- (c) That information contained in the application is false or otherwise inaccurate;
- (d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, the applicant would not operate the taxicab in a law abiding manner or in a manner which does not subject members of the traveling public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a Permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction there is a substantial risk that the applicant would not operate the taxicab in a law abiding manner or in a manner which does not subject members of the traveling public to risk of harm;
- (e) That the applicant's California driver's license has been revoked or suspended;
- (f) That the applicant is not employed, or has no offer of employment as a taxicab driver, or is not a self-employed independent taxicab driver;
- (g) That the applicant has tested positive for controlled substances, (or for permit renewal, controlled substances and alcohol), in accordance with Government Code section 53075.5;
- (h) That the applicant refuses or fails to submit to a controlled substance, alcohol test, or both, as required by Government Code section 53075.5; or,

(i) One or more of the grounds for Permit revocation or suspension exists pursuant to Section 4.15.100.

**4.15.097 EMPLOYEE PERMIT VOID UPON TERMINATION OF EMPLOYMENT.** The Employee Permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. If the holder of the Employee Permit is a self-employed independent operator, the Employee Permit shall become void on the date upon which the holder of the Permit no longer owns, or has a leasehold interest in a taxicab vehicle, or when the taxicab operated by the holder of the Permit is no longer covered by the holder of the Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after the occurrence of any of the events described in this paragraph.

The holder of the Special Business License employing the holder of the Employee Permit, if applicable, shall notify the Chief of Police within three (3) days upon termination of the holder's employment.

**4.15.099 EMPLOYEE PERMIT - CONTROLLED SUBSTANCE AND ALCOHOL TESTING, REPORTING TEST RESULTS.**

(a) (1) All initial applicants and renewal applicants for an Employee Permit shall take and pass with negative test results a controlled substance test, and an alcohol test and as otherwise required, by this Chapter or Government Code section 53075.5. The test or tests, as applicable, for an Employee Permit shall be taken no more than thirty days preceding the date the application for the Employee Permit is filed, or the date the application for renewal is filed, or the date the application for the renewal is filed if the Employee Permit was allowed to expire.

(2) When test results of a self-employed independent applicant or holder of an Employee Permit are positive for alcohol, a controlled substance, or both, the Chief of Police shall report such results to the taxicab leasing company, if any, on record with the Chief of Police. When test results of an applicant or holder of an Employee Permit, who is employed by or has an offer of employment by a taxicab employer, are positive for alcohol, a controlled substance, or both, the employer shall report such results to the Chief of Police.

(3) Any holder of an Employee Permit whose Employee Permit has been suspended or revoked for positive test results of a controlled substance, alcohol, or both, for a test required by this Chapter or Government Code section 53075.5, shall not be reinstated as a driver of a taxicab or as a Permit holder, nor shall a new Permit be issued, until the requirements for rehabilitation and return-to-duty in accordance with Government Code section 53075.5 are satisfied.

(b) The Chief of Police, upon reasonable suspicion to believe that the holder of an Employee Permit has violated the prohibitions of Government Code section 53075.5 for alcohol, a controlled substance, or both, shall require the holder of such

Permit to take a controlled substance, alcohol test, or both, in accordance with Government Code Section 53075.5. Such reasonable suspicion shall be based upon specific, contemporaneous, articulable observations concerning appearance, behavior, speech or body odors of the holder. The observations may include indications of the chronic and withdrawal effects of controlled substances. Alcohol testing may be required if such observations are made during, just preceding, or just after the period of the day that the holder is required to operate the taxicab.

Such reasonable suspicion testing as is required by the Chief of Police shall be taken by the holder of the Permit within five (5) days after the Chief of Police gives notice of the requirement. Notice shall be given to the holder of the Permit, and to the holder's employer if the holder is not self-employed. Notice shall be deemed effective upon depositing the notice in the United States mail, first class, postage pre-paid, and addressed to the holder of the Permit and the holder's employer, if applicable, at the last address on record with the Chief of Police. Notwithstanding the provision of Section 4.10.145 to the contrary, the Chief of Police shall temporarily suspend an Employee Permit effective upon the Chief of Police making a finding in writing pursuant to this Section requiring reasonable suspicion testing and the holder of the Permit fails to take the test. The prior 24 hour notice provision of Section 4.10.145, to the holder of the Employee Permit, shall not be required prior to such temporary suspension. The Chief of Police shall within 24 hours of the commencement of such temporary suspension serve the notice in the manner and as otherwise required by Section 4.10.145 and shall thereafter permit the holder of the Permit to respond to the Chief of Police as required by Section 4.10.145. The temporary suspension shall continue until the holder of the Employee Permit submits to such required testing, or pending expiration of the time for appeal or exhaustion of an appeal pursuant to the commencement of a proceeding for the suspension or revocation of the Permit, whichever occurs first.

**4.15.100 REVOCATION OR SUSPENSION OF SPECIAL BUSINESS LICENSES.** A Special Business License shall be revoked or suspended pursuant to the grounds set forth in Section 4.10.135 or upon a finding in writing of one or more of the following grounds: (a) Upon receipt by the Chief of Police of written notice from an insurer of cancellation, expiration or change in insurance coverage resulting in non compliance with Section 4.15.075(c), or, upon receipt of notice from the holder of the Special Business License pursuant to section 4.15.075(e), whichever occurs first; or, that the holder of a Special Business License has operated a taxicab for which the insurance coverage as required by Section 4.15.075(c) was not in effect.

Notwithstanding the provision of Section 4.10.145 to the contrary, the Chief of Police shall temporarily suspend a Special Business License effective upon the Chief of Police making a finding pursuant to this Section 4.15.100(a) in writing. The prior 24 hour notice provision of Section 4.10.145, to the holder of the Special Business License and the place of business thereof, shall not be required prior to such temporary suspension. The Chief of Police shall within 24 hours of the commencement of such temporary suspension serve the notice in the manner and as otherwise required by Section 4.10.145 and shall thereafter permit the holder of the License to respond to the Chief of Police as required by Section 4.10.145. Such temporary suspension shall

continue until the Chief of Police receives written notice from an insurer indicating compliance with the requirements of Section 4.15.075(c); or, pending expiration of the time for appeal or exhaustion of an appeal pursuant to a proceeding for the suspension or revocation of the License; whichever occurs first;

(b) The holder of a Special Business License has failed to notify the Chief of Police of cancellation, expiration, or change of insurance as required by Section 4.15.075(e);

(c) The holder of a Special Business License has submitted a false declaration regarding controlled substance, alcohol testing, or both, required by this Chapter;

(d) The holder of a Special Business License has allowed a person, an employee, or holder of an Employee Permit to operate a taxicab knowing that the operator tests positive, as required by Government Code section 53075.5 or this Chapter, for a controlled substance, alcohol, or both;

(e) The holder of a Special Business License has allowed a person or an employee without a valid Employee Permit to operate a taxicab;

(f) The holder of a Special Business License has failed to notify the Chief of Police of the termination of an employee holding an Employee Permit pursuant to Section 4.15.097; or,

(g) Any other failure of the holder of a Special Business License to comply with any condition, requirement, or prohibition of this Chapter or Chapters 4.02 or 4.10; or, a finding of grounds for denial of the License, or the denial of a renewal, pursuant to Section 4.10.100; or, a finding made pursuant to Section 4.15.082.

**4.15.105 REVOCATION OR SUSPENSION OF EMPLOYEE PERMITS.** An Employee Permit shall be revoked or suspended pursuant to Section 4.10.140 upon any of the following findings in writing:

(a) The holder of the Employee Permit has violated any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to Section 4.02.085 or 4.15.065;

(b) The holder of the Employee Permit has misrepresented a material fact contained in the application for the Permit, or renewal;

(c) That since issuance of the Permit, or renewal, the Chief of Police has acquired information supporting a finding prescribed by Section 4.15.095(d) in relation to the holder of the Employee Permit;

(d) That the holder of the Employee Permit operated a taxicab with an invalid, suspended or revoked California driver's license;

(e) That the holder of the Employee Permit has tested positive for any controlled substance, or alcohol, or both, pursuant to a test taken in accordance with Government Code section 53075.5;

(f) That the holder of the Employee Permit, or his or her employer, has submitted a false declaration regarding testing for a controlled substance, or alcohol, or both, pursuant to a test required by Government Code section 53705.5;

(g) The holder of the Employee Permit has operated a taxicab in an unsafe manner without regard for the safety and welfare of passengers, pedestrians, other drivers, or property. Factors to be considered in reaching this finding are that the holder of the Employee Permit has suffered a conviction of one or more moving violations of the California Vehicle Code, or, by conduct which has placed any passenger, motorist, pedestrian, or property at unreasonable or unnecessary risk for physical harm, damage to property, or deceitful or fraudulent practices.

(h) That the holder of the Employee Permit refuses or fails to submit to testing for a controlled substance, alcohol, or both, as required by Government Code section 53075.5 or this Chapter; or,

(i) Any other failure of the holder of the Employee Permit to comply with any duty, condition, requirement, or prohibition of this Chapter or Chapters 4.02 or 4.10; or, a finding made pursuant to section 4.15.095.

## CHAPTER 4.16

### MEDICAL CANNABIS DISPENSARIES

#### Sections:

- 4.16.000 Purpose.
- 4.16.005 Definitions.
- 4.16.010 Special Business License and Employee Permit Required.
- 4.16.015 Notice to Community of Application for Business License.
- 4.16.020 Conditional Use Permit Required.
- 4.16.025 Business Hours of Dispensaries.
- 4.16.030 Prohibited Ancillary Activities.
- 4.16.035 Prompt Removal of Solid Wastes.
- 4.16.040 License Application.
- 4.16.045 Maintenance of Certifications and Plans.
- 4.16.050 Confidentiality of Plans.
- 4.16.055 Applications for Employee Permits.
- 4.16.060 Issuance or Renewal of Employee Permit.
- 4.16.065 Employee Permit Void on Termination.
- 4.16.100 Suspension or Revocation.

**4.16.000 PURPOSE.** The People of the State of California passed Proposition 215, The Compassionate Use Act of 1996, which protects patients and physicians who prescribe marijuana for medical treatment. The Legislature of the State of California passed SB 402 which was designed to provide greater certainty regarding the medical use of marijuana and establishes use procedures and voluntary identification/registration cards to qualified patients. The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the People of the State of California by passing Proposition 215, and the Legislature of the State of California by passing SB 402, have provided for the medical use of marijuana, and with that in mind, the City Council wishes to insure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove. On March 25, 2004, the Elk Grove Planning Commission held public hearings on the proposed amendment to the City Code, and recommended that the City Council approve the proposed amendment. On April 7, 2004, the City Council held a public hearing on the proposed amendment to the City Code, at which time public testimony was taken and duly considered. The City Council finds that the revised Code is consistent with the goals, policies, implementation programs and land use designations specified in the City's General Plan, as required by Government Code Section 65860. The establishment of Medical Cannabis Dispensaries is contemplated by Health & Safety Code sections 11362.5 et seq. Medical Cannabis Dispensaries create adverse secondary effects, including but not limited to, an increase in driving under the influence of marijuana in the community in which they exist, increase illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

**4.16.005 DEFINITIONS.**

(a) "Medical Cannabis Dispensary" means a business enterprise where Qualified Patients or Primary Care Givers receive dispensation of limited doses of medical grade cannabis to use in the alleviation of pain and suffering associated with certain illness.

(b) "Qualified Patient" means a person whose primary care provider has issued a prescription to allow the person to purchase medical grade cannabis for consumption for the principal purpose of alleviating pain and suffering associated with certain serious illness.

(c) "Primary Caregiver" means family member or paid caregiver for a Qualified Patient who is authorized to receive medical cannabis for the purpose of giving doses to the Qualified Patient.

(d) "Confidentiality Plan" means an approved written plan containing policies and procedures of a Medical Cannabis Dispensary intended to assure maintenance of the privacy of Qualified Patients and Primary Caregivers.

(e) "Security Plan" means an approved written plan containing policies and procedures of a Medical Cannabis Dispensary intended to assure the secure handling and storage of cannabis.

**4.16.010 SPECIAL BUSINESS LICENSE AND EMPLOYEE PERMIT REQUIRED.** No person shall operate or conduct a Medical Cannabis Dispensary unless under and by authority of a valid, unexpired, and unrevoked Special Business License authorizing such Medical Cannabis Dispensary issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.16; and, no person shall be employed by a Medical Cannabis Dispensary without a valid, unexpired, and unrevoked Employee Permit issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.16.

**4.16.015 NOTICE TO COMMUNITY OF APPLICATION FOR BUSINESS LICENSE.** At least thirty (30) days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. mail of the applicant's intent to open such a business.

**4.16.020 CONDITIONAL USE PERMIT REQUIRED.** In addition to the general and special business licensing requirements of this Title, each applicant for a Special Business License for a Medical Cannabis Dispensary shall be required to obtain a conditional use permit from the Elk Grove Planning Commission as provided in the City of Elk Grove Zoning Code.

**4.16.025 BUSINESS HOURS OF DISPENSARIES.** The City Council finds that it is not in the public interest for a Medical Cannabis Dispensary to operate before or after normal school hours. A Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.

**4.16.030 PROHIBITED ANCILLARY ACTIVITIES.**

(a) No licensee for a Medical Cannabis Dispensary shall allow any of the following ancillary activities to take place on-site:

- (1) The use of cannabis by any person;
- (2) The cultivation of cannabis anywhere on the property;
- (3) The sale and/or display of drug paraphernalia or any implement that may be used to administer medical cannabis. The licensee shall maintain full compliance with Health & Safety Code sections 11014.5 and 11364 et seq. and Sections 4.54.200 et seq. of this Code.

(4) Alcohol shall not be provided, stored, kept, located, sold, dispensed or used anywhere on the property.

(b) In addition to any other conditions imposed by City Staff in the Conditional Use Permit for the Medical Cannabis Dispensary, the foregoing prohibitions in subsection (a) shall also be included in the Conditional Use Permit.

**4.16.035 PROMPT REMOVAL OF SOLID WASTES.** The City Council finds that the conduct of a Medical Cannabis Dispensary generates solid waste in which there

is a risk of the presence of cannabis in the waste stream. Every licensee of a Medical Cannabis Dispensary shall provide for removal of all solid waste from the property at least twice each day the dispensary is in operation at times at least three (3) hours apart. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.

**4.16.040 LICENSE APPLICATION.** In addition to the requirements of Section 4.10.030 for an application for a Special Business License, an application for a Medical Cannabis Dispensary shall include all of the following additional certifications and plans a copy of which shall be maintained by the City:

- (a) List of Cannabis Suppliers: The applicant shall list the names and addresses of all suppliers of cannabis products;.
- (b) Certification of No Interstate Commerce: The applicant shall certify that cannabis dispensed for medical purposes is produced within the State of California and has not crossed state lines;
- (c) Safety and Security Plan: The applicant shall submit for approval from the Chief of Police a written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system;
- (d) Confidentiality Plan: The applicant shall submit for approval from the Chief of Police a written Confidentiality Plan for preserving the confidentiality of all Qualified Patients, and Primary Care Givers to whom medical cannabis is dispensed by the licensee.

**4.16.045 MAINTENANCE OF CERTIFICATIONS AND PLANS.**

- (a) Copies of Certifications and Plans: During the term of a Special Business License for a Medical Cannabis Dispensary, the licensee shall maintain on the premises a current copy of the approved List of Cannabis Suppliers, the Certification of No Interstate Commerce, the Safety and Security Plan, and the Confidentiality Plan and they shall be made available for inspection by representatives of the City on demand during business hours.
- (b) Amendment of Certifications or Plans: At any time during the term of a Special Business License for a Medical Cannabis Dispensary, should there be a proposed change in suppliers of cannabis or a change in any element of the Safety and Security or Confidentiality Plans, the licensee shall file a request with the Chief of Police for an amendment of the license to allow the new or different cannabis supplier or change in a plan. Upon investigation by the Chief of Police pursuant to Section 4.10.035, the proposed amendments may be granted or denied by the Chief of Police stating in writing the reasons thereof. The approved amended list of suppliers or plans shall be kept on file with the Chief of Police. Appeal of the denial of any proposed amendment of the license will be pursuant to same procedure specified for the denial of an initial application or renewal of a special business license pursuant to Sections 4.10.110 to 4.10.130.

#### **4.16.050 CONFIDENTIALITY OF PLANS.**

The City Council finds that the public interest served in preserving the confidentiality of a Safety and Security Plan for a Medical Cannabis Dispensary and not disclosing the plan to the general public far outweighs the public's interest in disclosure of such Safety and Security Plan.

The City Council finds that there is an important security public interest served in preserving the confidentiality of a Confidentiality Plan for a Medical Cannabis Dispensary by not disclosing the Plan to the general public that far outweighs the public's interest in disclosure of such Confidentiality Plan. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

**4.16.055 APPLICATIONS FOR EMPLOYEE PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to work in a Medical Cannabis Dispensary, shall contain the following:

(a) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;

(b) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control regulated substances;

(c) A declaration by a Medical Cannabis Dispensary employer that the applicant is employed by or has an offer of employment by that employer to work in the Medical Cannabis Dispensary;

(d) A declaration by the Medical Cannabis Dispensary employer that the applicant, who is employed by or has an offer of employment with the employer, has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;

(e) The name of the Medical Cannabis Dispensary business which the applicant is employed by or has an offer of employment from;

(f) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

(g) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10.

**4.16.060 ISSUANCE OR RENEWAL OF EMPLOYEE PERMIT.** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct investigation pursuant to Section 4.10.085. The Chief of Police shall issue the permit or renewal of the permit pursuant to Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

- (a) That the application fails to contain information required by the Chief of Police or Section 4.10.045(a), or is otherwise incomplete;
- (b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;
- (c) That information contained in the application is false or otherwise inaccurate;
- (d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, there is a substantial risk that the applicant would not work in a Medical Cannabis Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application for a permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction the applicant would not work in the Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm; or

- (e) One or more of the grounds for permit revocation or suspension exists pursuant to this Chapter.

**14.16.065 EMPLOYEE PERMIT VOID ON TERMINATION.** The Employee permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after termination of employment.

The holder of the Special Business License employing the holder of the Employee Permit shall notify the Chief of Police within three (3) days upon termination of the holder's employment.

**4.16.100 SUSPENSION OR REVOCATION.** Failure to comply with any of the requirements of this Chapter or with any condition set forth in the conditional use permit for the property shall be grounds for the suspension or revocation of the license under Sections 4.10.145 to 4.10.155.

## CHAPTER 4.20

### CARDROOMS

#### Sections:

- 4.20.000 Statement of Purpose.
- 4.20.005 Definition - Cardroom.
- 4.20.010 Definition - Gaming or Gambling.
- 4.20.015 License Required.
- 4.20.020 Qualifications - Use.
- 4.20.025 Number of Licenses Limited.
- 4.20.030 Employee Permits.
- 4.20.035 Application for Permits.
- 4.20.040 Issuance of Permit.
- 4.20.045 Suspension and Revocation of Permits.
- 4.20.050 Bond.
- 4.20.055 Responsibility of Licensee.
- 4.20.060 Records and Audit.
- 4.20.065 Temporary Suspension.
- 4.20.070 Temporary Suspension - Notice of Suspension and Appeal.
- 4.20.075 Conducting a Cardroom or Operating as a Cardroom Manager or Dealer After Temporary Suspension.
- 4.20.085 Table Operation Fee.
- 4.20.090 Hours of Operation.
- 4.20.095 Games Permitted.
- 4.20.100 Equipment - Separation.
- 4.20.105 Minors Prohibited.
- 4.20.110 Bets Limited - Notice.
- 4.20.115 Notice of Table Rent.
- 4.20.120 Credit Prohibited.
- 4.20.125 Display of Licenses and Permits.
- 4.20.130 Protection of Patrons.
- 4.20.135 Exclusion or Ejection from a Cardroom.
- 4.20.140 Conflicts.
- 4.20.145 Severability.

**4.20.000 STATEMENT OF PURPOSE.** The regulatory provisions of Sections 4.20.020 and 4.20.025 are necessary to ensure that cardrooms are operated reasonably for the protection of public health, safety, and welfare and to conform to State mandated requirements set by The Gaming Registration Act found in the Business and Professions Code commencing with Section 19800, et seq. Although many operators are highly reputable, others are creative in avoiding the letter of the law. Gaming brings with it the elements of enjoyment and entertainment for its patrons but also undesirable elements such as compulsive gambling, cheating, dishonesty, and other possible criminal violations and peace disturbances.

If all licensees were reputable and vigilant, regulatory supervision would be almost perfunctory. Such is the case with many existing licensees. Others, however, require exhaustive monitoring and enforcement. Integrity is a difficult commodity to ascertain in advance of licensure. Thorough screening of applicants prior to licensure is desirable. Pursuant to Sections 4.10.035 and 4.10.040, the Chief of Police conducts a thorough investigation into the background of applicants and their entities in order to assure that licensure will not set the stage for fraud or deceit. Such investigation is particularly difficult when applicants have no local track record. Accordingly, two years residence or two years business operation within this City is required before an applicant is eligible to apply for a cardroom license and this requirement is found in Section 4.20.020. A two-year period for the observation of an individual's or business entity's ethical practices or lack thereof is a more realistic period of time for such assessment as opposed to a one-year residency requirement.

Section 4.20.025 would limit the number of cardroom licenses issued to one for each 75,000 residents of the City thus limiting the expansion of gambling within this community to a level where such gambling will be a source of local entertainment and recreation for local citizens while preventing this community and City from becoming a mecca for professional gamblers and gamblers from other jurisdictions. A "casino" type atmosphere where gambling becomes the major industry or attraction of a community or mecca for gamblers from all jurisdictions is detrimental to the development of this community as such increased and unrestrained gambling creates greater law enforcement problems compromising the ability of law enforcement to totally control the criminal and peace disturbance effects thereof. Limiting the number of licenses and cardrooms to one for each 75,000 residents assists in the accomplishment of these goals as opposed to permitting a greater number of licenses with a limitless number of cardrooms that may be operated per license.

The two-year residency requirement and the restriction in the number of cardroom licenses available would allow City energies to be more efficiently allocated. Pre-license screening would be supplemented with the objective track record of each applicant. The number of cardrooms would remain at a manageable level for the Chief of Police without creating a monopoly for existing cardrooms. The volume of unstable or illegally run cardroom operations would be more effectively curtailed.

Accordingly, City Council finds that a two year residence or operation prerequisite for a Special Business License and a limitation of one cardroom per 75,000

residents of the City will eliminate many of the above-mentioned problems without undue burden on stable and reputable cardrooms. The purpose therefore of Sections 4.20.020 and 4.20.025 is to protect the health, safety, and welfare of the citizens within the City, to assure that City expenditure is efficiently allocated, and to provide legitimate cardrooms where citizens of this City can safely enjoy the entertainment provided by reputable cardrooms.

**4.20.005 DEFINITION - CARDROOM.** As used in this Chapter the term “Cardroom” means any place where gaming is conducted and to which the public is invited to participate.

**4.20.010 DEFINITION - GAMING OR GAMBLING.**

(a) As used in this Chapter the term “Gaming” or “Gambling” means any game of chance played with cards, dice, or any device for currency, money, check, credit, or other thing of value which is not prohibited and made unlawful by Penal Code Chapter 9 (commencing with Section 319) or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code or by this Chapter.

(b) “Gaming” or “Gambling” for purposes of this Chapter does not mean the following:

- (1) The game of bingo conducted pursuant to and regulated by Chapters 4.21, 4.22, and 4.23;
- (2) Any lottery game conducted and regulated by the California State Lottery;
- (3) Parimutuel wagering on horseraces regulated by the California Horse Racing Board;
- (4) Games played with cards in private homes or residences in which no person makes money for operating the game, except as a player.

**4.20.015 LICENSE REQUIRED.** No person shall operate or conduct a cardroom in the City unless under and by authority of a valid, unexpired, and unrevoked Special Business License authorizing a Cardroom issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.20.020 QUALIFICATIONS - USE.**

(a) If the applicant for a Special Business License to operate a Cardroom is a sole proprietor, the proprietor shall have been a resident of the City for at least two (2) years immediately preceding the filing of an application for the License and shall have met the requirements set by the State Department of Justice pursuant to The Gaming Registration Act (commencing with Business and Professions Code Section 19800, et seq.) prior to filing the application for the license. If the applicant is a partnership, corporation, or other business entity owned by more than one individual, the business

entity shall have engaged in a business within the City continuously for at least two years immediately preceding the filing of the application and shall have met the requirements set by the State Department of Justice pursuant to The Gaming Registration Act (commencing with Business and Professions Code Section 19800, et seq.) prior to filing an application for a license.

(b) The Special Business License issued pursuant to this Chapter shall be placed in use at the designated location no later than ninety (90) days following the issuance thereof and the Special Business License shall remain in use thereafter for the term of the License. Failure to place such license in use at the designated location within the ninety (90) day period provided herein, or to maintain the License in use during the term of the License, shall be grounds for revocation of the License by the Chief of Police. For purposes of this Subdivision of this Section "in use" shall mean that at the location designated in the License the business of a Cardroom shall be in operation and that games as provided in Section 4.20.095 shall be conducted therein.

For purposes of revocation under this Subdivision of this Section, temporary closure of the Cardroom for necessary remodeling, rebuilding, repair, improvements, or other necessary and reasonable activity required to operate or improve the operation of the Cardroom when such activities are undertaken by the Licensee in a good faith effort to complete the activity within a reasonable period of time, shall not be grounds for revocation.

The Licensee shall cooperate with the Chief of Police by providing him or her the necessary information and documentation upon demand by the Chief of Police in order to allow a determination of whether the Licensee comes under the provisions of this Subdivision of this Section requiring revocation of the License. Failure of the Licensee to cooperate with the Chief of Police pursuant to the provision of this Subdivision of this Section shall be grounds for the revocation of the Special Business License to operate the Cardroom. The procedure for notice of revocation, revocation, and appeal of revocation shall be the same as is provided in Chapter 4.10 for the revocation of Special Business Licenses.

#### **4.20.025 NUMBER OF LICENSES LIMITED.**

(a) The number of licenses issued shall be limited to one for each 75,000, or fraction thereof, residents of the City, as determined by the last Federal Census or as determined by the latest population estimate of the Department of Finance of the State of California.

(b) In the event there are more applications for Special Business Licenses to operate Cardrooms than the limitation in subdivision (a) of this Section allows, the qualified applicant or applicants to whom a License is issued shall be selected by the Chief of Police in the order the applications were filed with the City Manager. Once all available number of licenses are issued, no applications will be accepted or considered until such time as an additional license becomes available. When the additional license becomes available, applications will then be taken and will be considered as provided

herein upon the timely filing of a new application therefor. For purposes of this subdivision of this Section, the unrevoked, valid, and unexpired License of a Cardroom Licensee who has filed a timely application for renewal of the License is not considered an additional license available for issuance until the license renewal application has been denied and the appeal thereof, if any, has become final.

(c) Notwithstanding the provisions of Section 4.10.010, a Licensee shall operate no more than one Cardroom in the City and shall hold no more than one Special Business License issued pursuant to this Chapter to operate that Cardroom; and no more than one Cardroom shall be located within a single structure or at a single location.

#### **4.20.030 EMPLOYEE PERMITS.**

(a) No person shall work in a Cardroom as a manager or cardroom dealer, and no person who holds a Special Business License authorizing operation of a Cardroom shall employ any person as a cardroom manager or cardroom dealer unless such person possesses a valid Employee Permit issued pursuant to the provisions of Chapter 4.10 and this Chapter.

(b) Notwithstanding the provisions of Section 4.10.095, an Employee Permit as a cardroom manager or cardroom dealer shall authorize the permittee to operate as a cardroom manager or cardroom dealer in any Cardroom possessing an unrevoked, unexpired, and valid Special Business License issued pursuant to this Chapter authorizing the operation of such Cardroom within the City. Notwithstanding the provisions of Section 4.10.095, the Employee Permit shall not include the name and address of the Card room for which the Employee Permit is issued as the Employee Permit authorizes the permittee to operate within any Cardroom as indicated above.

(c) Upon demand by the Chief of Police, the Cardroom shall provide the Chief of Police with the full name and the residence address of persons operating as cardroom managers or cardroom dealers in the Cardroom.

**4.20.035 APPLICATION FOR PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to serve as a cardroom manager or cardroom dealer shall contain a list of each criminal conviction of the applicant, pleas of guilty, or pleas of nolo contendere. The list shall, for each such conviction or pleas, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted.

**4.20.040 ISSUANCE OF PERMIT.** Upon receipt of an application for an Employee Permit to serve as a cardroom manager or cardroom dealer, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as he or she deems necessary. The Chief of Police shall issue the permit unless he or she finds pursuant to Section 4.10.090 any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.20.035, or is otherwise incomplete;

(b) That information contained in the application is false or otherwise inaccurate;

(c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would perform his or her duties as a cardroom manager or dealer in an unlawful manner or in a manner which subjects patrons of the Cardroom to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01, et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.05, or;

(d) That the applicant has violated or is in noncompliance with any of the provisions and requirements of this Chapter or other applicable law or administrative rule or regulation.

(e) That the applicant is disqualified from holding a state gambling license for any of the reasons specified in the Gambling Control Act, Business & Professions Code Sections 19850 and 19914.

(f) That the State of California objects to the issuance of the permit pursuant to the Gambling Control Act, Business and Professions Code sections 19850 and 19912.

#### **4.20.045 SUSPENSION AND REVOCATION OF PERMITS.**

(a) An Employee Permit may be revoked or suspended pursuant to Section 4.10.140 upon any of the following grounds:

(1) Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to this Chapter, Chapter 4.02 or 4.10;

(2) Misrepresentation of a material fact contained in the application for the permit;

(3) The Chief of Police has acquired information supporting a finding prescribed by Section 4.20.040(c) in relation to the holder of the permit; or

(4) The holder of the permit has violated any term, condition or requirement or prohibition established by this Chapter which is applicable to the holder of the permit.

(b) An Employee Permit may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal pursuant to Section 4.10.145, as applicable.

**4.20.050 BOND.** Before issuing a Special Business License under the provisions of this Chapter, the City Council shall require the applicant, as a condition to the issuance of the Special Business License, to post with the City a cash bond in the sum of Two Thousand Dollars (\$2,000) or a surety bond in the same amount furnished by a corporate surety authorized to do business in the State payable to the City. The bond shall guarantee that the Licensee shall redeem all chips for cash, and the bond shall be kept in full force and effect by the Licensee throughout the term of the License.

The provisions of this Section shall not be applicable to card games played or held by fraternal and veterans organizations, benefit associations, churches and other non-profit organizations operating the games for charitable purposes for participation by their members or bona fide guests.

**4.20.055 RESPONSIBILITY OF LICENSEE.** The holder of a Special Business License issued pursuant to this Chapter and Chapter 4.10 shall be financially and otherwise responsible for the operation of the Cardroom and for the conduct of any manager or other employee connected with the operation of the Cardroom. All employees of the Cardroom shall be identified by a name tag measuring no smaller than one inch by three inches and the tag shall be worn in plain view on the upper body of the employee.

#### **4.22.060 RECORDS AND AUDIT.**

(a) The Licensee shall keep full and accurate records of the income and expenses received and disbursed in connection with the operation, conduct, promotion, suspension, and any other phase of the Cardroom enterprise and card games which are authorized by this Chapter. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police. Upon demand, the Chief of Police or any other authorized representative of the City shall have the right to examine and audit such records at any reasonable time and the license holder shall fully cooperate by making such records available.

(b) The records described in subdivision (a) of this Section shall be subject to disclosure only pursuant to any suspension, revocation, or other proceedings conducted under this Chapter, Chapter 4.02 or 4.10; any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Counsel. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

#### **4.20.065 TEMPORARY SUSPENSION.**

(a) The Chief of Police shall have the authority to temporarily suspend the Special Business License and to order the Licensee to immediately cease and desist any further operation of the Cardroom pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the License and one of the following occurs:

(1) The Licensee is operating the Card room in a manner which is a serious and immediate threat to the health or safety of the public;

(2) The Licensee is in violation of any of the provisions of this Chapter, Chapter 4.02, Chapter 4.06, Chapter 4.10, administrative regulations adopted pursuant to those Chapters, the Penal Code of the State of California, or any applicable law, rule or regulation; or,

(3) The Chief of Police makes a finding pursuant to Section 4.10.040(c) and that by reason of the crime or act the patrons of the Cardroom and the public are subject to the immediate risk of harm or criminal, deceitful or otherwise unethical practices.

#### **4.20.070 TEMPORARY SUSPENSION - NOTICE OF SUSPENSION AND APPEAL.**

(a) The temporary suspension shall be effective no sooner than 24 hours following the time and date of delivery of the notice thereof as provided in Section 4.10.145. The procedures for notice, for service of such notice, and for response by the Licensee prior to the commencement of the temporary suspension shall be as prescribed in Section 4.10.145.

(b) The appeal by the holder of a Special Business License of the revocation or suspension of its license pursuant to Section 4.10.135, whose license has been temporarily suspended, shall be as provided in Section 4.10.150.

**4.20.075 CONDUCTING A CARDROOM OR OPERATING AS A CARDROOM MANAGER OR DEALER AFTER TEMPORARY SUSPENSION.** It shall be unlawful for the holder of a Special Business License to operate a Cardroom after temporary suspension of the Special Business License pursuant to Sections 4.20.065 and 4.20.070, and it shall be unlawful for the holder of a Cardroom Employee Permit to operate as a cardroom manager or dealer in a Cardroom after temporary suspension pursuant to Section 4.20.045 and Section 4.10.145 and such violation shall be punishable as a misdemeanor.

#### **4.20.085 TABLE OPERATION FEE.**

(a) In addition to any application or renewal license fees imposed by the City pursuant to Chapters 4.06 and 4.10 upon the business of a Cardroom, such Cardroom shall be charged a quarterly table operation fee for each card table operated by the Licensee or to be operated by the applicant. The amount of this quarterly fee shall be as prescribed from time to time by resolution of the City Council and shall be based upon the cost to the City of enforcement and administration of this Chapter as provided by Section 4.02.060.

Exempted from this quarterly fee are additional tables used for promotional or tournament play except that pursuant to Section 4.20.100(a) the total number of regular tables and promotional or tournament tables in use shall not exceed seven (7) tables. Such promotional or tournament play and the use of such additional tables for such promotions and tournaments shall not exceed four days in any calendar month. The Chief of Police shall be notified seven days in advance of the promotional or tournament events and shall be notified of the duration and dates of such events.

(b) The quarterly table operation fee shall be paid quarterly by the applicant or Licensee to the City Manager. The first quarterly fee shall be due at the filing of the initial application for a Special Business License to conduct a Cardroom. Thereafter, the quarterly due dates for payment of the quarterly table operation fee shall be on January 1, April 1, June 1, and September 1; except, if any of these days falls on a Sunday or a City holiday, the quarterly due date for payment shall be the day after such Sunday or City holiday. The quarterly table operation fee shall be delinquent if not received or postmarked on or before the quarterly due date for payment as such quarterly due date is defined above. Prior to the beginning of each quarter, the Licensee shall notify the Chief of Police as to the number of tables to be operated for that new quarter and shall pay to the City Manager the table operation fee accordingly. In the event that the Licensee reduces the number of tables in operation during a quarter, the City shall not rebate any of the previously paid table operation fee for that quarter. In the event that the Licensee desires to increase the number of tables in operation during a quarter, the Licensee shall pay to the City Manager the appropriate table operation fee for that entire quarter regardless of when the additional table(s) are added.

(c) On the denial by the Chief of Police of an application or a renewal of a Special Business License to conduct a Cardroom the quarterly table operation fee paid by the applicant or Licensee at the time of filing the initial application or the renewal shall be rebated to the applicant or Licensee by the City Manager. The rebate shall not be made by the City Manager until the appeal period on the denial has elapsed or, if an appeal is filed, until a final decision upholding the denial has been made and the appeal has become final in the administrative or judicial process, whichever is applicable.

If the applicant's or Licensee's appeal of the denial is granted, the applicant or Licensee shall owe and pay the appropriate table operation fee to the City Manager prior to the issuance of the Special Business License.

#### **4.20.090 HOURS OF OPERATION.**

(a) Except as otherwise provided hereinafter in subdivision (b) of this section, the Licensee may operate a Cardroom twenty-four (24) hours a day and seven (7) days a week.

(b) Applicants for a Cardroom license to operate a Cardroom after the effective date of this ordinance, shall be required to secure a use permit as approved by the appropriate authority in accordance with the requirements of the Zoning Code of the City of Elk Grove. Operation of the Cardroom shall thereafter be in accordance with the hours set by the use permit.

#### **4.20.095 GAMES PERMITTED.**

(a) The only gambling permitted in a Cardroom in the City is Draw Poker, Lowball, Panguingue, Hold'em, and Seven Card Stud. The permitted games shall be played only in the following manner:

(1) "Draw Poker" and "Lowball" are played with a standard 52 card deck, with joker options. Each player is dealt five cards face down, prior to any betting. After receiving their cards, players determine whether to stop playing that hand (fold) or to place their bets. Following the first round of betting, players have the option of keeping their originally dealt cards or discarding non-desired cards and replacing them with a like number of cards drawn from the deck (the "draw"). Following the "draw," there is a second round of betting. The goal in "Draw Poker" is to garner the betting pool or common pot with the highest ranking poker hand. The goal in "Lowball" is to garner the betting pool or common pot with the lowest ranking poker hand. Acceptable variations of "Draw Poker" include the dealing of seven cards instead of five and the splitting of the pot between the player holding the highest ranking hand and the player holding the lowest ranking hand.

(2) "Panguingue" is played with 6 to 12 decks of cards with the eights, nines, tens, and jokers removed. Each player is dealt 10 cards and the purpose of the game is to meld sets and sequences of cards with certain cards having special values. Each player, in turn, draws either a card from the top of the remaining deck or from the top of an adjacent discard pile. This sequence of play continues until one player goes out with a total meld of eleven cards, including the card just drawn.

(3) "Hold'em" is played with one standard deck of cards. Each player is dealt a pre-determined number of "hole" cards face down. After the initial deal, there is a round of betting. Then three "community" cards are dealt face up in the center of the table. There is another round of betting. A fourth card is dealt face up in the center of the table. There is a third round of betting. Then a fifth card is dealt face up in the center of the table. There is a final round of betting. Players use any of the five "community" cards and a pre-determined minimum number of their "hole" cards to make the best five card poker hand. Acceptable variations of "Hold'em" include the low and high/low versions.

(4) "Seven Card Stud" is played with one standard deck of cards. Each player is dealt two cards face down and one card face up. There is a round of betting. Players are dealt one up card followed by a round of betting. Players are again dealt one up card followed by a third round of betting. Those players electing to remain in the game are dealt another up card followed by a fourth round of betting. Finally, the remaining players are dealt one down card for a total of seven cards-three down and four up. A fifth and final round of betting occurs. Each remaining player selects five of his seven cards to form the best five card hand. Acceptable variations of "Seven Card Stud" include the low and high/low versions.

(b) Written rules for each card game offered by a Cardroom pursuant to subdivision (a) of this Section shall be provided to any patron upon request. The Licensee shall file with the Chief of Police a written copy of the rules to each card game played in the Cardroom. Any deviation or change in the rules of any card game or any new card game from that on file with the Chief of Police shall require the approval of the Chief of Police prior to offering the card game to patrons. The Chief of Police shall review the new card game or any deviation or change in the rules and shall within ninety (90) days approve the game provided it conforms with the requirements of subdivision (a) of this Section and this Chapter; and, if the game is patented, the Licensee shall obtain written permission from the patent-owner prior to offering the game to patrons and prior to acquiring the approval of the Chief of Police to conduct the game.

(c) Except as provided in subdivision (a) of this Section, all other gaming (including, but not limited to, gaming played with cards, dice, or any device for money) not otherwise prohibited by the California Penal Code is prohibited. Nothing herein contained in this Chapter shall be construed to permit the licensing of any gambling declared illegal by the Penal Code.

#### **4.20.100 EQUIPMENT- SEPARATION.**

(a) No Cardroom shall maintain more than seven card tables. Chairs shall be provided for all card players. No more than twelve players shall be permitted to play at any time at any one table. Authorized games shall not utilize dominoes, tiles, dice, spinning wheels, electronic player-controlled machines or any other device other than the standard decks of playing cards traditionally used for playing such games, poker chips, and the optional dealer shoes.

(b) Each licensed Cardroom shall be maintained separate and apart from any other room or business operated in the building, but may be connected by a door.

**4.20.105 MINORS PROHIBITED.** No person under the age of twenty-one (21) years shall be permitted to frequent a Cardroom or to engage in any card game conducted therein.

**4.20.110 BETS LIMITED - NOTICE.** No player shall be permitted to wager or raise a wager more than Forty Dollars (\$40). Other than seated players actively participating in the game, no person shall be permitted to place a wager on any card

game, and a player shall only place a wager on his or her own card hand. Back-line betting or side-betting is prohibited. No player shall be permitted to bet with cash money, markers, or anything other than poker chips. Notice of all the provisions and restrictions provided in this Section shall be posted in a conspicuous place in the Cardroom.

**4.20.115 NOTICE OF TABLE RENT.** The Licensee shall post in a conspicuous place in the Cardroom notice of the amount of table rent to be charged for each table and notice of the total number of tables permitted to be in operation during the particular quarter.

**4.20.120 CREDIT PROHIBITED.** No Cardroom shall extend credit to any patron in order for the patron to participate in a card game.

**4.20.125 DISPLAY OF LICENSES AND PERMITS.** A copy of the Special Business License applicable to the Cardroom premises and the Employee Permit of any person employed as a manager or dealer shall be posted and exhibited while in force in some conspicuous place on the Cardroom premises.

**4.20.130 PROTECTION OF PATRONS.**

(a) Whenever it appears to the Chief of Police that security personnel are necessary to protect the health and safety of the public, the Chief of Police shall have the authority to require that a Cardroom provide uniformed security personnel on the premises and the parking lot used by the Cardroom for its patrons and employees. The Chief of Police shall determine the necessity for the requirement for security personnel based on the propensity for peace disturbances or criminal activity in the geographic area in which the Cardroom is located, based upon criminal activity or peace disturbances on Cardroom premises, based upon the particular time of day, or any other factors which affect the health and safety of the public and Cardroom patrons. The Chief of Police shall notify the Licensee, in writing, as to time periods, days of the week during which security is required, the number of security officers, and the location where such officers are to be provided (whether in the parking lot or on the premises). Upon receiving the written notice of security requirements, the Licensee shall conform to those requirements within forty-eight (48) hours of service thereof and shall maintain those requirements in full force and effect until such time as the Chief of Police deems they are no longer necessary.

(b) Between the hours of 2:00 a.m. and 6:00 a.m., the Licensee shall not knowingly permit the consumption of alcoholic beverages on the premises or in the parking lot which the Cardroom uses for its patrons.

(c) The Licensee shall not knowingly permit any obviously intoxicated person to participate in any card game.

(d) The Licensee shall not knowingly permit any illegal activity to occur on the premises or in the parking lot used by the Cardroom for its patrons or employees.

Illegal activity includes, but is not limited to, narcotics violations, bookmaking, illegal gambling, loansharking, receiving stolen property, or prostitution.

(e) The Licensee shall permit the Chief of Police, the City Manager, Fire Department or any other authorized public official to inspect the premises at any time during the hours of operation.

#### **4.20.135 EXCLUSION OR EJECTION FROM A CARDROOM.**

(a) Pursuant to Business and Professions Code Section 19845, the Licensee shall be permitted to exclude or eject from the Licensee's Cardroom, any individual who has engaged in or been convicted of bookmaking, sale of controlled substances, or illegal gambling activities, or whose presence in or about the Cardroom would be inimical to the interests of legitimate gaming. The Licensee shall not exclude or eject any person on the grounds of any protected class under state law including, but not limited to, race, color, creed or sex. Any individual who is excluded or ejected from any Cardroom and who refuses to leave the premises is subject to arrest for trespassing under Section 9.80.010.

(b) Pursuant to Section 19844 of the Business and Professions Code, any individual who is excluded or ejected from any Cardroom may apply to the Chief of Police for a hearing on the question of whether subdivision (a) of this Section is applicable. The hearing shall be held within 30 days after filing of the request for hearing with the Chief of Police or at such time as the applicant and Chief of Police may agree. If, upon the hearing, the Chief of Police determines that the rule of exclusion or ejection as provided in subdivision (a) of this Section does not or should not apply to the applicant, the Chief of Police shall notify all Cardrooms licensed by the City pursuant to this Chapter of such determination. If the Chief of Police determines that such exclusion or ejection was proper, the Chief of Police shall make an order to that effect which shall be a final administrative order. Such order shall be subject to review by any court of competent jurisdiction in accordance with law.

(c) Pursuant to Section 19846 of the Business and Professions Code, notwithstanding any other provision of law, no Cardroom which ejects or excludes any individual based upon the provisions of subdivision (a) of this Section shall be subject to civil liability if such ejection or exclusion was based upon a reasonable and good faith belief that subdivision (a) of this Section applied to the individual in question.

#### **4.20.140 CONFLICTS.**

(a) If any section, subdivision, clause, phrase or portion of this Chapter conflicts with any section, subdivision, clause, phrase or portion of an express provision of the City of Elk Grove Zoning Code, or conditions of a use permit of the Zoning Code, or other administrative approvals issued under the Zoning Code, then the City of Elk Grove Zoning Code, conditions of the use permit under the Zoning Code, or the administrative approvals issued under the Zoning Code shall prevail.

(b) If any section, subdivision, clause, phrase or portion of this Chapter conflicts with any section, subdivision, clause, phrase or portion of The Gaming Registration Act (Business and Professions Code commencing with Section 19800, et seq.) as required by the State of California, then The Gaming Registration Act shall prevail.

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

## **CHAPTER 4.21**

### **BINGO GAMES**

#### Sections:

- 4.21.000 Statement of Purpose.
- 4.21.005 Bingo Prohibition.
- 4.21.010 Definition of "Bingo."
- 4.21.015 Definition of "Bingo Game."
- 4.21.017 Definition of a "Bingo Session."
- 4.21.020 Definition of "Security."
- 4.21.025 Definition of "Member."
- 4.21.027 Prohibition of Member Participation in Staffing Bingo Games.
- 4.21.030 Chief of Police.
- 4.21.035 Organizations Eligible For License.
- 4.21.040 Contents of the Application.
- 4.21.045 Bingo Manager.
- 4.21.050 License Fee.
- 4.21.055 Issuance of License.
- 4.21.060 Posting of License.
- 4.21.065 Profits - 23701(d) Organizations.
- 4.21.070 Proceeds - Other Organizations.
- 4.21.075 Records - Compliance Examination and Inspection.
- 4.21.080 Retention of Records.
- 4.21.083 Limitation of Involvement in Bingo.
- 4.21.085 Prohibition of Financial Interest in Bingo.
- 4.21.090 Exclusive Operation By Licensee.
- 4.21.095 Staff Member Identification.
- 4.21.100 Attendance Limited to Occupancy Capacity.
- 4.21.105 Licensing of Premises.
- 4.21.110 Operating Rules.
- 4.21.115 Location of Games.
- 4.21.120 Limitation of Bingo Hours and Sessions.
- 4.21.125 Location Restriction.
- 4.21.130 Temporary Suspension of Licensee Pending Opportunity for Hearing.
- 4.21.135 Notice of Temporary Suspension and Appeal - Appeal of Underlying Suspension or Revocation.
- 4.21.140 Conducting Bingo Games After Temporary Suspension or Suspension.
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- 4.21.155 Purchases from Bingo Suppliers.
- 4.21.160 Injunction.
- 4.21.165 Regulation of Games and Equipment.
- 4.21.167 Computerized Equipment.
- 4.21.170 False or Misleading Advertising.
- 4.21.175 Receipt of Profit by a Person and Penalty for Violation of This Chapter.
- 4.21.180 Discontinuance of Bingo Games.

**4.21.000 STATEMENT OF PURPOSE.** Past enforcement experience in other jurisdictions has demonstrated the following:

(a) City time, effort and expense to regulate and monitor bingo are increasing significantly. State and City laws demand a technical accounting of proceeds. As volume increases, the City's ability to audit, and enforce state and local law is compromised. Although many operators are highly efficient and reputable, others are inefficient and creative in avoiding the letter of the law.

(b) If all licensees were efficient and reputable, regulatory supervision would be almost perfunctory. Such is the case with many existing licensees. Others, however, require exhaustive monitoring and enforcement. Integrity is a difficult commodity to ascertain in advance of licensure. Thorough screening of applicants prior to licensure is desirable. Pursuant to Sections 4.10.035 and 4.10.040, the Chief of Police conducts a thorough investigation into the background of applicants, and their organizations, in order to assure that licensure would not set the stage for fraud and deceit. Such investigation is particularly difficult when applicants have no local track record.

(c) Both newly chartered and out of the jurisdiction charities have proven to be problematic. Several have folded within months of licensure due to financial collapse. While some financial failure may be innocently explained, others are clearly bankrupted by the misappropriation of charitable proceeds. Whether innocent or criminal causes underlie these failures, short-lived charities monopolize an inordinate amount of City expense, which never ripens to benefit any charity.

A one year operational prerequisite would allow City energies to be more efficiently allocated. Pre-license screening would be supplemented with the objective track record of each applicant. The number of unstable or pretextual organizations would be reduced.

Accordingly, it is the finding of the City Council that a twelve month operational prerequisite would eliminate many of the above problems, without undue burden to stable and reputable charities. The purposes of this Chapter are to protect the health, safety and welfare of the citizens within the City, to assure that City expenditure is efficiently allocated, and to safeguard legitimate charitable purposes.

The purpose for allowing an eligible organization to conduct bingo games in the City is to provide that organization an additional source of revenue to further the purpose for which that organization was created. A licensee organization conducting bingo games without generating a profit from those games does not fulfill the purpose for which bingo is permitted.

Organizations with a proven track record demonstrating that the game can produce a certain level of profits for charitable purposes, as opposed to proceeds going largely to overhead expenses of the game, should be allowed to conduct further games on various days of the week.

The purpose of requiring a separate license for separate functions of bingo operations, such as a bingo parlor license, a bingo supplier license, and a license for the actual conduct of the games, is to ensure that each function is conducted by a separate and independent person or entity. Such regulation aids in assuring the integrity of the game and in minimizing the problems of undue influence being used against an organization that is licensed to conduct bingo. Recent history has shown that nonprofit organizations are not beyond exercising undue influence against smaller organizations and channeling some of the monies meant for charitable purposes into the private accounts of dishonest members. Further, requiring separation of functions lessens the opportunity for fraud, collusion, and self-dealing.

The purpose of requiring those organizations licensed to conduct bingo games to pay amounts owed to the bingo parlor before the next day of bingo operation and to pay the bingo supplier within thirty days of the invoice date or ten days of the statement date, whichever occurs later, is a direct effort to preclude the parlor or the supplier from acquiring a financial interest in the games. The existence of a debtor-creditor relationship is inimical to the integrity of the bingo games. In the realm of gaming, and bingo is gaming, debts owed to the parlor or supplier by the organization licensed to conduct bingo can be used by the parlor or supplier to exert undue influence on the conduct of the games, and to increase the overhead expenses charged to these organizations. Organizations indebted to the parlor or supplier are thus placed in a position of sharing profits with the parlor or supplier to the detriment of the charitable purpose.

**4.21.005 BINGO PROHIBITION.** No person shall operate a bingo game in the City without possessing a valid, unrevoked and unexpired Special Business License issued pursuant to the provisions of this Chapter and City Regulations adopted pursuant to this Chapter, and except in conformance with Section 326.5 of the California Penal Code, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.21.010 DEFINITION OF "BINGO."** As used in this Chapter, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. The game of bingo shall include cards having numbers or symbols that are concealed and preprinted in a manner providing for the distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend as follows: "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." Although "cards" colloquially may refer to a cardboard card, it is permissible for a "card" to be a sheet of paper with multiple card faces preprinted on it and is included herein within the definition of "card."

The game of bingo includes the use of an electronic bingo aid in conjunction with bingo cards to assist a bingo player participating in bingo games to identify a winning card, when used under the conditions set forth in Section 4.21.167(b). The term "electronic bingo aid" is defined as any mechanical, electronic, or computerized aid,

(including related hardware and software), that is interfaced with or connected to equipment that allows a player to store, display, and mark bingo card faces programmed into the device. This definition of electronic bingo aid includes the individual hand held or table top unit or component used by a player, the related equipment and system with which the hand held or table top unit is interfaced with, and all other related systems, equipment, software, hardware, and circuitry, that together comprise the electronic bingo aid.

Definitions, powers, conditions and restrictions set forth in this Chapter are intended to comply with and implement applicable California Constitution and Penal Code provisions. To the extent that any provision of this Chapter is substantially the same as that contained in Section 326.5 of the Penal Code, and violation thereof is a violation of that Penal Code section and punishable thereunder, such provision of this Chapter is explanatory only.

#### **4.21.015 DEFINITION OF "BINGO GAME."**

(a) The total value of prizes awarded during the conduct of any bingo game shall not exceed \$250 in cash or kind, or both, for each separate game which is held. A bingo game starts when the first ball or number symbol is called and ends when the first ball and all succeeding balls or number symbols are returned to the cage or blower. Each progressive play in a series which continues to utilize and count any number symbols called and utilized in a previous part of this progression shall be deemed part of the same bingo game, even if a separate prize is awarded for each part of the progression. The cumulative prizes awarded for a "progressive" or other similar bingo game shall not exceed \$250 in cash or kind or both.

(b) It shall be unlawful for any person to establish, provide or authorize the establishment or provision of a prize or prizes in violation of the provisions of this Section, and a violation of the provisions of this Section shall constitute grounds for revocation of a Special Business License authorizing the operation of bingo games issued pursuant to the provisions of this Chapter and Chapter 4.10.

**4.21.017 DEFINITION OF A "BINGO SESSION."** A bingo session shall not exceed six (6) hours in duration. A session begins when the first game starts.

**4.21.020 DEFINITION OF "SECURITY."** Security shall mean the person(s) who protects bingo players, bingo licensees, and volunteers from exposure to danger. The security person(s) shall be prohibited from the sale or the distribution of bingo materials or otherwise participating in non-security activities before, during, and after the bingo session. However, this provision does not preclude security from accompanying the licensee with the session's net proceeds to a night depository immediately after the session.

#### **4.21.025 DEFINITION OF "MEMBER."**

(a) Each licensee shall have written policies incorporated in its constitution, articles, by-laws, or other regulations setting forth the manner in which a person may

become a bona fide member of the organization. Absent any such written policies, it shall be presumed that the organization has no members who may operate or staff bingo games within the meaning of Section 326.5 of the Penal Code.

(b) The licensee shall keep a full and accurate list of its members. The Chief of Police or any other authorized representative of the City is entitled to examine and investigate such list at any reasonable time, and the licensee shall cooperate in making such records available upon demand of the Chief of Police.

**4.21.027 PROHIBITION OF MEMBER PARTICIPATION IN STAFFING BINGO GAMES.** A volunteer or member shall not participate in the staffing of bingo games if the Chief of Police makes a finding that such volunteer or member:

(a) Has violated any applicable prohibition or requirement of this Chapter or Title or applicable administrative regulations adopted pursuant to this Chapter or Title; or has been convicted of a crime, and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or,

(b) Has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or her or another, or substantially injure another;

(c) And, that by reason of the violation, crime, or act, there is a substantial risk the member may perform his or her duties of staffing the bingo game in an unlawful manner or in a manner which subjects patrons of the bingo game to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, a member shall not be prohibited from staffing a bingo game solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Section 4852.05.

**4.21.030 CHIEF OF POLICE.** The Chief of Police is charged with the responsibility of administering the regulations imposed by this Chapter and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing bingo games, promulgate and enforce administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

**4.21.035 ORGANIZATIONS ELIGIBLE FOR LICENSE.** Organizations which are exempted from the payment of the bank and corporation tax by Section 23701(a), 23701(b), 2370(d), 23701(e), 23701(f), 23701(g), and 237011 of the Revenue and Taxation Code, mobile home park associations and senior citizens organizations shall be eligible to apply for and receive a Special Business License to conduct bingo games in the City pursuant to the provisions of the California Constitution, Section 326.5 of the Penal Code, and the provisions of this Chapter only if the proceeds of such games are

used for charitable purposes and only if the applicant has owned or leased property or occupied donated property within the City that has been used by the applicant for the performance of the charitable purposes for which the applicant is organized for at least twelve (12) consecutive months immediately preceding the filing of such application. The required consecutive twelve month period need not be as an organization that is exempt from the payment of bank and corporation tax. With the foregoing exceptions, no other person shall be qualified or eligible to receive such a license.

**4.21.040 CONTENTS OF THE APPLICATION.** In addition to the matters prescribed by Section 4.10.030, an application for a Special Business License to conduct bingo games shall contain the following:

(a) The names and signatures of at least two officers, including the presiding officer of the organization who will be primarily responsible for conducting bingo games. In the event of any change in persons holding such offices, the licensee shall within ten (10) days of change notify the Chief of Police, in writing, of such change, specifying the name, address, date of birth, and telephone number of such officer(s);

(b) A description of the property on which bingo games will be conducted, including the street number, whether owned or leased, applicant's current use of the premises, and the occupancy capacity of the property;

(c) A copy of the deed, lease or other written instrument by which the applicant will acquire entitlement to occupy the premises where the bingo games will be conducted, and a description of all uses which the applicant will make of the premises;

(d) A statement of the specific charitable purpose(s) for which the applicant is organized;

(e) Proposed day(s) of the week and hours for conduct of bingo games;

(f) Such proof as may be required by the Chief of Police that the applicant is eligible and qualified to receive a Special Business License under Section 4.21.035. If eligibility is based on an exemption from payment of the bank and corporation tax, the application shall be accompanied by a certificate of determination of exemption under the applicable Section of the Revenue and Taxation Code, or a letter of good standing from the Exemption Division of the Franchise Tax Board showing such exemption;

(g) A statement that the applicant agrees to conduct bingo games in strict accordance with the provisions of Section 326.5 of the Penal Code, this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation and agrees that the license may be revoked by the Chief of Police upon violation of any such provisions; and

(h) The application shall be signed by the applicant under penalty of perjury.

**4.21.045 BINGO MANAGER.** Concurrently, with the filing of an application, each applicant shall file a statement specifying the name, address, e-mail address, if any, telephone number and birth date of one or more persons who shall manage, supervise and be responsible for the conduct of all bingo games by the applicant. Such person(s) shall be known as the bingo manager(s), shall sign the statement accepting such responsibility and shall be present on the premises at all times during which bingo games are conducted. In the event any other person is designated as the bingo manager by any licensee, the licensee shall within ten (10) days of such designation file a new statement containing all of the data specified in this Section.

**4.21.050 LICENSE FEE.** Each holder of a Special Business License to conduct bingo games shall, pursuant to the authority conferred by Section 326.5 of the California Penal Code, pay to the Chief of Police a fee prescribed by City Council paid upon application for a Special Business License or the application for renewal thereof. A bingo monitoring fee, prescribed by a Resolution of the City Council, for law enforcement and public safety costs incurred by the City that are directly related to bingo activities shall be imposed and shall be collected monthly by the City and such additional fee shall not exceed the actual costs incurred in providing the service.

**4.21.055 ISSUANCE OF LICENSE.** The Chief of Police shall issue a Special Business License for bingo games unless one or more of the findings prescribed by Section 4.10.040 are made, or the Chief of Police makes one or more of the following findings in writing:

(a) The bingo games will be a fraud on the public;

(b) The bingo games will be conducted at a location or in a manner or the proceeds thereof will be accounted for or expended in a manner which violates, or the applicant has violated, Section 326.5 of the Penal Code, this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(c) The identity of the applicant or proposed method or methods of conducting bingo games are contrary to the provisions of Section 326.5 of the California Penal Code, this Chapter, City Regulations adopted under this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(d) The applicant will be maintaining an inadequate system of record keeping and accounting relating to the conduct of the games and disposition of the proceeds therefrom;

(e) The application does not conform to the requirements, terms, and conditions of this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(f) The applicant holds a current license under Chapters 4.22 or 4.23.

**4.21.060 POSTING OF LICENSE.** The Special Business License shall be conspicuously posted at the location of the bingo games.

**4.21.065 PROFITS - 23701(d) ORGANIZATIONS.** With respect to organizations exempt from payment of the bank and corporation tax by Section 23701(d) of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account, and shall not be commingled with any other fund or account. Such profits shall be expended only for the charitable purposes stated in the application for bingo license or in the Articles of Incorporation of such organization. These profits shall not be used for the private gain of any individual.

**4.21.070 PROCEEDS -OTHER ORGANIZATIONS.**

(a) With respect to organizations licensed under this Chapter which are not exempt from payment of the bank and corporation tax by Section 23701(d) of the Revenue and Taxation Code, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. These proceeds shall not be used for the private gain of any individual. The proceeds shall be expended only for the charitable purposes stated in the application for bingo license or in the Articles of Incorporation of such organization, except as follows:

- (1) Such proceeds may be used for prizes;
- (2) A portion of such proceeds, not to exceed twenty percent (20%) of the proceeds before the deduction for prizes, or two thousand dollars (\$2,000) per month, whichever is less, may be used for rental of property, overhead, the purchase of bingo equipment, administrative expenses, security equipment and security personnel; and,
- (3) Such proceeds may be used to pay license fees.

(b) A licensee shall be deemed to violate Section 326.5(k)(2) of the California Penal Code and Subdivision (a)(2) of this Section if expenses during any particular month exceed two thousand dollars (\$2,000). If expenses do not exceed two thousand dollars (\$2,000) per month, the twenty percent (20%) limitation shall be applied annually at the conclusion of each twelve (12) months of operation.

**4.21.075 RECORDS - COMPLIANCE EXAMINATION AND INSPECTION.**

(a) The licensee shall keep full and accurate records of the income received and expenses disbursed in connection with its operation, conduct, promotion, supervision, and any other phase of bingo games. Such records are to include but are not limited to: ledgers and accounts relating to inventory, proceeds, expenditures, and the distribution of all profits derived from bingo games, and any other records as are necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or

regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police; and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

(b) The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy, bingo licensee records as described in subdivision (a) of this Section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

(c) Compliance examinations shall be conducted by the Chief of Police of bingo licensee records described in subdivision (a) of this Section not less frequently than annually, for each twelve (12) months of each licensee's operation.

(d) If the organizational structure of the licensee is such that an umbrella organization disburses bingo proceeds to member organizations, the records described in subdivision (a) of this Section which are subject to examination, review, audit, inspection, or photocopy shall include both the bingo records of the umbrella organization and its member organizations. For purposes of this Section, an umbrella organization is defined as a nonprofit, income tax exempt, charitable organization which is organized for the purpose of providing financial support to other nonprofit, income tax exempt, charitable organizations.

**4.21.080 RETENTION OF RECORDS.** The licensee shall keep and preserve the records described in Section 4.21.075(a) for the following period of time, whichever occurs later:

(a) Three (3) years;

(b) Until completion of a compliance examination; or

(c) Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.21.083 LIMITATION OF INVOLVEMENT IN BINGO.** The bingo licensee shall not allow another person, sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture or other individual or entity to organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of its bingo game or the promotion thereof.

**4.21.085 PROHIBITION OF FINANCIAL INTEREST IN BINGO.**

(a) No individual, corporation, partnership, or other entity except the bingo licensee shall hold a financial interest in the conduct of any bingo game. A financial

interest includes, but is not limited to, situations in which a bingo licensee maintains accounts payable to a parlor licensee for parlor rents and other costs beyond the next day of bingo operation; or, maintains accounts payable to a bingo supplier beyond thirty (30) days of the invoice date or ten (10) days of the statement date, whichever occurs later. For purposes of this subdivision of this Section "invoice date" is defined as the date of delivery of such supplies and "statement date" is defined as the date within thirty (30) days of the delivery of supplies.

(b) A licensee that has not paid its supplier account(s) or parlor account(s) within the period provided in subdivision (a) of this Section shall not purchase additional supplies from any supplier or rent or incur other costs from any parlor until all accounts are brought into compliance with the required payment periods provided in subdivision (a) of this Section.

**4.21.090 EXCLUSIVE OPERATION BY LICENSEE.** Only the bingo licensee shall operate bingo games or participate in the promotion, supervision, or any other phase of the games. Bingo games shall be operated and staffed solely by members of the licensee; except that the licensee may retain or employ an off-duty law enforcement officer or security personnel at such bingo games. Such members shall not receive a profit, wage, salary, or compensation from bingo proceeds or bingo profits for services rendered from any bingo game. The term "compensation" as used in this Section includes, but is not limited to, cash, bingo paper, pull tabs, coupons, redeemable vouchers, discounts, or payment in kind. Neither the provisions of Section 326.5(b) & (h) of the Penal Code nor those of this Section shall be deemed violated if a bingo licensee reimburses members staffing the games for the actual and necessary costs which they incur in providing services associated with the conduct of the games.

**4.21.095 STAFF MEMBER IDENTIFICATION.** Any person participating in the operation, conduct or staffing of any bingo game shall wear on his or her outside clothing, in plain view, an identification insignia or badge measuring not less than 2 1/2 inches by 3 1/2 inches in size and specifying the name and title of such person and the name of the licensee organization.

**4.21.100 ATTENDANCE LIMITED TO OCCUPANCY CAPACITY.**

(a) Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which the game is conducted as determined by the fire department or district having jurisdiction in accordance with applicable laws and regulations.

(b) It is unlawful for a licensee to knowingly authorize or permit, and unlawful for any person to, reserve seats or space where bingo games are conducted.

**4.21.105 LICENSING OF PREMISES.** The license issued under this Chapter shall authorize the holder thereof to conduct bingo games only on such property the address of which is stated in the application. In the event the described property ceases to be used for the conduct of bingo games by the licensee, the license shall

have no further force or effect. The bingo licensee shall file a new application, and such application shall be processed pursuant to the provisions of this Chapter, in order for the eligible organization to conduct bingo games at a new location or address.

**4.21.110 OPERATING RULES.** Each licensee shall formulate, publish and post in a conspicuous place at the location of the bingo games written rules by which the bingo games are conducted and which recite the prohibitions described below. It is unlawful for a licensee to knowingly authorize, permit, and unlawful for any person to do any of the following:

- (a) Provide or award total prizes for each separate bingo game which exceeds two hundred fifty dollars (\$250) in cash or kind, or both;
- (b) Limit attendance or participation in such games to members of the licensee or otherwise deny attendance or participation to any member of the general public who complies with the rules of the game and conducts himself or herself in an orderly and law abiding manner;
- (c) Participate in a bingo game, if the participant is under the age of eighteen (18) years old;
- (d) Participate in a bingo game where alcoholic beverages are consumed in the room where the bingo games are conducted or if the participant is under the influence of alcohol;
- (e) Participate in bingo games, unless personally present at the location of the games at the time the games are being conducted.

In this Section "participate" is defined as including, but not limited to, the handling of bingo supplies or receipts during any bingo session.

**4.21.115 LOCATION OF GAMES.** A licensee shall conduct bingo games only on property owned or leased by it, or property whose use is donated to the licensee, and which property is used by the licensee for performance of the charitable purposes for which the organization is organized. Nothing in this Section shall be construed to require that the property be owned or leased exclusively by or donated exclusively to such organization. The requirements of the provisions of Section 326.5(f) of the Penal Code and those of this Section shall be deemed satisfied if the licensee conducts regular business meetings or other activities consistent with its charitable purposes, in addition to bingo games, upon the property which it owns, leases, or uses as a donee. A licensee need not use the property exclusively for activities which fulfill its charitable purposes or objectives.

**4.21.120 LIMITATION OF BINGO HOURS AND SESSIONS.**

- (a) No bingo licensee shall conduct bingo games between the hours of 2:00 a.m. and 10:00 a.m. of the same day.

(b) Except as provided in this subdivision, no bingo licensee shall conduct more than one bingo session per week. To conduct more than one bingo session per week a licensee shall secure the permission of the Chief of Police. The licensee shall have a valid, unrevoked, and unexpired license to conduct such bingo games and shall submit a written application with information therein as required by the Chief of Police. The Chief of Police shall authorize the bingo licensee to conduct more than one session per week unless the Chief of Police makes one or more of the following findings in writing:

- (1) The bingo licensee is not an organization exempt from the payment of the bank and corporation tax as provided by Sections 23701(a), 23701(b), 238701(d), 23701(e), 23701(f), 23701(g), and 237011 of the Revenue and Taxation Code, or is not a mobile home park association, or a senior citizens organization; and, for at least two continuous years immediately preceding filing of the application for additional sessions has not existed and operated within the City. The two year consecutive period of existence and operation provided for herein, need not include exemption from payment of the bank and corporation tax;
- (2) The bingo licensee has failed, during the immediately preceding two (2) year period, to raise at least twenty-five thousand dollars (\$25,000) each year through public and private solicitations (including publicly funded grants and recreational and other fund raising activities, but exclusive of any revenue from the sponsorship of bingo games), and has failed to expend at least sixteen thousand dollars (\$16,000) during each of the preceding two (2) years on charitable causes; or, the bingo licensee has not conducted bingo games in the City for the preceding 12 months;
- (3) The bingo licensee has failed to equal or exceed, and has failed to maintain for at least 6 consecutive months, at least 75% of the average percentage Net Profit Available from bingo in the City as determined and defined by the Chief of Police from, but not limited to, bingo records of the licensee community during the previous City fiscal year;
- (4) The bingo licensee does not have enough volunteers to staff the extra sessions;
- (5) The bingo licensee's accounting records have never undergone a compliance examination by the Chief of Police or there exist uncorrected deficiencies from a compliance examination conducted by the Chief of Police;
- (6) The additional sessions will be detrimental to public safety, health or welfare; or

- (7) The licensee has failed to comply with other provisions of this Chapter, the City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

(c) The Chief of Police shall notify the bingo licensee in writing of the denial of a licensee's application to conduct more than one bingo session per week and shall in such notice state the reason(s) for the denial and that the licensee has fifteen (15) calendar days from the date of service of such written notice of denial to file an appeal of such denial. Upon timely request by the licensee, the appeal hearing process and related procedures shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.130.

#### **4.21.125 LOCATION RESTRICTION.**

(a) Notwithstanding the permission contained in a Special Business License pursuant to Section 4.21.105, and notwithstanding any provision of this Chapter or Chapter 4.10 to the contrary, it shall be unlawful for any person who holds a Special Business License authorizing the operation of bingo games to conduct bingo games at a place which is or would by virtue of the conduct of such games be or become a bingo parlor, as defined by Section 4.22.010, unless the bingo parlor has been authorized by a valid unexpired, unrevoked Special Business License issued pursuant to the provisions of Sections 4.22.030 and Chapter 4.22.

(b) Notwithstanding any other provision of this Chapter or Chapter 4.10 to the contrary, violation of the provisions of subdivision (a) of this Section shall constitute grounds for revocation of a Special Business License authorizing the operation of bingo games issued pursuant to the provisions of this Chapter and Chapter 4.10.

**4.21.130 TEMPORARY SUSPENSION OF LICENSE PENDING OPPORTUNITY FOR HEARING.** The Chief of Police shall have the authority to temporarily suspend the bingo license by ordering in writing that the licensee immediately cease and desist any further operations of any bingo game pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

(a) The bingo licensee is conducting a bingo game in violation of any of the provisions of this Chapter, Penal Code Section 326.5, the City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) The bingo licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any

reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The bingo licensee has not kept records as required by the Chief of Police, this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove or federal law, administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulations.

**4.21.135 NOTICE OF TEMPORARY SUSPENSION AND APPEAL - APPEAL OF UNDERLYING SUSPENSION OR REVOCATION.**

(a) The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in Section 4.10.145.

(b) Upon timely request by the licensee, the appeal hearing process and related procedures of a revocation or suspension of its license pursuant to Section 4.10.135 shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.155.

**4.21.140 CONDUCTING BINGO GAMES AFTER TEMPORARY SUSPENSION OR REVOCATION.** Any person who continues to conduct a bingo game after temporary suspension pursuant to Section 4.21.130, or suspension pursuant to Section 4.10.135, is guilty of a misdemeanor.

**4.21.150 RECEIVING BINGO PROCEEDS DURING SUSPENSION OR REVOCATION.** Notwithstanding the provisions of Section 4.10.145, an organization whose license has been temporarily suspended, suspended, or revoked cannot receive bingo proceeds from any source during the period of temporary suspension, suspension, or revocation. A violation of this Section shall result in a permanent license revocation to the organization involved.

**4.21.155 PURCHASES FROM BINGO SUPPLIERS.** It is prohibited for bingo licensees to use bingo paper and pull tabs purchased from suppliers that are not licensed to conduct a bingo supply business by the City pursuant to Chapter 4.23.

**4.21.160 INJUNCTION.** The City may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the Penal Code, of this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.21.165 REGULATION OF GAMES AND EQUIPMENT.** The Chief of Police may prescribe such regulations with respect to the conduct of the games and the equipment used by the licensee as deemed necessary to ensure the fairness and integrity of the games, and the accountability of the funds collected. Violation of such regulations shall constitute grounds for revocation of the Special Business License, as set forth in this Chapter and Chapter 4.10.

**4.21.167 COMPUTERIZED EQUIPMENT.**

(a) Except as provided in Subsection (b) of this Section, it shall be unlawful for organizations licensed under this Chapter to:

- (1) Permit the use of machines, devices, or equipment that is computerized, electronic, or mechanical, in a bingo game;
- (2) Operate, or allow to be played, any form of bingo in which the numbers to be called are selected by electronic means rather than by random selection of numbered balls from a pool of game balls.

(b) Electronic Bingo Aid.

(1) Purpose. The purpose of this Subsection (b) is not to permit the use of all electronic bingo aids in bingo. The purpose is to permit the bingo licensee to use an electronic bingo aid on the conditions and specifications set forth in this Subsection (b). It is contemplated that an electronic bingo aid will include individual units or components to be used by players and that these units or components will be activated by the organization licensed to conduct bingo for a player's operation. These individual player units or components are hand held or desktop devices used in conjunction with bingo cards. It is contemplated that an electronic bingo aid will permit a bingo player to input into an activated individual player unit or component randomly selected numbers called by the bingo licensee in order to match such numbers against programmed information to identify a winning card. The programmed information reflects the exact configurations of the bingo cards sold to and played by the player. The electronic bingo aid is not to alter the bingo cards. The electronic bingo aid is to be used in conjunction with bingo cards in order to assist the player identify a winning card. The electronic bingo aid is not to be used as an electronic or computerized game of bingo, or as a substitute for required bingo cards, or as a substitute for any other requirements of bingo as provided in this Chapter or Penal Code section 326.5.

(2) An electronic bingo aid may be used by bingo players in conjunction with bingo cards to assist in the identification of a winning card if the bingo licensee complies with the conditions set forth in this Section, and if the organization complies with all other required provisions of Chapter 4.21 herein and Penal Code section 326.5. Violation of any or all of such provisions and conditions shall constitute grounds for revocation, suspension, or denial of the Special Business License to conduct bingo games, pursuant to the procedures set forth in this Chapter and Chapters 4.02 and 4.10.

(3) An electronic bingo aid is permitted only as a means of assisting a player to mark, otherwise register, or record, numbers selected at random in order to identify a winning bingo card. An electronic bingo aid shall not replace or alter the bingo cards. An electronic bingo aid shall not interfere or interact with the element of chance in the game. The player shall have in his or her possession at all times during the game, bingo cards with configurations that were sold to the player by the bingo licensee for use with the electronic bingo aid that correspond exactly to such bingo card configurations programmed into the electronic bingo aid. The bingo cards and the individual unit or component of the electronic bingo aid used by the player shall be kept separate and apart and in public view on the tabletop, during the game.

(4) Players shall manually input numbers called by the bingo licensee into the individual player operated units or components of the electronic bingo aid; and, automatic daubing shall not be permitted. The portion of the electronic bingo aid system in the immediate physical possession and operation of the bingo licensee, and the individual player operated units or components of the electronic bingo aid used by a player, shall be able to identify a winning card during the game. Verification by the bingo licensee of a winning combination shall be made based on the bingo card and not solely on the electronic bingo aid. Players shall notify the game operator or caller of a winning pattern of bingo.

(5) The electronic bingo aid, including the individual player operated units or components of the electronic bingo aid, shall be enabled for play solely by the bingo licensee; and, only on the premises where the games are conducted. The electronic bingo aid shall be programmed either by the bingo licensee, or by a bingo supplier licensed pursuant to Chapter 4.23 at the direction and as specified by the bingo licensee. A copy of any change in the program of a programmed electronic bingo aid shall be submitted to the Chief of Police. The same card configurations shall be programmed into the electronic bingo aid as are sold to the player. All individual player operated units or components of the electronic bingo aid shall be rented or otherwise provided to a player solely by the bingo licensee.

(6) Prior to giving physical possession of the individual player operated unit or component of the electronic bingo aid to the player, the bingo licensee shall receive payment from the player for the number of games requested by the player that are programmed into the electronic bingo aid. The bingo licensee shall at the time of payment issue to the player: an individual player operated unit or component of the electronic bingo aid; the bingo cards sold to the player corresponding exactly to the bingo number pattern for each card face thereon that is programmed into the electronic bingo aid; and a receipt indicating, the amount paid, the number of faces and games sold to the player and activated in the electronic bingo aid, and the serial number of each card face sold to the player and activated by game.

(7) The Chief of Police shall by administrative regulation determine the maximum number of bingo card faces that may be programmed into a player operated unit or component of an electronic bingo aid during a bingo game, but such number shall in no event exceed 72 bingo card faces.

(8) Only one player operated unit or component of an electronic bingo aid may be used by a bingo player during a bingo game.

(9) A particular type of electronic bingo aid shall not be used by a bingo licensee until the bingo licensee has demonstrated the electronic bingo aid to the Chief of Police, and such electronic bingo aid has been inspected and approved by the Chief of Police.

(10) Each player electing to use the electronic bingo aid shall have an equal opportunity to do so. The bingo licensee shall distribute each player operated unit or component of the electronic bingo aid for play on a random basis; first come, first served. No particular player operated unit or component of the electronic bingo aid shall be reserved for any player. The bingo player is prohibited from selecting the player operated unit or component of the electronic bingo aid.

(11) Only a bingo supplier licensed by Chapter 4.23 may remove the electronic bingo aid from the premises where the games are conducted. Removal may be for repair or for use by another organization licensed by this Chapter to conduct bingo. A record shall be maintained by the bingo licensee of: all electronic bingo aids removed from such premises; the name of the person, and business if any, who has taken the device from such premises; the site address where taken; the return date if any; and, disposition of the electronic bingo aid.

(12) Accounting records pertaining to electronic bingo aids, including the internal accounting system of the electronic bingo aid, shall be retained as prescribed by Section 4.21.080. The electronic bingo aid system must have a dial-up capability so the Chief of Police may remotely monitor the operation and the internal accounting system of the electronic bingo aid at any time. The electronic bingo aid shall contain a point of sale accounting system that allows it to track all financial activity for the bingo session. The electronic bingo aid shall at a minimum contain and keep an accounting system that records the serial number of each bingo card or bingo face sold, the price of each card sold, and the total amount of the electronic bingo aid proceeds from each session. The accounting information must be secure and shall not be accessible for alteration. The electronic bingo aid's capabilities and information must not be lost through power failure or other disruption during the session.

(13) The bingo licensee shall not conduct bingo games where a player is required to use an electronic bingo aid. During all games, the use of an electronic bingo aid shall be at the option of the bingo player. The bingo licensee shall permit all players to play in all bingo games without the use of an electronic bingo aid.

(14) The bingo licensee shall require a player electing to use an electronic bingo aid to purchase no less than the licensee's minimum number buy-in of bingo cards for use without an electronic bingo aid.

(15) The portion of the electronic bingo aid system in the immediate physical possession and operation of the bingo licensee shall have the capability during

the game to print and may print the configurations of the bingo cards that are programmed into the electronic bingo aid. The player operated units or components of the electronic bingo aid shall not have such capability and shall not print configurations of the bingo cards.

(16) The electronic bingo aid including related circuitry shall be sealed and secured in order to prevent unauthorized removal, additions, changes, or other alterations to the data within such electronic bingo aid.

(17) The Chief of Police may, upon demand, examine and inspect the electronic bingo aid, or any player operated unit or component of the electronic bingo aid, during the conduct of the games if the Chief of Police detects or discovers any problem with such equipment that affects the integrity of the bingo game or such equipment. The bingo licensee shall immediately cooperate and comply upon the Chief of Police's demand for such examination and inspection. Such examination and inspection shall include immediate access to the electronic bingo aid, player operated units or components of the electronic bingo aid, and inspection of all associated parts and systems, as applicable; and, may involve the immediate removal of the electronic bingo aid, player operated units or components of the electronic bingo aid, or related system or parts, as applicable, from the game premises for further testing.

(18) If, at any time, the Chief of Police detects or discovers any malfunction with an electronic bingo aid, or any player operated unit or component of the electronic bingo aid, that affects the integrity of such equipment or the bingo game, the Chief of Police may order the bingo licensee to cease the use of the electronic bingo aid or a player operated unit or component of the electronic bingo aid, as applicable, immediately. The bingo licensee shall comply immediately with such Chief of Police's order.

(19) If the bingo licensee detects or discovers any malfunction or any problem or occurrence with the electronic bingo aid, or the player operated unit or component of the electronic bingo aid, that affects the security or the integrity of the bingo game or such equipment, the bingo licensee shall cease immediately the use of the electronic bingo aid or affected player operated unit or component of the electronic bingo aid, as applicable.

**4.21.170 FALSE OR MISLEADING ADVERTISING.** It shall be unlawful for any licensee to make or disseminate or cause to be made or disseminated before the public in this City, in any newspaper or other publication, or any advertising device, or any other manner or means whatsoever, any statement concerning any such bingo game including, but not limited to, the amount of prizes to be awarded or distributed in any game, which is untrue or misleading, and which is known or which, by the exercise of reasonable care, should be known to be untrue or misleading.

**4.21.175 RECEIPT OF PROFIT BY A PERSON AND PENALTY FOR VIOLATION OF THIS CHAPTER.**

(a) It is a misdemeanor under Section 326.5(b) of the Penal Code of the State of California for any person to receive or pay a profit, wage, or salary from any bingo game authorized under this Chapter for activities related to bingo or the bingo operation. The expenditure of any revenues or proceeds derived from bingo to pay employees, members, or contractors of licensed organizations for services associated with the planning, organization, management, operation or staffing of bingo games, or related to bookkeeping, accounting, auditing or technical advice concerning the handling or disposition of such revenues or proceeds is prohibited. A violation of this prohibition is punishable by a fine not to exceed ten thousand dollars (\$10,000) payable to the general fund of the City of Elk Grove.

(b) In addition to other applicable provisions of this Title, a violation of any of the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a Special Business License to conduct bingo games issued pursuant to the provisions of this Chapter and Chapter 4.10.

**4.21.180 DISCONTINUANCE OF BINGO GAMES.** Bingo licensees who discontinue conducting bingo games shall follow the accounting requirements prescribed by the Chief of Police in the City Regulations adopted pursuant to this Chapter. Their failure to do so shall result in denial of a subsequent license to conduct bingo games for two (2) years from the last day a bingo game was conducted.

## CHAPTER 4.22

### BINGO PARLORS

#### Sections:

- 4.22.000 Purpose.
- 4.22.005 Definitions.
- 4.22.010 Same - Bingo Parlor.
- 4.22.015 Same - Bingo.
- 4.22.017 Same - Bingo Session.
- 4.22.020 License Required.
- 4.22.025 Contents of the Application.
- 4.22.030 Issuance.
- 4.22.035 Employee Permits.
- 4.22.040 Application for Permits.
- 4.22.045 Issuance of Permit.
- 4.22.050 Suspension or Revocation of Permits.
- 4.22.055 Records - Compliance Examination and Inspection.
- 4.22.057 Retention of Records.
- 4.22.060 Hours of Operation.
- 4.22.065 Limitation on Parlor Owner Involvement in Bingo.
- 4.22.070 Prohibition of Financial Interest in Bingo.
- 4.22.080 Temporary Suspension of License Pending  
Opportunity for Hearing.
- 4.22.085 Notice of Temporary Suspension and Appeal -  
Appeal of Underlying Suspension or Revocation.
- 4.22.090 Operating and Conducting Business at the Bingo  
Parlor after Temporary Suspension or Suspension.
- 4.22.100 Receipt of Profit by a Person and Penalty for Violation of this Chapter.

**4.22.000 PURPOSE.** In recent years, there has been a proliferation of bingo parlors in the region, resulting in multiple organizations licensed to conduct bingo in accordance with Chapter 4.21 and conducting bingo games at a single commercial location. Competition for the bingo player and the bingo dollar has increased between charitable organizations conducting bingo games. High rents and overhead and increased promotional expenditures have reduced the charitable organizations' profits derived from bingo games, thereby resulting in a substantial decrease in the profits available for charitable purposes.

The regulatory provisions of this Chapter are necessary to ensure that bingo parlors are operated subject to reasonable conditions for the protection of the public health, safety and welfare. A system of regulating bingo parlors, in conjunction with the existing regulations of organizations licensed to conduct bingo in accordance with Chapter 4.21, encourages the maximum use of bingo proceeds and profits for charitable purposes, but also limits the commercialization of bingo, particularly by criminal or otherwise undesirable elements.

The licensing regulations for bingo parlors further clarify and define the relationship between the bingo parlor and the licensed charitable organizations with respect to the operation and management of bingo games in the City.

**4.22.005 DEFINITIONS.** As used in this Chapter, the terms identified by Sections 4.22.010 through 4.22.017 shall be ascribed the meanings indicated.

**4.22.010 SAME - BINGO PARLOR.** A "bingo parlor" means a building, facility, or other improvement upon which space is leased, rented or otherwise allocated for monetary consideration to two or more organizations possessing a Special Business License pursuant to Chapter 4.21, within or upon which bingo games sponsored by the licensed organizations are conducted. A bingo parlor shall not be deemed to mean or include a building, facility, or other improvement which is owned by a public agency, within or upon which space is rented, leased or otherwise allocated for the operation of bingo games by two or more licensed organizations.

**4.22.015 SAME - BINGO.** As used in this Chapter, the term "bingo" shall be deemed to mean a game of chance as specifically defined in Section 4.21.010.

**4.22.017 SAME - BINGO SESSION.** As used in this Chapter, the term "bingo session" shall be deemed to mean the same as specifically defined in Section 4.21.017.

**4.22.020 LICENSE REQUIRED.** No person shall, unless under and by authority of a valid, unrevoked and unexpired Special Business License issued pursuant to the provisions of this Chapter, operate a bingo parlor in the City, whether singularly or in connection with another type of enterprise. A person shall be deemed to operate or conduct a bingo parlor and violate this Section if the person, without a Special Business License supervises, directs, organizes, controls or is in any way responsible for or in charge of a bingo parlor for which a Special Business License is required.

**4.22.025 CONTENTS OF THE APPLICATION.** In addition to the matters prescribed by Section 4.10.030, an application for a Special Business License to operate a bingo parlor shall contain the following:

(a) A copy of all leases, contracts or other agreements regarding the use or occupancy of the bingo parlor by and between the licensee and any organization licensed to conduct bingo games pursuant to Chapter 4.21;

(b) A description of all uses which any organization licensed pursuant to Chapter 4.21 shall make of the bingo parlor premises; and,

(c) A detailed description of the facility, services, resources and security personnel which the licensee shall provide to each organization licensed pursuant to Chapter 4.21 which shall operate or conduct a bingo game at the bingo parlor.

**4.22.030 ISSUANCE.** The Chief of Police shall issue a Special Business License unless:

(a) One or more of the findings set forth in Section 4.10.040 is made;

(b) The bingo parlor has violated, or will be conducted, operated or managed in a manner which violates, Penal Code Section 326.5, this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The applicant holds a current license under Chapters 4.21 or 4.23.

**4.22.035 EMPLOYEE PERMITS.** No person shall work in a bingo parlor as a bingo parlor manager and no person who holds a Special Business License authorizing operation of a bingo parlor shall employ any person as a bingo parlor manager unless such person possesses a valid Employee Permit or a Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.22.040 APPLICATION FOR PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to serve as a bingo parlor manager shall contain a list of each arrest resulting in either a conviction, a plea of guilty or a plea of nolo contendere. This list shall, for each such conviction, plea of guilty or plea of nolo contendere, set forth the date of arrest, the offense charged and the offense for which the applicant was convicted, or entered a plea of guilty or plea of nolo contendere.

**4.22.045 ISSUANCE OF PERMIT.** Upon receipt of an application for an employee permit to serve as a bingo parlor manager, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the permit pursuant to Section 4.10.090 unless he or she finds any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.22.040, or is otherwise incomplete;

(b) That information contained in the application is false or otherwise inaccurate;

(c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or, has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant may not perform his or her duties as a bingo parlor manager in a law-abiding manner or in a manner which does not subject patrons of the bingo parlor to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.05; or,

(d) That the applicant has violated or is in noncompliance with any of the provisions of this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.22.050 SUSPENSION OR REVOCATION OF PERMITS.** An employee permit may be revoked or suspended pursuant to Section 4.10.140 upon any of the following grounds:

(a) Violation of any of the duties, terms, conditions, requirements or prohibitions contained in this Chapter, in the City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) Violation of any duties, terms, conditions requirements or prohibitions imposed by Chapter 4.02 or Chapter 4.10;

(c) Misrepresentation of a material fact contained in the application for the permit; or,

(d) The Chief of Police has acquired information supporting a finding as described by Section 4.22.045(c) in relation to the holder of the permit.

#### **4.22.055 RECORDS - COMPLIANCE EXAMINATION AND INSPECTION.**

(a) The parlor licensee shall keep full and accurate records of the income received and expenses disbursed in connection with its operation and conduct of a bingo parlor, and as necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

(b) The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy, parlor licensee records as described in subdivision (a) of this Section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

(c) Compliance examinations shall be conducted by the Chief of Police of parlor licensee records described in subdivision (a) of this Section not less frequently than annually, for each twelve (12) months of each licensee's operation.

(d) Records described in subdivision (a) of this Section shall be subject to disclosure only pursuant to:

(1) Any suspension, revocation or other proceeding conducted under this Chapter or the City Regulations adopted pursuant to this Chapter; or,

(2) Any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Counsel. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

**4.22.057 RETENTION OF RECORDS.** The parlor licensee shall keep and preserve the records described in Section 4.22.055(a), for the following period of time, whichever occurs later:

(a) Three (3) years;

(b) Until completion of a compliance examination; or

(c) Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.22.060 HOURS OF OPERATION.** It shall be unlawful for any bingo parlor to operate or remain open for purposes of conducting bingo games between the hours of 2:00 a.m. and 10:00 a.m. of the same day.

**4.22.065 LIMITATION ON PARLOR OWNER INVOLVEMENT IN BINGO.** The licensee shall not organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of any bingo game conducted at the bingo parlor or the promotion thereof.

**4.22.070 PROHIBITION OF FINANCIAL INTEREST IN BINGO.** With the exception of revenue generated by any business or enterprise for which a Special Business License is required pursuant to this Chapter no licensee shall have a financial interest in the conduct of a bingo game operated in the City. A licensee shall be deemed to have a financial interest in the conduct of a bingo game including, but not limited to, the following situations:

(a) Rent or other costs for the bingo parlor is adjusted based on the profits, losses or tax exempt status of any organization licensed under Chapter 4.21;

(b) The licensee absorbs, assumes, shares or otherwise participates in the losses or profits of any bingo game conducted by any organization licensed under Chapter 4.21; or,

(c) The licensee maintains an accounts receivable for an organization licensed under Chapter 4.21 for rent amounts or other costs owed to the bingo parlor; except, for amounts owed by such organization from a previous day of bingo operation which are paid before the next day of bingo operation.

**4.22.080 TEMPORARY SUSPENSION OF LICENSE PENDING OPPORTUNITY FOR HEARING.** The Chief of Police shall have the authority to temporarily suspend the parlor's license by ordering in writing that the licensee immediately cease and desist any further operations of the parlor pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

(a) The parlor licensee is conducting its operation in violation of any of the provisions of this Chapter, Penal Code Section 326.5, the City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) The parlor licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this Chapter, City Regulations

adopted pursuant to this Chapter, Penal Code Section 326.5, any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The parlor licensee has not kept records as prescribed by the Chief of Police, this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

#### **4.22.085 NOTICE OF TEMPORARY SUSPENSION AND APPEAL - APPEAL OF UNDERLYING SUSPENSION OR REVOCATION.**

(a) The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in Section 4.10.145.

(b) Upon timely request by the licensee, the appeal hearing process and related procedures of the revocation or suspension of its license pursuant to Section 4.10.135 shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.155.

**4.22.090 OPERATING AND CONDUCTING BUSINESS AT THE BINGO PARLOR AFTER TEMPORARY SUSPENSION OR REVOCATION.** Any person(s) who continues to operate and conduct the business of a bingo parlor after temporary suspension pursuant to Section 4.22.080, or suspension pursuant to Section 4.10.135, is guilty of a misdemeanor.

#### **4.22.100 RECEIPT OF PROFIT BY A PERSON AND PENALTY FOR VIOLATION OF THIS CHAPTER.**

(a) It is a misdemeanor under Section 326.5(b) of the Penal Code for any person to receive or pay a profit, wage or salary from any bingo game authorized under this Chapter. Payment received by a parlor licensee for rent or lease of a parlor facility or other costs of the parlor related to bingo from a bingo licensee licensed pursuant to Chapter 4.21 and 4.10 shall not be deemed a violation of this Section. A violation of this prohibition is punishable by a fine not to exceed ten thousand dollars (\$10,000) payable to the general fund of the City of Elk Grove.

(b) A violation of any of the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a Special Business License to conduct a bingo parlor issued pursuant to the provisions of this Chapter.

## CHAPTER 4.23

### BINGO SUPPLIERS

#### Sections:

- 4.23.000 Purpose.
- 4.23.010 Definitions.
- 4.23.015 Same - Bingo Supplier.
- 4.23.020 Same - Bingo.
- 4.23.025 License Required.
- 4.23.030 Issuance.
- 4.23.035 Records - Compliance Examination and Inspection.
- 4.23.037 Retention of Records.
- 4.23.040 Limitation on Involvement in Bingo.
- 4.23.045 Prohibition of Financial Interest in Bingo.
- 4.23.050 Required Records.
- 4.23.055 Computerized Equipment.
- 4.23.060 Temporary Suspension of License Pending  
Opportunity for Hearing.
- 4.23.065 Notice of Temporary Suspension and Appeal -  
Appeal of Underlying Suspension and Revocation.
- 4.23.075 Operating and Conducting Business after Temporary  
Suspension or Suspension.
- 4.23.080 Receipt of Profit by a Person and Penalty for  
Violation of this Chapter.

**4.23.000 PURPOSE.** A system of regulating bingo suppliers in conjunction with the regulation of organizations authorized to conduct bingo games pursuant to Penal Code Section 326.5 and of bingo parlors is necessary to ensure the maximum use of bingo proceeds and profits for charitable purposes and to limit the abuses stemming from increased commercialization of bingo in the City.

**4.23.010 DEFINITIONS.** As used in this Chapter, the terms identified by Sections 4.23.015 through 4.23.020 shall be ascribed the meanings indicated.

**4.23.015 SAME - BINGO SUPPLIER.** A "bingo supplier" means any person or enterprise which, for a consideration, sells, rents, supplies, provides or furnishes equipment, products, goods, paper or other items for use in the conduct of bingo games.

**4.23.020 SAME - BINGO.** As used in this Chapter, the term "bingo" shall be deemed to mean a game of chance as specifically defined in Section 4.21.010.

**4.23.025 LICENSE REQUIRED.** No person shall, unless under and by authority of a valid, unrevoked and unexpired Special Business License, sell, rent, supply, provide or furnish for a consideration, any equipment, products, goods, paper or other items for use in the conduct of bingo games. A bingo supplier shall be deemed to operate or conduct business within the City if the bingo supplier or representatives thereof sell, rent, supply, provide or furnish for a consideration, within the City, any equipment, products, goods, paper or other items for use in the conduct of bingo games, whether or not the bingo supplier operates from a fixed location within another jurisdiction.

**4.23.030 ISSUANCE.** The Chief of Police shall issue a Special Business License unless:

- (a) One or more of the findings set forth in Section 4.10.040 is made;
- (b) The bingo supplier sells, rents, supplies, provides or furnishes any equipment, products, goods, paper or other items for use in conjunction with or in the conduct of bingo games in a manner which violates Penal Code Section 326.5, this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;
- (c) The applicant has a current license under Chapter 4.21 or 4.22; or,
- (d) The applicant has violated or is not in compliance with this Chapter, Section 326.5 of the Penal Code, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.23.035 RECORDS - COMPLIANCE EXAMINATION AND INSPECTION.**

- (a) The bingo supplier licensee shall keep full and accurate records of all inventory, income received and expenses disbursed in connection with the sale, rental,

supply, provision or furnishing of any equipment, products, goods, paper or other items for use in the conduct of bingo games, and as necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or rule or administrative regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police; and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

(b) The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy, supplier licensee records as described in subdivision (a) of this Section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

(c) Compliance examinations shall be conducted by the Chief of Police of supplier licensee records described in subdivision (a) of this Section not less frequently than annually, for each twelve (12) months of each licensee's operation.

(d) Such records shall be subject to disclosure only pursuant to:

(1) Any suspension, revocation or other proceeding conducted under this Chapter or the City Regulations adopted pursuant to this Chapter; or,

(2) Any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Attorney. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

**4.23.037 RETENTION OF RECORDS.** The supplier licensee shall keep and preserve the records described in Section 4.23.035(a), for the following period of time, whichever occurs later:

(a) Three (3) years;

(b) Until completion of a compliance examination; or

(c) Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.23.040 LIMITATION ON INVOLVEMENT IN BINGO.** The licensee shall not organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of any bingo game conducted in the City or the promotion thereof.

#### **4.23.045 PROHIBITION OF FINANCIAL INTEREST IN BINGO.**

(a) With the exception of revenue generated by any business or enterprise for which a Special Business License is required pursuant to this Chapter, no bingo supplier shall have a financial interest in the conduct of a bingo game operated in the City. A licensee shall be deemed to have a financial interest in the conduct of a bingo game including, but not limited, to the following situations:

(1) The price or cost of bingo supplies is adjusted by the licensee based on the profits, losses or tax exempt status of any organization licensed under Chapter 4.21;

(2) The licensee absorbs, assumes, shares or otherwise participates in the losses, or profits of any bingo game conducted by any organization licensed under Chapter 4.21; or,

(3) The licensee maintains an accounts receivable for an organization licensed to conduct bingo games pursuant to Chapter 4.21 for amounts owed to the bingo supplier for a period that exceeds thirty (30) days from the invoice date or ten (10) days from the statement date, whichever occurs later. For purposes of this subdivision of this Section "invoice date" is defined as the date of delivery of such supplies and "statement date" is defined as the date within thirty (30) days of the delivery of supplies.

(b) The licensee with knowledge that a bingo licensee licensed pursuant to Chapter 4.21 has not paid its supplier account(s) to any supplier within the required period as provided in subdivision (a) (3) of this Section shall not sell or rent supplies to such a bingo licensee until all the bingo licensee's account(s) are brought within the time period provided for within subdivision (a) (3) of this Section.

**4.23.050 REQUIRED RECORDS.** Licensed bingo suppliers shall maintain a complete set of records which includes detail of all activities. These records shall include, but are not be limited to the following:

(a) Pre-printed sales invoices which reflect the following information:

- (1) Date of sale;
- (2) The customer name, and complete business address;
- (3) A description and stock number of each line item sold; and,
- (4) Quantity and sales price of each line item.

(b) The original and two (2) copies of the pre-printed sales invoice shall be prepared and maintained as follows:

- (1) Original issued to the customer;

- (2) A copy retained in a file by customer name; and,
- (3) A copy file in (invoice number) numerical sequence.

(c) Credit memos for returned items shall be prepared in the same detail as items described in subdivision (a) of this Section.

#### **4.23.055 COMPUTERIZED EQUIPMENT.**

(a) Except as provided in Subsection (b) of this Section, it shall be unlawful for bingo suppliers licensed under this Chapter to:

(1) Sell, rent, supply, provide or furnish machines, devices, or equipment that is computerized, electronic, or mechanical to an organization licensed to conduct bingo pursuant to Chapter 4.21, for use in a bingo game; or,

(2) Sell, rent, supply, provide, or furnish equipment for use in a bingo game in which the numbers to be called are selected by electronic means rather than by random selection of numbered balls from a pool of game balls.

(b) Electronic Bingo Aid.

(1) Purpose. The purpose of this Subsection is not to permit a licensed bingo supplier to sell, rent, supply, provide or furnish to organizations licensed to conduct bingo pursuant to Chapter 4.21 all electronic aids for use in bingo. The purpose is to permit the licensed supplier to sell, rent, supply, provide or furnish to such organizations the use of electronic bingo aids on the conditions set forth herein. It is contemplated that an electronic bingo aid will include individual units or components to be used by players and that these units or components will be activated by the organizations licensed to conduct bingo for a player's operation. These individual player units or components are hand held devices or desktop devices to be used in conjunction with bingo cards. It is contemplated that an electronic bingo aid will permit a bingo player to input into an activated individual player unit or component randomly selected numbers called by an organization licensed to conduct bingo pursuant to Chapter 4.21 in order to match such numbers against programmed information to identify a winning card. The programmed information reflects the exact configurations of the bingo cards sold to and played by the player. The electronic bingo aid is not to alter the bingo cards. The electronic bingo aid is to be used in conjunction with bingo cards in order to assist the player identify a winning card. The electronic bingo aid is not to be used as an electronic or computerized game of bingo, or as a substitute for required bingo cards, or as a substitute for any other requirements of bingo as provided in Chapter 4.21 or in Penal Code section 326.5.

(2) An electronic bingo aid to assist in the identification of a winning card or paper may be sold, rented, supplied, provided or furnished to an organization licensed pursuant to Chapter 4.21 to conduct bingo by a licensed bingo supplier if the licensed bingo supplier complies with the conditions set forth in Subsections (b)(3) through (b)(12) of this Section, and if the supplier complies with all other required

provisions of this Chapter and Penal Code section 326.5. Violation of any or all of such provisions and conditions shall constitute grounds for revocation, suspension, or denial of the Special Business License to conduct the business of a bingo supplier, pursuant to the procedures set forth in this Chapter and Chapters 4.02, and 4.10.

(3) An electronic bingo aid shall assist a player to mark, otherwise register, or record, numbers selected at random in order to identify a winning bingo card. An electronic bingo aid shall not replace or alter bingo cards. The electronic bingo aid shall be programmed either by the supplier licensee at the direction and as specified by an organization licensed to conduct bingo pursuant to Chapter 4.21, or by the organization licensed to conduct bingo. The electronic bingo aid shall be programmed only with bingo card configurations corresponding exactly to bingo card configurations used by such licensed organization. A copy of any change made by the supplier licensee in the program of a programmed electronic bingo aid shall be submitted to the Chief of Police. The electronic bingo aid shall permit licensed organizations to enable the electronic bingo aid, including the individual player operated units or components, for play on the premises where the games are conducted. The electronic bingo aid shall not interfere or interact with the element of chance in the game.

(4) The electronic bingo aid shall permit a player to use a player operated unit or component of the electronic bingo aid to manually input numbers called in a bingo game into the electronic bingo aid. Automatic daubing shall not be a feature of the electronic bingo aid. The portion of the electronic bingo aid system in the immediate physical possession and operation of the organization licensed by Chapter 4.21 to conduct the games, and the individual player operated units or components of the electronic bingo aid used by a player, shall identify winning cards during a game. The portion of the electronic bingo aid system in the immediate physical possession and operation of the organization licensed to conduct bingo shall be capable of printing a winning card for verification during the game; the individual player operated units or components shall not have this feature.

(5) A particular type of electronic bingo aid shall not be sold, rented, supplied, provided or furnished to an organization licensed to conduct bingo pursuant to Chapter 4.21 by a licensed bingo supplier until the licensed supplier has demonstrated the electronic bingo aid to the Chief of Police, and such electronic bingo aid has been inspected by, and approved by the Chief of Police.

(6) An electronic bingo aid may be removed from the place where the games are conducted solely by the supplier licensee for repair or to transfer to another organization licensed to conduct bingo pursuant to Chapter 4.21 for the conduct of bingo. The supplier licensee shall keep a record of the bingo electronic aid received; the date received; the repairs made, if any; the particular malfunction, if any; the name of the licensed organization that the electronic bingo aid or part thereof was removed; and, the date the aid or part thereof is returned to an organization if returned, or notation of what action taken if not returned.

(7) The electronic bingo aid shall have a dial-up capability so that the Chief of Police may remotely monitor the operation and internal accounting system of the electronic bingo aid at any time. The electronic bingo aid shall contain a point of sale accounting system that allows it to track all financial activity for a bingo session. The bingo supplier licensee's accounting records pertaining to electronic bingo aids shall be retained as prescribed by Section 4.23.050. An electronic bingo aid shall work with an accounting system that records, and retains for a retention period of not less than that found in Section 4.21.080, the serial number of each bingo card or face sold, the price of each card sold, and the total amount of the electronic bingo aid proceeds from each session. An electronic bingo aid's capabilities and information must not be lost through power failure or other disruption during the session.

(8) An electronic bingo aid shall have the capability to permit organizations licensed to conduct bingo to print the configurations of the bingo cards or papers that are programmed into the device; but, the individual player operated units or components shall not have this feature.

(9) The electronic bingo aid including related circuitry shall be sealed and secured in order to prevent unauthorized removal, additions, changes, or other alterations or tampering with the data within such electronic bingo aid.

(10) If the Chief of Police detects or discovers any problem with an electronic bingo aid, including the player operated electronic bingo aid unit or component, or any related system or parts, that affects the integrity of the bingo game, or such equipment, the Chief of Police may, upon demand, examine and inspect such equipment, as applicable, if it is in possession of the supplier licensee after removal from the place where the game of bingo is conducted. The Chief of Police may upon demand examine and inspect any electronic bingo aid, player operated unit or component of an electronic bingo aid, or related system or parts, for sale, rent, supply, or to be provided or furnished by the supplier licensee to an organization licensed to conduct bingo. Such examinations and inspections shall include immediate access to the electronic bingo aid, including the player operated unit or component of an electronic bingo aid, and unlimited inspection of all parts and associated systems, as applicable; and, may involve the removal of such equipment, as applicable, from the supplier licensee's premises or possession for further testing. Upon the Chief of Police's demand, the supplier licensee shall immediately comply and cooperate with the Chief of Police for such examinations, inspections, or removals.

(11) If at any time the Chief of Police detects or discovers any problem with an electronic bingo aid, or with a player operated bingo unit or component of the electronic bingo aid, or with any related system or parts, that affects the security or the integrity of a bingo game or such equipment, the Chief of Police may order the supplier licensee to cease the sale, rental, supply, or provision or furnishing of such electronic bingo aid or player operated unit or component, as applicable, to an organization licensed to conduct bingo, and the supplier licensee shall comply immediately with such Chief of Police's order.

(12) If at any time the supplier licensee detects or discovers any problem with a electronic bingo aid, or with a player operated unit or component of the electronic bingo aid, or any related system or parts, that affects the security or the integrity of a bingo game or such equipment, the supplier licensee shall cease immediately to sell, rent, supply, provide, or furnish the electronic bingo aid or player operated unit or component, as applicable, to an organization licensed to conduct bingo, and shall notify the Chief of Police, and organizations licensed to conduct bingo who have secured possession of such electronic bingo aid from such bingo supplier, of such malfunction, problem or occurrence.

**4.23.060 TEMPORARY SUSPENSION OF LICENSE PENDING OPPORTUNITY FOR HEARING.** The Chief of Police shall have the authority to temporarily suspend the supplier's license by ordering in writing that the licensee immediately cease and desist any further operations of the bingo supply business pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

(a) The supplier licensee is conducting its operation in violation of any of the provisions of this Chapter, Penal Code Section 326.5, the City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) The supplier licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The supplier licensee has not kept records as prescribed by the Chief of Police, this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.23.065 NOTICE OF TEMPORARY SUSPENSION AND APPEAL - APPEAL OF UNDERLYING SUSPENSION AND REVOCATION.**

(a) The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in

Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in Section 4.10.145.

(b) Upon timely request by the licensee, the appeal hearing process and related procedures of the revocation or suspension of its license pursuant to Section 4.10.135 shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.155.

**4.23.075 OPERATING AND CONDUCTING BUSINESS AFTER TEMPORARY SUSPENSION OR SUSPENSION.** Any person(s) who continues to operate and conduct the business of a bingo supplier after temporary suspension pursuant to Section 4.23.065, or suspension pursuant to Section 4.10.135, is guilty of a misdemeanor.

**4.23.080 RECEIPT OF PROFIT BY A PERSON AND PENALTY FOR VIOLATION OF THIS CHAPTER.**

(a) It is a misdemeanor under Section 326.5(b) of the Penal Code for any person to receive or pay a profit, wage or salary from any bingo game authorized under this Chapter. Payment received by a bingo supplier for supplies purchased by a bingo licensee licensed pursuant to Chapter 4.21 shall not be deemed a violation of this Section. A violation of this prohibition is punishable by a fine not to exceed ten thousand dollars (\$10,000) payable to the general fund of the City of Elk Grove.

(b) A violation of any of the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a Special Business License for a bingo supplier issued pursuant to the provisions of this Chapter.

**CHAPTER 4.25**  
**PAWNBROKERS, SECONDHAND DEALERS**  
**AND JUNK DEALERS**

Sections:

- 4.25.000 Purposes.
- 4.25.005 License Required.
- 4.25.010 Definitions.
- 4.25.015 Display of License.
- 4.25.020 Daily Report.
- 4.25.025 Contents of Reports.
- 4.25.030 Records.
- 4.25.040 Use of English Language Required.
- 4.25.045 Time Limit for Sale.
- 4.25.050 Junk Dealer Not to Accept Pledges or Pawns.
- 4.25.055 Receipt of Goods - Prohibited Persons.
- 4.25.060 Nonapplicability of Sections.
- 4.25.065 Hours.
- 4.25.070 Construction Requirements.
- 4.25.075 Sanitation of Premises.
- 4.25.080 Separate Businesses.
- 4.25.085 Bond.
- 4.25.090 Reporting Stolen Goods.
- 4.25.095 Inspection.

**4.25.000 PURPOSES.** Pawnbrokers, secondhand dealers and junk dealers and collectors constitute prime vehicles for the disposal and sale of stolen property within the City. The purposes of the Chapter are to regulate the activities of such enterprises for the purpose of facilitating law enforcement's apprehension of criminals and recovery of stolen property and to curtail the trafficking of stolen property.

This Chapter is enacted pursuant to the provisions of Section 21638 of the Business and Professions Code. The provisions of this Chapter shall not be construed to require any act or omission which is expressly prohibited or prohibit any act or omission which is expressly required by the provisions of Sections 21625 through 21647 of the Business and Professions Code.

**4.25.005 LICENSE REQUIRED.** It is unlawful for any person to operate or conduct the business of pawnbroker, secondhand dealer, junk dealer or junk collector, unless under and by authority of a valid, unexpired and unrevoked Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

Notwithstanding the provisions of Section 4.10.040(c) and Section 4.10.100, the Chief of Police shall not deny a Special Business License for the business of pawnbroker, secondhand dealer, junk collector or junk dealer on grounds enumerated by Section 4.10.040(c) unless one or more of the persons identified in Section 4.10.040(c) has been convicted of an offense described by Section 21641 of the Business and Professions Code. A License shall not be revoked on grounds prescribed by Section 4.10.135(b) unless one or more of the persons identified by Section 4.10.040(c) has been convicted of an offense described by Section 21641 of the Business and Professions Code.

**4.25.010 DEFINITIONS.** As used in this Chapter the following terms shall be ascribed the following meanings:

(a) "Pawnbroker" -- shall mean a person engaged in conducting, managing or carrying on the business of pawnbroking, or the business of lending money for himself or any other person upon personal property, pawns or pledges; or the business of purchasing articles from the vendors or their assignees at prices agreed upon at or before the time of such purchase.

(b) "Pawnshop" -- shall mean any room, store, building or other place in which any pawn brokering business is engaged in, carried on or conducted.

(c) "Secondhand Dealer"- shall mean a person engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, furniture, wares, coins or merchandise.

(d) "Junk Dealer" -- shall mean a person having a fixed place of business in the City, and engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail, any old rags, sacks, bottles, cans, papers, metal, or other articles commonly known as junk.

(e) "Junk Collector" -- shall mean a person not having a fixed place of business in the City, who goes from house to house, or from place to place, gathering, collecting, buying, selling, or otherwise dealing in any old rags, sacks, bottles, cans, papers, metal or other articles commonly known as junk.

**4.25.015 DISPLAY OF LICENSE.** Every person issued a Special Business License under the provisions of this Chapter, and conducting, managing or carrying on a business or occupation at a fixed place of business, shall keep such License posted and exhibited while in force in some conspicuous part of the place of business. Every person having such License and not having a fixed place of business shall carry such License with him at all times while carrying on the business or occupation for which the same was granted. Every person having a License under the provisions of this Chapter shall produce and exhibit the same when applying for a renewal thereof and whenever requested to do so by any officer authorized to issue, inspect or collect licenses.

**4.25.020 DAILY REPORT.** Every pawnbroker and secondhand dealer shall send to the Chief of Police the daily electronic report in the format required by Business and Professions Code section 21628(j)(2). The report shall be sent electronically to the Chief of Police by a method and format acceptable to him or her.

Every junk dealer and junk collector shall send to the Chief of Police in an electronic format approved by the Chief of Police a daily report of all information required to be gathered by Business and Professions Code section 21606. The report shall be sent electronically by a method determined by the Chief of Police.

**4.25.025 CONTENTS OF REPORTS.** The contents of the reports to be sent at the close of each business day to the Chief of Police shall be as provided in Business and Professions Code section 21628 for pawnbrokers and second hand dealers and in section 21606 for junk dealers and junk collectors

**4.25.030 RECORDS.** Every pawnbroker and secondhand dealer shall keep a complete record of all goods, wares, merchandise or things pledged to or purchased or received by him, sold or otherwise disposed of, which shall contain all the matters required to be shown in the reports required to be made by such pawnbroker or secondhand dealer and referred to and described in Sections 4.25.020 and 4.25.025.

Every junk dealer and junk collector shall keep a record of all goods, wares, merchandise or things purchased or received by him, sold or otherwise disposed of, which record shall contain all the matters required to be shown in the reports referred to and described in Sections 4.25.020 and 4.25.025.

Every such record and all goods, wares, merchandise and things pledged to or pledged or received by any such pawnbroker, secondhand dealer, junk dealer or junk collector shall be immediately produced for inspection by any officer required to inspect such records or personal property in the performance of his official duties.

**4.25.040 USE OF ENGLISH LANGUAGE REQUIRED.** Every report and record required by the terms of this Chapter to be filed or kept, shall be written or printed entirely in the English language, in a clear and legible manner.

**4.25.045 TIME LIMIT FOR SALE.** It is unlawful for any pawnbroker, secondhand dealer, or junk dealer to sell or otherwise dispose of any article or thing, the report of which is required to be made under the provisions of Sections 4.25.020 and 4.25.025 within one week after making a report to the Chief of Police as required in Section 4.25.020. The provisions of this section shall not apply to motor vehicles duly and regularly cleared for transfer by the Department of Motor Vehicles of the state.

**4.25.050 JUNK DEALER NOT TO ACCEPT PLEDGES OR PAWNS.** No junk dealer or junk collector shall receive any personal property by way of pledge or pawn, nor shall the business of junk dealer and the business of pawnbroker be conducted upon the same premises.

**4.25.055 RECEIPT OF GOODS - PROHIBITED PERSONS.** It is unlawful for any pawnbroker, secondhand dealer, junk dealer or junk collector, to receive or purchase any property, article or thing, from any person who shall appear to be, or who is known to be, intoxicated, or from any minor, unless the minor presents the written consent of his parent or guardian, duly signed, authorizing the particular transaction, which written consent must be kept, and exhibited, upon demand, by any officer requesting the same in the performance of his official duties.

In any criminal prosecution, or proceeding for the suspension or revocation of any license for a violation of this section, proof that the defendant licensee, or his agent or employee, demanded and was shown, before receiving or purchasing any property, article or thing, a motor vehicle operator's license or a registration certificate issued under the Federal Selective Service Act, or other bona fide documentary evidence of majority and identity of the person, is a defense to the prosecution or proceeding for the suspension or revocation of any license.

**4.25.060 NONAPPLICABILITY OF SECTIONS.** The provisions of Sections 4.25.020 through 4.25.045 shall not apply to the receipt of, or sale of secondhand personal property which has been received as part payment for a new article if the person receiving or selling the secondhand personal property is the authorized dealer or agent of the manufacturer of the new article sold.

**4.25.065 HOURS.** It is unlawful for any person engaged in, conducting, managing or carrying on the business of pawnbroker, secondhand dealer, junk dealer or junk collector, or for any agent, or employee of any such person, to accept any pledge, or to loan any money upon personal property or to receive or purchase any goods, wares or merchandise, or any article or thing between midnight on Saturday and seven a.m. the following Monday, or between seven p.m. of any day other than Saturday and Sunday, and seven a.m. the following day.

**4.25.070 CONSTRUCTION REQUIREMENTS.** If any business or establishment required by Section 4.25.005 to possess a Special Business License is located in whole or in part in any yard, enclosure, lot, or open area, such premises as are open to public view shall be completely surrounded and enclosed by a wall, fence or barrier constructed of wood or other solid, impervious material, and so constructed as to be a continuous barrier, except for necessary openings, sufficient to prevent the ingress or egress of rats, mice, or other rodents so far as is possible. Should any part of such yard, enclosure, lot or open area abut upon any earthen embankment, the height of which shall not be less than the minimum height of the wall, fence or barrier herein provided for, such part so abutting upon the earthen embankment need not be enclosed by a wall, fence or barrier. The wall, fence or barrier shall be continuously kept and maintained in the condition required by this section. The wall, fence or barrier shall extend above the ground for at least six feet. Any and all necessary openings in such fence, wall or barrier shall be provided with suitable gates or doors. No such openings shall in any single instance be greater than is reasonably necessary.

Such gate or door shall be kept closed at all times except during the normal business hours of the business or establishment.

It is unlawful for any person to permit any such business or establishment referred to and described in this Chapter to be established, conducted, carried on or maintained unless the premises shall have been rendered rodentproof as far as reasonably possible, and continuously maintained in such condition. Each day's violation of the requirements declared and established by this Chapter shall be and constitute a separate and distinct violation and offense.

**4.25.075 SANITATION OF PREMISES.** If any business or establishment required by Section 4.25.005 to possess a Special Business License is located in whole or in part in a yard, enclosure, lot or open area, such premises and area shall, so far as reasonably possible, be kept clean and free from rubbish and similar loose material that might serve as a harborage for rats, mice or other rodents, and all loose metal, or parts or accessories of automobiles, and all other material kept, stored or accumulated on the premises, shall, so far as reasonably possible, be neatly and carefully piled, in such manner as to minimize and prevent as far as possible the harborage of rodents, and shall be suitably protected from water and the elements so that there can be, so far as is practicable, no accumulation of water in any article or thing stored on the premises.

**4.25.080 SEPARATE BUSINESSES.** If any person shall engage in, conduct, manage or carry on, at the same time, more than one of the businesses defined by Section 4.25.010, such person shall be deemed to be engaging in, conducting, managing and carrying on each such business separately and apart from the other such business, and such person shall comply in all respects with the provisions of this chapter relating to each such business, and it is unlawful for any such person to fail, refuse or neglect so to do.

**4.25.085 BOND.** Every junk dealer, as defined herein, shall furnish to the City a bond in the principal amount of five thousand (\$5,000) dollars guaranteeing faithful performance by the junk dealer of the terms and conditions of this Chapter.

**4.25.090 REPORTING STOLEN GOODS.** Every pawnbroker, secondhand dealer, junk dealer and junk collector shall immediately notify the Chief of Police by telephone when any property is offered to him for pledge or for sale under such circumstances that the pawnbroker, secondhand dealer, junk dealer or junk collector knows or should have known the property so offered for pledge or sale to have been stolen.

**4.25.095 INSPECTION.** The Chief of Police or the City Manager or their designees may conduct an inspection of the premises of a pawnbroker, second hand dealer, or junk dealer at any time during regular business hours for the purpose of determining that the business is being operated in compliance with all requirements under state law and the Municipal Code.

## **CHAPTER 4.26**

### **JUNK TIRE STORAGE**

#### **Article I**

#### **Special Business License Required**

Sections:

- 4.26.000 Purposes.
- 4.26.005 City Manager.
- 4.26.010 Definitions.
- 4.26.015 License Required.
- 4.26.020 Number of Licenses Required.
- 4.26.025 Display of License.
- 4.26.030 Application.
- 4.26.035 Issuance.
- 4.26.040 Change of Information.

#### **Article 2**

#### **Requirements - Services**

- 4.26.045 Inspections.
- 4.26.050 Indemnification.
- 4.26.055 Fire Protection.
- 4.26.060 Existing Junk Tire Storage Compliance Schedule.
- 4.26.065 Employee Permits Not Required.

#### **Article 3**

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- 4.26.070 Fine, Imprisonment and Expenses for Compliance.
- 4.26.075 Injunctive Relief.
- 4.26.080 Revocation.
- 4.26.085 Temporary Suspension.
- 4.26.090 Abatement.
- 4.26.095 Nature of Enforcement Actions.
- 4.26.100 Appeals.

**Article 1**  
**Special Business License Required**

**4.26.000 PURPOSES.** The improper storage and the careless disposal of junk tires jeopardize the public health, safety and welfare of City residents and visitors. Large numbers of these junk tires randomly placed in buildings or fields are breeding grounds for disease-carrying insects and animals. If large numbers of these junk tires are ignited by fire, those fires are extremely difficult and expensive to extinguish and the smoke from those fires presents a serious hazard to the environment. Furthermore, large numbers of junk tires carelessly strewn about offend the aesthetic sensibilities of the residents of the City.

The regulatory provisions of this Chapter are necessary to insure reasonable storage of these junk tires and thereby minimize the jeopardy to the public health, safety and welfare.

This enactment will provide criminal penalties to those who violate its requirements. It will also provide a means of enforcing abatement of the nuisance caused by the unreasonable storage of large numbers of junk tires.

This enactment does not apply to tires that do not meet the definition of "junk tires" as set forth herein. Tires that are not junk tires have economic value and are therefore not indiscriminately discarded in large quantities as are junk tires. Further, while tires other than junk tires present the same fire extinguishment problems and environmental hazards as junk tires, the City Council finds they are usually stored in a manner that minimizes these problems and hazards.

**4.26.005 CITY MANAGER.** The City Manager is charged with the responsibility of administering this Chapter and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing junk tire storage, promulgation and enforcement of administrative regulations and the performance and exercise of the duties and authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to junk tire storage and the issuance and administration of Special Business Licenses therefor as are vested in the Chief of Police under Chapter 4.02 and Chapter 4.10 of this Code. Any reference to the "Chief of Police" in these sections as that reference relates to the issuance, renewal or denial of a Special Business License or as that reference relates to the appeal of a denial, revocation or suspension of a Special Business License shall be deemed a reference to the City Manager in relation to this junk tire storage ordinance.

Also, the City Manager shall be vested with the same powers and authorities in relation to abatement of violations of this junk tire storage ordinance as are vested in the Director of Public Works under Chapter 6.58 of this Code. Any reference in that Chapter to the "Director of the Department of Public Works" shall be deemed a

reference to the City Manager in relation to abatement of violations of this junk tire storage ordinance.

**4.26.010 DEFINITIONS.** As used in this Chapter, the following terms shall be ascribed the following meanings:

(a) "Premises" means a unit of improved or unimproved land, or any portion thereof, shown on the latest equalized City assessment roll as a parcel or as contiguous parcels. Property shall be considered as contiguous parcels even if separated by a utility easement or railroad right of way.

(b) "To store" means to leave, deposit, accumulate, abandon or discard.

(c) "Storage" means the act of storing.

(d) "Junk tire" means a not new automobile, truck or any other type of motorized vehicle tire that is not directly attached to an operational vehicle and does not meet the federal or State of California requirements for used tires or recappable casings

**4.26.015 LICENSE REQUIRED.** It is unlawful for any person to store five hundred (500) or more junk tires either inside or outside a building for any length of time on or about any one particular premises within the City which is owned, leased or in any manner utilized by that person unless the storage is under and by authority of a valid, unexpired, unrevoked and unsuspended Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.26.020 NUMBER OF LICENSES REQUIRED.** Notwithstanding Section 4.10.010, a person who stores five hundred (500) or more junk tires either inside or outside a building for any length of time at one or several premises throughout the City shall be required to obtain a Special Business License for each particular premises where five hundred (500) or more junk tires are stored.

**4.26.025 DISPLAY OF LICENSE.** Every person issued a Special Business License under the provisions of this Chapter shall keep the License posted and exhibited in a conspicuous part of the particular premises where the five hundred (500) or more junk tires are stored.

**4.26.030 APPLICATION.** In addition to the information required by Section 4.10.030, an application shall contain the following:

(a) All names under which the applicant has engaged, does or proposes to engage in junk tire storage;

(b) An accurate legal description, including assessment number, of the particular premises where the junk tires are to be stored;

(c) The name and street address of any person with a legal ownership interest in the particular premises where the junk tires are to be stored;

(d) The written consent of any person with a legal ownership interest in the anticipated junk tire storage premises to the storage of junk tires on those premises and to the requirements and obligations imposed on these owners by this Chapter. The written consent form shall be furnished by the City Manager and all signatures on this form shall be notarized in accordance with California law;

(e) Factual information, as specific as possible, as to the maximum number of junk tires expected to be stored on the particular premises at any one time and the number of junk tires expected to be transferred onto or off of the particular premises on a daily, weekly and monthly basis;

(f) A written statement from the Chief of the Fire Protection District with jurisdiction over the proposed junk tire storage premises discussing in detail any fire hazard that would be created by the storage of junk tires on or about the particular premises; and

(g) The name and street address within the City of an individual authorized to accept service of legal process or any notices issued pursuant to this Chapter.

**4.26.035 ISSUANCE.** The City Manager shall issue a Special Business License to allow storage of junk tires unless:

(a) One or more of the findings prescribed by Section 4.10.040(a) (b) and (d) are made; or

(b) The City Manager finds in writing that the use of the particular premises for junk tire storage would not be in compliance with the City of Elk Grove Zoning Ordinance and has not been approved by the City Council through any required use permit hearing process; or

(c) The City Manager finds in writing that based upon detailed information provided by the Chief of the appropriate Fire Protection District or other appropriate fire prevention experts and officials, the proposed storage of junk tires on the particular premises would constitute a dangerous fire hazard.

The requirements of Section 4.10.035 and Section 4.10.040(c) shall not be applicable to this Chapter for issuance of a Special Business License.

**4.26.040 CHANGE OF INFORMATION.** The applicant shall report to the City Manager any change in the information required by Section 4.26.030 within ten (10) days of the effective date of the change except that the information required by Section 4.26.030(c) shall be reported immediately. An updated written consent form pursuant to Section 4.26.030(d) shall be required immediately upon a change in the information required by Section 4.26.030(c).

## **Article 2 Requirements - Services**

**4.26.045 INSPECTIONS.** Premises on which junk tires are stored pursuant to a Special Business License shall be open during regular working hours for inspection by the City Manager or his or her designated representative. Inspections shall occur as frequently as determined necessary by the City Manager but in no event shall there be less than six inspections per year of each particular premises where junk tires are stored pursuant to a Special Business License.

The refusal by a Licensee, or an officer, employee or agent thereof, to permit inspection by the City Manager, or his or her designated representative, pursuant to the authority conferred by this Section shall constitute grounds for suspension or revocation of the Special Business License.

The refusal by a Licensee, or an officer, employee or agent thereof, to permit such inspections by the Chief of the appropriate Fire District, or his designated representative, as may be reasonably necessary to insure compliance with Section 4.26.055 shall also constitute grounds for suspension or revocation of a Special Business License issued pursuant to this Chapter.

**4.26.050 INDEMNIFICATION.** The licensee and the legal owners of the premises where junk tires are stored pursuant to this Chapter shall indemnify, hold harmless and, upon written request, assume any and all costs of the legal defense of the City, its officers, employees and agents from all claims, losses, damages, injuries and liabilities of every kind, nature and description directly or indirectly arising from the performance of activities and operations permitted by a Special Business License issued pursuant to this Chapter.

**4.26.055 FIRE PROTECTION.** The licensee shall provide such fire protection measures and equipment as may be required by all applicable laws, and as the Chief of the Fire Protection District with jurisdiction over the premises where the junk tires are stored finds reasonably necessary to provide adequate fire protection to the immediate and adjacent premises. No junk tires may be stored on a particular premises pursuant to this Chapter unless and until the written statement required by Section 4.26.030(f) is obtained from the Chief of the appropriate Fire Protection District.

**4.26.060 EXISTING JUNK TIRE STORAGE COMPLIANCE SCHEDULE.** Any person who presently stores junk tires and who will be required to obtain a Special Business License pursuant to this Chapter upon its adoption may be granted by the City Manager a maximum of three (3) months to comply with all of the requirements of this Chapter provided that public health, safety and welfare of the City residents and visitors will not be unreasonably jeopardized thereby.

**4.26.065 EMPLOYEE PERMITS NOT REQUIRED.** Section 4.10.070 and related sections of Chapter 4.10 requiring employee permits for personnel of Special Business Licenses shall not be applicable to this Chapter.

### **Article 3 Penalties**

#### **4.26.070 FINE, IMPRISONMENT AND EXPENSES FOR COMPLIANCE.**

Notwithstanding the provisions of Section 4.02.100, any person who violates any of the provisions of this Chapter, or fails to comply with any of the regulatory requirements adopted by the City Manager pursuant to this Chapter, is guilty of a misdemeanor, and upon conviction may be punished by a fine not to exceed five hundred dollars or by imprisonment not to exceed six months, or by both. In addition, each such person shall be required to pay any and all expenses necessary to bring the subject premises into compliance with this Chapter and any regulatory requirements adopted by the City Manager pursuant to this Chapter. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter, or regulatory requirements adopted by the City Manager pursuant to this Chapter, is committed, continued, or permitted by any such person, and he shall be punished accordingly.

**4.26.075 INJUNCTIVE RELIEF.** In addition to the penalties set forth in Section 4.26.070 and consistent with the provisions of Section 4.26.090, any storage of junk tires contrary to the provisions of this Chapter, or any regulations adopted by the City Manager pursuant to this Chapter, shall be and the same is hereby declared to be unlawful and a public nuisance. The City Manager may commence action for the abatement and removal and enjoinder of this public nuisance in the manner provided by law. The City Manager may take such other steps and may apply to such court or courts as may have jurisdiction to grant relief as will abate and remove such junk tires and restrain and enjoin any person, firm or corporation from using any premises contrary to the provisions of this Chapter.

**4.26.080 REVOCATION.** In addition to the grounds set forth in Section 4.10.135 and in addition to the penalties prescribed in Section 4.26.070 and Section 4.26.075, a Special Business License may be revoked during its term if the City Manager finds in writing that one or more of the following grounds exist:

- (a) Violation by the licensee of any of the terms, conditions or requirements of this Chapter;
- (b) Violation by the licensee of any administrative regulation or rule promulgated pursuant to the provisions of this Chapter;
- (c) Failure of the licensee to comply with any applicable City, State or federal law; and
- (d) Refusal of the licensee to permit an inspection pursuant to Section 4.26.045.

Except for the junk tires on the subject premises at the time of the revocation, no other junk tires shall be stored on the subject premises pending final determination of

the revocation proceedings. Nothing in this Section shall be construed as precluding the removal of any junk tires from the subject premises.

**4.26.085 TEMPORARY SUSPENSION.** In addition to the matters prescribed by Section 4.10.145 and in addition to the penalties prescribed in Section 4.26.070 and Section 4.26.075, a Special Business License issued pursuant to this Chapter may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal if the City Manager finds that such temporary suspension is necessary to protect against a serious and immediate threat to public health, safety or welfare caused by the exercise of the license. In the event the City Manager orders a temporary suspension, the notice of the suspension shall be delivered to the address of the agent designated in the application as authorized to accept service of legal process for each junk tire storage premises to which the suspension pertains. The notice shall contain the following:

- (a) The finding justifying the temporary suspension;
- (b) The time, date and place at which the Licensee may appear in advance of the commencement of the temporary suspension for the purpose of responding to the charges contained in the notice; and
- (c) The time and date on which the temporary suspension commences, which shall not be earlier than 24 hours following the time and date of delivery of the notice.

Restoration of Special Business License privileges following a temporary suspension may be granted by the City Manager upon the establishment of such terms, conditions and requirements as are reasonably necessary to protect the public health, safety and welfare of the City residents and visitors.

Except for the junk tires on the subject premises at the time of the temporary suspension, no other junk tires shall be stored on the subject premises pending final determination of the temporary suspension proceedings. Nothing in this section shall be construed as precluding the removal of any junk tires from the subject premises.

**4.26.090 ABATEMENT.** Junk tires stored in violation of this Chapter are within the meaning of the term "rubbish" as that term is used in Chapter 6.58 of this Code. The provisions of Chapter 6.58 shall be applicable to abatement of violations of this Chapter relating to junk tire storage. In the event that a particular premises is rented or leased or otherwise utilized by a person other than the property owner, that person, in addition to the property owner, shall be held responsible and liable for any costs of abatement that result from the implementation of this section. For the purposes of this Chapter, nothing in Chapter 6.58 or in this Chapter shall be interpreted as imposing a requirement that the City, its officers, agents or employees remove or cause to be removed any junk tires stored contrary to this Chapter.

**4.26.095 NATURE OF ENFORCEMENT ACTIONS.** Any action or proceeding commenced or continued by the City Manager or the City against a person for violations of this Chapter, or any regulations or rules adopted by the City Manager pursuant to this

Chapter, shall be deemed actions or proceedings to enforce the police or regulatory power of the City.

**4.26.100 APPEALS.** The appeals procedure set forth in Chapter 4.10, Sections 4.10.115 through 4.10.155 as those Sections relate to Special Business Licenses, shall be applicable to this Chapter relating to junk tire storage.

## Chapter 4.27

### TOBACCO RETAILERS

#### Sections:

- 4.27.010 Legislative Findings.
- 4.27.020 Purpose.
- 4.27.030 Definitions.
- 4.27.040 Requirement for Tobacco Retailers License.
- 4.27.050 Application Procedure.
- 4.27.060 Issuance and Renewal of License.
- 4.27.070 Display of License.
- 4.27.080 License Fee.
- 4.27.090 License Nontransferable.
- 4.27.100 License Violation.
- 4.27.110 Suspension or Revocation of License.
- 4.27.120 Denial, Suspension, and Revocation - Appeals.
- 4.27.130 Enforcement.

**4.27.010 Legislative Findings.** The City Council finds and determines that:

(a) State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Penal Code § 308).

(b) State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business & Professions Code § 22956) and provide procedures for using persons under 18 years of age to conduct onsite compliance checks of tobacco retailers (Business & Professions Code § 22952).

(c) State law requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under 18 years of age is illegal (Business & Professions Code § 22952, Penal Code § 308).

(d) State law prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk (Business & Professions Code § 22962).

(e) State law prohibits the sale of "bidis" (hand-rolled filterless cigarettes imported primarily from India and Southeast Asian countries) except at those businesses that prohibit the presence of minors. (Penal Code § 308.1).

(f) State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco (Penal Code § 308.3).

(g) State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees (Education Code § 48901(a)).

(h) Elk Grove Municipal Code Section 6.86.070 prohibits the sale or distribution of tobacco products from vending machines.

(i) In May of 2004, the Sacramento County Department of Health and Human Services Tobacco Education Program found that 17.0% of tobacco retailers sampled in the County unlawfully sold tobacco products to minors, clerks in several types of outlets, including supermarket, convenience mart/gas stations, drug stores, and small markets, sold tobacco to minors and less than 45% of the stores surveyed displayed the STAKE Act signs required by State Law.

(j) Eighty-eight percent of adults who have ever smoked tried their first cigarette by the age of 18, and the average age at which smokers try their first cigarette is 14 1/2.

(k) The City of Elk Grove has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults.

(l) California courts in *Cohen v. City Council*, 40 Cal.3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App. 4th 383 (1993), have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law.

(m) State law authorizes local tobacco retailer licensing laws to provide for the suspension or revocation of the local tobacco retailer license for any violation of a state tobacco control law (Business & Professions Code § 22971.3).

(n) A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.

**4.27.020 Purpose.** The purpose of this Chapter is to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided for violations.

**4.27.030 Definitions.** As used in this Chapter, the following words and phrases shall have the meaning given them in this Section, unless the context clearly requires otherwise:

(a) "City" means the City of Elk Grove.

(b) "City Manager" means the City Manager of the City of Elk Grove or his or her designee.

(c) "Itinerant tobacco retailing" means engaging in tobacco retailing at other than a fixed location.

(d) "License" means a Tobacco Retailer Special Business License issued by the City pursuant to this Chapter.

(e) "Licensee" means any proprietor holding a license issued by the City pursuant to this Chapter.

(f) "Person" means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust,

business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(g) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day-to-day operations of a business.

(h) "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(i) "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed or used for the smoking or ingestion of tobacco products.

(j) "Tobacco retailer" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

(k) "Tobacco retailing" shall mean selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

#### **4.27.040 Requirement for Tobacco Retailers License.**

(a) It shall be unlawful for any person to act as a tobacco retailer without first obtaining a license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.

(b) Nothing in this Chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the City identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this Chapter shall be construed to render inapplicable, supercede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by Labor Code section 6404.5.

#### **4.27.050 Application Procedure.**

All applications for a license shall be submitted to the City Manager in the name of each proprietor proposing to conduct tobacco retailing and shall be signed by each proprietor or an authorized agent thereof. A proprietor proposing to conduct tobacco

retailing at more than one location shall submit a separate application for each location. Every application shall be submitted on a form supplied by the City Manager and shall contain the following information:

(a) The name, address, e-mail address, if any, and telephone number of each proprietor.

(b) The business name, address, and telephone number of the fixed location for which a license is sought.

(c) Whether or not any proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

(d) Such other information as the City Manager deems necessary for the administration or enforcement of this Chapter.

#### **4.27.060 Issuance and Renewal of License.**

(a) Upon the receipt of an application for a license and the applicable license fee, the City Manager shall issue a license or its renewal unless:

(1) The application is incomplete or inaccurate;

(2) The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this Chapter except this subparagraph shall not constitute a basis for denial of a license if either or both of the following apply:

(A) The applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subparagraph, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Chapter that occurred at the location, is presumed not to be an "arm's length transaction";

(B) It has been more than five (5) years since the most recent license for that location was revoked;

(3) The application seeks authorization for tobacco retailing that is unlawful pursuant to this Code, or that is unlawful pursuant to any other local, state, or federal law; or,

(4) The City Manager has information that the applicant or his or her agents or employees has violated any local, state or federal tobacco control law at the location for which the license or renewal of the license is sought within the preceding thirty-day (30) period.

(b) Unless revoked on an earlier date, all licenses shall expire one year after the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding License, the City Manager shall transmit to the licensee by mail an application for renewal. The application submitted for renewal shall be in such form and include such information as is prescribed and required by the City Manager, but shall include a renewal form provided by the City, the required fee, and a copy of the license to be renewed. A license that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed. An application for renewal and license fee shall be submitted at least thirty (30) days, but not more than sixty (60) days, prior to the expiration of the current valid license. The renewal applicant shall follow all of the procedures and provide all of the information required Section 4.27.050. The City Manager shall process the application according to the provisions of this Section.

(c) Where the City Manager does not approve a license or renewal of a license, the City Manager shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by mail not later than five (5) calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**4.27.070 Display of License.** Each license shall be prominently displayed in a publicly visible location at the licensed premises.

**4.27.080 License Fee.** The fee for issuance or renewal of a license shall be established by resolution of the City Council and shall be in addition to the fees associated with any other license or permit fee imposed by this Code upon the applicant. The license fee shall be paid to the City at the time the license application is submitted.

**4.27.090 License Nontransferable.** A license is nontransferable. If a licensee changes business location, that licensee must obtain a new license prior to acting as a tobacco retailer at the new location. If a business licensed to conduct tobacco retailing is sold, the new owner must obtain a license for that location before acting as a tobacco retailer.

**4.27.100 License Violation.** It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, state, or federal tobacco-related law.

**4.27.110 Suspension or Revocation of License.**

(a) In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this Section, if the City Manager finds that the licensee or his or her agents or employees has or have violated any of the provisions of this Chapter except violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location.

(1) Upon a finding by the City Manager of a first license violation within any five-year (5) period, the license shall be suspended for thirty (30) days.

(2) Upon a finding by the City Manager of a second license violation within any five-year (5) period, the license shall be suspended for ninety (90) days.

(3) Upon a finding by the City Manager of a third license violation within any five-year (5) period, the license shall be suspended for one (1) year.

(4) Upon a finding by the City Manager of a fourth license violation within any five-year (5) period, the license shall be revoked.

(b) Notwithstanding subsection (a), a license shall be revoked if the City Manager finds that either one or both of the following conditions exist:

(1) One or more of the bases for denial of a license under Section 4.27.060(a) existed at the time application was made or at any time before the license issued.

(2) The information contained in the license application, including supplemental information, if any, is found to be false in any material respect.

(c) In the event the City Manager suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five (5) days of the suspension or revocation in the manner prescribed in Section 4.27.060(c). The notice shall contain:

(1) A brief statement of the specific grounds for such suspension or revocation;

(2) A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of Section 4.27.120, to the City Manager, within ten (10) calendar days of the date of service of the notice; and,

(3) A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.

(d) A licensee for whom a license suspension is in effect must remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended license.

#### **4.27.120 Denial, Suspension, and Revocation - Appeals.**

(a) Any applicant or licensee aggrieved by the decision of the City Manager in denying, suspending, or revoking a license, may appeal the decision by submitting a written appeal to the City Manager within ten (10) calendar days from the date of service of the notice of denial, suspension, or revocation. The written appeal shall contain:

(1) A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

(2) A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

(3) The signatures of all parties named as appellants and their official mailing addresses; and,

(4) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

(b) The appeal hearing shall be conducted in accordance with Chapter 1.11 of the Municipal Code.

(c) Any suspension or revocation of a license shall be stayed during the pendency of an appeal that is properly and timely filed pursuant to this Section.

#### **4.27.130 Enforcement.**

(a) In addition to any other remedy, any person violating any provision of this Chapter shall be guilty of a misdemeanor for each day such violation continues.

(b) Any violation of this Chapter may be remedied by a civil action brought by the City Attorney. The City may recover reasonable attorneys' fees and costs of suit in any civil action brought by the City Attorney to remedy any violation of this Chapter.

(c) Any person violating the provisions of this Chapter shall also be liable for civil penalties of not less than two hundred fifty dollars (\$250.00) or more than twenty-five thousand dollars (\$25,000.00) for each day the violation continues.

(d) Violations of this Chapter are hereby declared to be public nuisances subject to abatement by the City.

(e) In addition to criminal sanctions, civil penalties as provided in this Section, and other remedies set forth in this Chapter, administrative penalties of up to \$5,000 for each violation of this Chapter may be imposed against any person violating any provision of this Chapter pursuant to the procedures specified in Section 16.18.205(f) of the Municipal Code or pursuant to any generally applicable provisions of the Municipal Code concerning administrative fines and penalties.

## **CHAPTER 4.30**

### **ADULT-RELATED ESTABLISHMENTS**

#### **Article I General Provisions**

Sections:

- 4.30.000 Purposes.
- 4.30.005 Definitions.
- 4.30.010 Same - Adult-Related Establishment.
- 4.30.015 Same - Bathhouse.
- 4.30.020 Same - Introductory Service.
- 4.30.025 Same - Massage Services.
- 4.30.030 Same - Escort Services.
- 4.30.035 Same - Employed or Retained By.
- 4.30.050 Exemptions.
- 4.30.060 Hours of Operation.
- 4.30.065 List of Services.
- 4.30.070 Personnel Registers.
- 4.30.075 Employment of Minors.
- 4.30.080 Schools of Massage.
- 4.30.085 Sanitation requirements - Massage Establishments.
- 4.30.090 Sanitation requirements - Bathhouses.
- 4.30.095 Sanitation requirements - Massage Technicians.
- 4.30.100 Minimum qualifications - Massage Managers.
- 4.30.105 Minimum qualifications - Massage Technicians.

#### **Article 2 Licenses and Permits**

- 4.30.200 License Required.
- 4.30.205 Display of License.
- 4.30.210 Employee Permits Required.
- 4.30.215 Application.
- 4.30.220 Issuance.
- 4.30.225 Revocation of Permits.

**Article 1**  
**General Provisions**

**4.30.000 PURPOSES.** There has been a proliferation throughout the region of adult-related establishments, such as escort bureaus, introductory services, public bathhouses, and similar businesses which offer patrons services or entertainment of an adult character. There has been a demonstrable relationship between high incidence of unlawful prostitution and drug-related crime, and the adult-related establishments regulated by this Chapter. Such businesses have been known to operate as fronts for houses of prostitution, and for illegal drug-related transactions. Past regulation by the regional governments of some of these establishments, such as massage parlors, has been unsuccessful because the establishments evade the regulations by changing their names to indicate different objects or purposes from the types of businesses regulated.

A system of requiring regulatory licenses for adult-related establishments and for those persons rendering services to customers will assist in assuring illegal activities do not occur on the premises or otherwise in connection with the business within the City. If criminal activity occurs on the premises, or if other provisions of this Chapter are violated, the licenses are subject to revocation. Criminal liability also exists for a violation of this Chapter. These provisions will provide the Chief of Police with both preventative and investigatory tools to control illegal activity in such businesses, and will promote and protect the public health, safety and welfare.

By the definition of "adult-related establishment" contained in Section 4.30.010, it is the intent of the City Council to prevent evasion of the provisions of this Chapter through the device of calling the business by a new or different name.

This Chapter is enacted pursuant to the provisions of Section 51034 of the Government Code.

**4.30.005 DEFINITIONS.** As used in this Chapter, the terms identified by Sections 4.30.010 through 4.30.035 shall be ascribed the meanings indicated.

**4.30.010 SAME - ADULT RELATED ESTABLISHMENT.** "Adult-related establishment" means a bathhouse, escort bureau, introductory service, massage establishment, or out-call massage service as defined by this Chapter. "Adult-related establishment" does not include an "Adult-Oriented Business" as defined and regulated in Chapter 4.31.

**4.30.015 SAME - BATHHOUSE.** "Bathhouse" means an establishment whose primary business is to provide, for pecuniary compensation, consideration, hire or reward, access to any kind of bath facility, including but not limited to, showers, saunas and hottubs.

**4.30.020 SAME - INTRODUCTORY SERVICE.** "Introductory service" means a business which, for pecuniary compensation, consideration, hire or reward will help persons to meet or become acquainted with others for social purposes. For purposes of this Section, "others" include personnel of the introductory service.

**4.30.025 SAME - MASSAGE SERVICES.** In relation to massage services, the following terms shall be ascribed the following meanings:

(a) "Massage" -- means any method of pressure or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external surfaces of the body with hands or with any object or appliance;

(b) "Massage Establishment" -- means an establishment whose primary business is the offering of massage in exchange for pecuniary compensation, consideration, hire or reward;

(c) "Out-Call Massage Service" -- means any business, not licensed as a massage establishment under the provisions of this Chapter, wherein the primary function of such business is to engage in or carry on massage for pecuniary compensation, consideration, hire or reward not at a fixed location, but at a location designated by the customer or client;

(d) "Massage Technician" -- means any person who for pecuniary compensation, consideration, hire or reward, engages in the practice of massage.

**4.30.030 SAME - ESCORT SERVICES.** In relation to escort services, the following terms shall be ascribed the following meanings:

(a) "Escort Bureau" -- means a business which, for pecuniary compensation, consideration, hire or reward, furnishes or offers to furnish escorts;

(b) "Escort" -- means a person who, for pecuniary compensation, consideration, hire or reward, either escorts or accompanies others to or about social affairs, entertainment or places of amusement, or keeps company with others about any place of public resort or within any private quarters.

**4.30.035 SAME - EMPLOYED OR RETAINED BY.** "Employed or retained by" shall include:

(a) any person who is a directly paid employee of an adult-related business;

(b) any person whose association with an adult-related business is that of an independent contractor who receives payments of anything of value in exchange for any service rendered to the adult-related business or any of its customers;

(c) any person who receives a referral of customers from an adult-related business and who at any time before the referral or thereafter arranges in any way for money or any thing of value to flow to the adult-related business or any of its owners (regardless of whether the parties involved acknowledge that consideration is flowing in exchange for the referral or record such consideration in their financial records).

**4.30.050 EXEMPTIONS.** This Chapter shall not be applicable to or include the following:

(a) Hospitals, nursing homes, sanitariums, or persons working in any such establishments;

(b) Persons holding an unrevoked certificate to practice the healing arts under the laws of the State of California or persons working under the direction of any such persons;

(c) Barbers or cosmetologists lawfully carrying out their particular occupation or business, and holding a valid, unrevoked license or certificate of registration issued by the State of California;

(d) Modeling schools maintained pursuant to standards established by the State Board of Education of the State of California; or

(e) Any recognized school of massage which: (1) teaches the theory, ethics, practice, profession and work of massage requiring a minimum of 250 hours of instruction for which not more than 125 hours of credit can be given to a student for previous experience; and (2) requires a residence course of study to be given before the student is furnished with a diploma or certificate of learning or completion; and (3) has been registered pursuant to Section 94931 of the Education Code, or, if such school is not located in California, has complied with the standards commensurate with those specified in Section 94931. A "recognized school of massage" as those terms are used above, shall not include a school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class.

**4.30.060 HOURS OF OPERATION.** It shall be unlawful for any adult-related establishment to be operated or remain open for business between the hours of 10:00 p.m. and 8:00 a.m. of the following day.

**4.30.065 LIST OF SERVICES.** A list of the services available and the price of such services shall be posted in a clearly visible place at or near the entrance of each adult-related establishment. The services available shall be described in readily understandable language. No adult-related establishment shall render or provide, or offer to render or provide, any service not listed in compliance with this Section.

**4.30.070 PERSONNEL REGISTERS.** Operators of adult-related establishments shall maintain personnel registers, which shall be available for inspection by the Chief of Police at all times during regular business hours, as follows:

(a) With respect to a massage establishment and an out-call massage service, a personnel register shall be maintained containing the names and employee permit numbers of each person employed or retained to perform service as a massage technician.

(b) With respect to an escort or introductory service, a personnel register shall be maintained which includes the names and employee permit number of each person employed or retained as an escort or person employed or retained by the introductory service.

(c) With respect to any other adult-related establishment, a personnel register shall be maintained which includes the names of all persons employed or retained on the premises to provide services, the title of the position of each such person, and as to those persons required to possess employee permits by this Chapter, their employee permit numbers.

**4.30.075 EMPLOYMENT OF MINORS.** It shall be unlawful for the operator or any other person in charge of an adult-related establishment to employ or retain any person who is under the age of eighteen (18) years to perform any service on the premises of the establishment.

**4.30.080 SCHOOLS OF MASSAGE.** No massage establishment shall operate as a school of massage, as the terms "school of massage" are defined by Section 4.30.050(e), or shall use the facilities or premises of such a school of massage in connection with the operations of the massage establishment.

No person shall perform a massage on a member of the general public while on the premises of a school of massage, as defined by Section 4.30.050(e).

**4.30.085 SANITATION REQUIREMENTS - MESSAGE ESTABLISHMENTS.** Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Towels, coverings and linens shall not be used on more than one patron unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one patron. Soiled linens and paper towels shall be deposited in approved receptacles.

Within massage establishments wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Chief of Police. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Chief of Police. All walls, ceilings, floors and other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Instruments for massage shall not be used on more than one patron unless they are sterilized before each use by sterilization methods approved by the Chief of Police.

**4.30.090 SANITATION REQUIREMENTS -BATHHOUSES.** Within bathhouses, towels shall not be supplied to more than one patron unless such towels have first been laundered and disinfected. Wet and dry heat rooms, steam or vapor rooms and cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once a day the premises are open, with a disinfectant approved by the Chief of Police. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Chief of Police. All walls, ceilings, floors and other physical facilities shall be in good repair and maintained in a clean and sanitary condition.

**4.30.095 SANITATION REQUIREMENTS - MASSAGE TECHNICIANS.** While performing services in any adult-related establishment, massage technicians shall wear garments which cover the entire body, exclusive of the head, neck, arms, legs, hands and feet, while giving a massage. Such garments shall not be transparent.

**4.30.100 MINIMUM QUALIFICATIONS - MASSAGE MANAGERS.** Each massage establishment and out-call massage service offering any services involving physical contact with patrons shall be managed by a person who possesses a diploma or certificate of graduation from a recognized school of massage, as the terms "recognized school of massage" are defined by Section 4.30.050(e). It shall be unlawful for any massage establishment or out-call massage service offering such services to operate unless managed by a person possessing a diploma or certificate.

Such an establishment and service shall not be deemed "managed" as required by this Section unless a person possessing the required certificate or diploma having the authority and responsibility to supervise personnel employed or retained to perform services and to supervise the delivery of services is on the premises of the establishment not less than seventy-five percent of the time the business is open for the delivery of services.

**4.30.105 MINIMUM QUALIFICATIONS - MASSAGE TECHNICIANS.** It shall be unlawful for any massage establishment and out-call massage service to employ or retain a person to provide services as a massage technician, and unlawful for any person to work at or for such an establishment or service, unless the person possesses a diploma or certificate of graduation from a recognized school of massage, as the terms "recognized school of massage" are defined by Section 4.30.050(e).

## **Article 2 Licenses and Permits**

**4.30.200 LICENSE REQUIRED.** It shall be unlawful for any person to operate or conduct an adult-related establishment unless under and by authority of a valid, unexpired and unrevoked Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.30.205 DISPLAY OF LICENSE.** Each adult-related establishment, except an out-call massage service, shall display the Special Business License in a conspicuous place within the establishment so that the same may be readily seen by persons entering the premises.

A person engaged in an out-call massage service who is the Licensee for such service shall have the License available for inspection at all times while providing out-call massage services.

**4.30.210 EMPLOYEE PERMITS REQUIRED.** It shall be unlawful for any person to provide any of the following services without possessing a valid, unexpired and unrevoked Employee Permit issued pursuant to the provisions of Chapter 4.10 and this Chapter:

- (a) Act as a manager of an adult-related establishment by supervising or controlling the personnel of such an establishment or the services rendered therein;
- (b) Give a massage for a fee or any other form of consideration;
- (c) Act as an escort or a person employed or retained by an Introductory Service.

It shall be unlawful for the operator of any adult-related establishment to employ or retain a person to perform any of the above services unless such person possesses such an Employee Permit.

**4.30.215 APPLICATION.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to provide services identified by Section 4.30.210 shall contain the following:

- (a) A list of each conviction of the applicant, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged and the offense of which the applicant was convicted.
- (b) Proof of the age of the applicant; and
- (c) With respect to a permit to perform services as a manager of a massage establishment or out-call massage service or as a massage technician, the name and address of each school of massage attended or provider of instructional services in massage which has been received, the name and address and current telephone number of the school or provider, the dates of attendance or receipt of instruction, and a copy of any certificate or diploma or other evidence of completion which the applicant has received.

**4.30.220 ISSUANCE.** Upon receipt of an application for an Employee Permit to act as a manager of an adult-related establishment, a massage technician, or an escort, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit unless he or she finds pursuant to Section 4.10.090 any of the following:

- (a) That the application fails to contain information required by the Chief of Police or Section 4.30.215, or is otherwise incomplete;
- (b) That information contained in the application is false or otherwise inaccurate;
- (c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk

that the applicant would not perform his or her duties as a manager, massage technician, or escort in a law-abiding manner or in a manner which does not subject patrons to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 482(a).

(d) That the applicant is under eighteen (18) years of age; or

(e) That with respect to an application for an Employee Permit to act as a manager of a massage establishment or out-call massage service offering services involving physical contact with patrons, or massage technician, the applicant has not graduated from a recognized school of massage, as defined by Section 4.30.050(e).

Notwithstanding any other provision in this Chapter to the contrary, the Chief of Police may deem the requirements of the immediately preceding subparagraph and Sections 4.30.100 and 4.30.105 satisfied if he or she finds in writing that the applicant for the Permit has attended not less than two hundred and fifty (250) hours of instruction in massage at a school within or outside this State or in any foreign country that provides education substantially equal to or in excess of that received as a result of graduating from a recognized school of massage. Not more than one hundred and twenty-five (125) hours of such 250 hour instructional requirement can be waived based upon prior education or training experience.

**4.30.225 REVOCATION OF PERMITS.** An Employee Permit may be revoked or suspended pursuant to Section 4.10.140 upon any of the following grounds:

(a) Violation of any of the duties, requirements or prohibitions contained in this Chapter;

(b) Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to Section 4.02.085;

(c) Misrepresentation of a material fact contained in the application for the Permit; or

(d) That since issuance or renewal of the Permit the Chief of Police has acquired information supporting a finding prescribed by Section 4.30.220(c) in relation to the holder of the Permit.

## CHAPTER 4.31

### ADULT-ORIENTED BUSINESSES

#### Article 1 General Provisions

Sections:

- 4.31.000 Purpose and Intent.
- 4.31.005 Licenses and Registration Required.
- 4.31.010 Classification.

#### Article 2 Definitions

- 4.31.050 Definitions.

#### Article 3 Adult-Oriented Business Licenses

- 4.31.100 Adult-Oriented Business License Required.
- 4.31.105 Investigation and Action on Application.
- 4.31.110 Transfer of Adult-Oriented Business Licenses.

#### Article 4 Adult-Oriented Business Employee Permits

- 4.31.200 Employee Permit Required.
- 4.31.205 Investigation and Action on Application.
- 4.31.210 Transfer of Employee Permit.

#### Article 5 Denial, Suspension and Revocation of License or Permit

- 4.31.300 Denial of License or Permit.
- 4.31.305 Suspension or Revocation of License or Permit.
- 4.31.306 Suspension or Revocation Hearing.
- 4.31.310 Appeal.
- 4.31.315 Confidentiality.

#### Article 6 Development and Performance Standards

- 4.31.400 Prohibition Against Minors.
- 4.31.405 Concealing Specified Activities and Anatomical Areas From Public View.
- 4.31.410 Posting Notices Related to Minors.
- 4.31.415 Indoor Areas Open to View by Management.

- 4.31.420 Building Requirements.
- 4.31.425 Hours of Operation.
- 4.31.430 Security Guards.
- 4.31.435 Register and Permit Number of Employees.
- 4.31.440 Inspection.
- 4.31.445 Restroom Facilities.
- 4.31.450 Special Regulations - Live Entertainment.
- 4.31.455 Special Regulations - Adult Motels.
- 4.31.460 Special Regulations - Films, Video, or Viewing Booths.
- 4.31.465 Special Regulations - Nude Model Studios.
- 4.31.470 Special Regulations - Public Nudity.
- 4.31.475 Prohibition - Sexual Encounter Centers.

**Article 7  
Enforcement**

- 4.31.500 Each Day Separate Offense.
- 4.31.505 Public Nuisance.
- 4.31.510 Infractions.
- 4.31.515 Civil Injunction.
- 4.31.520 Administrative Remedies.
- 4.31.525 Revocation of License.

**Article 1**  
**GENERAL PROVISIONS**

**4.31.000 PURPOSE AND INTENT.**

It is the intent of this Chapter to regulate Adult-Oriented Businesses in order to promote the health, safety, and general welfare of the residents of the City. The provisions of this Chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials and paraphernalia protected by the First Amendment, or denying access by the distributors, exhibitors, and Performers of adult-oriented entertainment to their intended market. In addition, the provisions of this Chapter have neither the purpose nor effect of condoning or legitimizing the distribution of obscene material.

**4.31.005 LICENSES AND REGISTRATION REQUIRED.**

(a) It is a violation of this Chapter for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises in the City, the operation of an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Special Business License issued by the Chief of Police pursuant to this Chapter.

(b) It is a violation of this Chapter for any person who operates an Adult-Oriented Business to employ or permit a person to work for or at the Adult-Oriented Business who does not possess a valid Adult-Oriented Business Employee Permit issued by the Chief of Police pursuant to this Chapter.

(c) It is a violation of this Chapter for any person to obtain employment with or perform, work for or at an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business Employee Permit issued by the Chief of Police pursuant to this Chapter. These provisions shall not apply to persons exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not Nude, Semi-Nude, in a State of Nudity, or in a Semi-Nude Condition.

(d) It is a violation of this Chapter for any person to engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business Employee Permit issued by the Chief of Police pursuant to this Chapter.

**4.31.010 CLASSIFICATION.**

Adult-Oriented Businesses are classified as follows:

(a) Adult Arcades;

- (b) Adult Bookstores (including Adult Novelty Stores or Adult Video Stores);
- (c) Adult Cabarets;
- (d) Adult Motels (including Adult Hotels);
- (e) Adult Motion Picture Theaters;
- (f) Adult Theaters;
- (g) Nude Model Studios; and
- (h) Sexual Encounter Centers.

## **Article 2 DEFINITIONS**

### **4.31.050 DEFINITIONS.**

The definitions contained in this Section shall govern the construction of this Chapter.

(a) **Adult Arcade** means any commercial establishment to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, computer, or other image-producing devices are maintained to show images to four (4) or fewer persons per machine at any one time, and where, as a regular and substantial course of conduct, the images so displayed are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas. The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the business' displays that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(2) The proportion of the business' revenue that is attributable to displays that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(b) **Adult Bookstore (including Adult Novelty Store or Adult Video Store)** means a commercial establishment which, as a regular and substantial course of conduct, offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides, or other visual representations which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; or,

(2) Instruments, devices, or paraphernalia, except for clothing, which are designed for use in connection with Specified Sexual Activities.

(3) The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(A) The business devotes more than twenty-five percent (25%) of its retail inventory (not measured by the number of items but rather by the cost to the business owner of the inventory) to merchandise distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.

(B) The business devotes more than twenty-five percent (25%) of the retail floor area to merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.

(C) The retail value of merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas exceeds twenty-five (25%) of the total retail value of inventory offered in each of the following categories:

- (i) books,
- (ii) magazines,
- (iii) video tapes or any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), for sale or rental,
- (iv) novelties and devices, and
- (v) on-premises viewing of images, films, and or videos.

(D) Gross revenue derived from merchandise in any category set forth in Paragraph C above exceeds (25%) of the total gross revenue for the category.

There is a rebuttable presumption that a business constitutes an adult bookstore, adult novelty store or adult video store where the business offers or advertises merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas as set forth in Paragraph C above and fails to make revenue and inventory related business records available to the City upon twenty-four (24) hours advance notice.

(c) **Adult Cabaret** means a nightclub, bar, restaurant, or similar commercial establishment which, as a regular and substantial course or conduct, features:

- (1) Persons who appear in a State of Nudity or Semi-Nude Condition;
- or

(2) Live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or

(3) Films, motion pictures, video cassettes, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(4) The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(A) The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(B) The proportion of the business' revenue that is attributable to performances or services that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(d) **Adult Motels (including Adult Hotels)** means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or other photographic reproductions which, as a regular and substantial course of conduct, are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; and has any of the following characteristics:

(1) a sign visible from the public right of way which advertises the availability of the above-described photographic reproductions; or

(2) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(3) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

(e) **Adult Motion Picture Theater** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, for observation by five (5) or more patrons at any one time.

The phrase "regularly shown" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the theater's photographic reproductions that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(2) The number of photographic reproductions shown at the theater each month that are distinguished or characterized by an emphasis upon depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(3) The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the display or depiction of Specified Sexual Activities or Specified Anatomical Areas.

(f) **Adult-Oriented Businesses** means any of the following commercial establishments where patrons are permitted or invited: an Adult Arcade, Adult Bookstore, Adult Novelty Store, Adult Video Store, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Nude Model Studio, or Sexual Encounter Center. An Adult-Oriented Business does not include those businesses defined and regulated as "Adult-Related Businesses" under Chapter 4.30.

(g) **Adult Theater** means a theater, concert hall, auditorium, or similar commercial establishment which as a regular and substantial course of conduct features persons who appear in a State of Nudity or Semi-Nude Condition and/or features live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(2) The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(h) **Distinguished or Characterized by An Emphasis Upon** means the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas," the films so described are those whose dominant or predominant character and theme are the depiction, description, showing, or simulation of the enumerated sexual activities or anatomical areas.

(i) **Employee** means a person who performs any service on the premises of an Adult-Oriented Business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not such person is paid a salary, wage or other compensation by the operator of the business. Employee does not include a person exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not in a State of Nudity or in a Semi-Nude Condition.

(j) **Establishment of an Adult-Oriented Business** means and includes any of the following:

(1) The opening or commencement of any Adult-Oriented Business as a new business;

(2) The conversion of an existing business, whether or not an Adult-Oriented Business, to any other Adult-Oriented Business;

(3) The addition of any Adult-Oriented Business to any other existing Adult-Oriented Business; or

(4) The relocation of any Adult-Oriented Business.

(k) **Fabric** means cloth made by weaving or knitting natural or synthetic fibers and filaments, and for the purposes of this definition, includes paper, metallic or plastic materials but excludes any material directly painted on a body.

(l) **Hotel** means a building or group of buildings containing guestrooms offering transient lodging accommodations to the general public and incidental services that are customarily provided by a hotel, for the convenience of hotel guests, such as food service, recreational facilities, retail services, and banquet, reception and meeting rooms.

(m) **Licensee** means: a person in whose name a license to operate an Adult-Oriented Business has been issued, as well as the person listed as an applicant on the application for a license.

(n) **Motel** means an establishment otherwise defined as a hotel with at least twenty-five (25) percent of all rooms having direct access to the parking areas without the necessity of persons passing through a main lobby of the building.

(o) **Nude Model Studio** means any place where a person: appears Semi-Nude, in a State of Nudity, or displays Specified Anatomical Areas; and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of California or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which

credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(1) That has no sign visible from the exterior of the structure and no other advertising that indicates a person in a State of Nudity or a Semi-Nude Condition is available for viewing;

(2) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

(3) Where no more than one (1) Nude or Semi-Nude model is on the premises at any one time.

(p) **Nudity or a State of Nudity** means the showing of the human male or female genitals, pubic area, anus, or buttocks with less than a fully opaque fabric covering, the showing of the female breast with less than a fully opaque fabric covering of any part of the areola, or the showing of completely or opaquely covered (by Fabric) male genitals in a discernibly turgid state.

(q) **Permit** means a authorization issued by the City to a person in whose name a permit has been issued allowing employment in an Adult-Oriented Business.

(r) **Person** means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(s) **Police Chief or Chief of Police** means the Chief of Police of the City of Elk Grove or the authorized representatives thereof.

(t) **Semi-Nude or in a Semi-Nude Condition** means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks and areola of the female breast as well as portions of the body covered by supporting straps or devices.

(u) **Sexual Encounter Center** means a business or commercial enterprise that, as one of its principal purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, when one or more of the persons is in a State of Nudity or Semi-Nude Condition. The definition of sexual encounter center does not include an establishment where a medical practitioner, physiologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(v) **Specified Anatomical Areas** means and includes the following:

(1) Less than completely and opaquely covered by fabric: human genitals or pubic region; human buttocks; human anus; or the female breast below a point immediately above the top of the areola;

(2) Human male genitals in a discernibly turgid state, even if completely or opaquely covered by Fabric; and

(3) Any device, costume, or covering that simulates any of the body parts included in subdivisions (1) or (2) above.

(w) **Specified Criminal Activity** means the following offenses within the State of California, or an offense without the State of California that would have constituted any of the following offenses if committed within the State of California: Sections 243.4, 261, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 288, 314.1, 314.2, 315, 316, 318, 653.22 or subdivisions (a), (b) and (d) of Section 647 of the California Penal Code; any offense requiring registration under provisions of either Section 290 of the California Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or as those sections may thereafter be amended or renumbered

(x) **Specified Sexual Activities** means and includes any of the following, whether performed directly or indirectly through clothing or other covering:

(1) The fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breast;

(2) Sex acts, actual or simulated, including but not limited to, intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated;

(4) Excretory functions as part of or in connection with any of the other activities described in subdivision (1) through (2) above.

(y) **Transfer of Ownership or Control of Adult-Oriented Business** means and includes any of the following:

(1) The sale, lease, or sublease of the Adult-Oriented Business;

(2) The transfer of securities which constitute a controlling interest in the Adult-Oriented Business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the Adult-Oriented Business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**Article 3**  
**ADULT-ORIENTED BUSINESS LICENSES**

**4.31.100 ADULT-ORIENTED BUSINESS LICENSE REQUIRED.** Every person who proposes to maintain, operate, conduct, or establish an Adult-Oriented Business in the City shall file an application with the Chief of Police on a form provided by the City and shall pay a non-refundable application, investigation, and licensing fee set forth in the schedule of fees established from time to time by the City Council.

(a) All applicants must be qualified according to the provisions of this Chapter. The application may request and the applicant shall provide such information including fingerprints as to enable the Chief of Police to determine whether each applicant meets the qualifications established in this Chapter.

(b) If a person who wishes to operate an Adult-Oriented Business is an individual, the person must sign the application. If a person who wishes to operate an Adult-Oriented Business is other than an individual, each individual who has a twenty percent (20%) or greater ownership interest in the Adult-Oriented Business must sign the application. Each applicant must be qualified under this Chapter and each applicant shall be considered a Licensee if a license is granted.

(c) The completed application for an Adult-Oriented Business License shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(A) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least eighteen (18) years of age;

(B) a partnership, the partnership shall state its complete name, address, e-mail address, if any, and the names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any;

(C) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacity of all officers and directors, and the name of the registered corporate agent and the address of the registered office for service of process.

If the applicant is a partnership or corporation, each partner of the partnership or each shareholder of the corporation with twenty (20%) percent or more share of the corporation shall be deemed an individual applicant and must each be qualified under this Chapter.

(2) If the applicant intends to operate the Adult-Oriented Business under a name other than that of the applicant, the applicant shall register the fictitious name of the Adult-Oriented Business with the appropriate governmental entity and show written proof of registration of the fictitious name.

(3) Whether the applicant has been convicted of a Specified Criminal Activity and, if so, the particular California statute section listed in the definition of Specified Criminal Activity, the date, place, and jurisdiction of each.

(4) Whether the applicant has ever had a license previously issued under this Chapter or its predecessor, or other similar Adult-Oriented Business ordinances from another city or county, denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or majority stockholder of a corporation that is licensed under this Chapter, or its predecessor, whose license has previously been denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) Whether the applicant holds any other licenses under this Chapter, or its predecessor, or other similar Adult-Oriented Business ordinance from another city or county, and, if so, the names and locations of such other licensed businesses.

(6) The particular Adult-Oriented Business for which the applicant is applying. An applicant must apply separately for each Adult-Oriented Business to be operated, owned, managed, or controlled by the applicant.

(7) The address to which notice of action on the application is to be mailed.

(8) The location of the Adult-Oriented Business, including a legal description of the property, street address, and telephone number(s), if any.

(9) The applicant's mailing address, residential address, and e-mail address, if any.

(10) A recent photograph of the individual applicant.

(11) The applicant's driver's license number, Social Security number, and, for partnerships or corporation applicants, the applicant's state or federally issued tax identification number to the extent the applicant has been issued these items.

(12) The names of all Employees, independent contractors, and other persons who will work, be employed or perform at the Adult-Oriented Business, who are required by this Chapter to obtain an Adult-Oriented Business Employee Permit.

(13) A sketch or diagram showing interior configuration of the premises, including a statement of the total floor area occupied by the Adult-Oriented Business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(14) A certificate and straight-line drawing, prepared within 30 days prior to application, depicting, without regard to intervening structures or objects, the distance from the closest exterior wall of the building or structure, in which the Adult-Oriented Business is located, to the boundary of the property on which is located a building, structure or use, or portion of the building, structure or use, described in, and within the distance specified in, section 23.70.040 of the City's Zoning Code.

(15) A diagram of the off-street parking areas and premises entries of the Adult-Oriented Business and showing the location of the lighting system.

(d) Every application for a license under this Chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

(e) The fact that an applicant possesses other types of state, city or county permits or licenses does not exempt the applicant for the requirement of obtaining an Adult-Oriented Business License.

#### **4.31.105 INVESTIGATION AND ACTION ON APPLICATION.**

(a) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within ten (10) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have thirty (30) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with Chief of Police as set forth herein.

(b) Within three (3) business days after the Chief of Police determines that the application is complete and the required non-refundable application fee has been submitted, the Chief of Police shall issue a temporary license to the applicant, which shall be valid for the time period during which the license application is being processed, which time period shall not exceed thirty (30) business days from the date the application has been deemed complete. A temporary license issued pursuant to this subsection shall not grant any vested rights on the holder of the temporary license.

(c) Within five (5) business days after receipt of a completed application and the required filing fee, the Chief of Police shall transmit copies of the application and its attachments to appropriate City departments.

(d) Within thirty (30) business days after receipt of a completed application and the required filing fee, the Chief of Police shall complete the investigation, grant or deny the application in accordance with the provisions of this Chapter, and shall notify the applicant as follows:

(1) If the application is approved, the Chief of Police will write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an Adult-Oriented Business License.

(2) If the application is denied, the Chief of Police will write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(3) The documents specified in paragraphs (1) and (2) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application for receipt of the determination under this Chapter. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(e) The Chief of Police shall approve the issuance of a license to an applicant, unless it is determined by a preponderance of the evidence that any of the following findings is true:

(1) That the operation as proposed by the applicant, if permitted, will not comply with all applicable laws, including, but not limited to the locational requirement set forth in the City's Zoning Code, the provisions of this Chapter, and the building, health, housing and fire codes of the City.

(2) That the applicant has been convicted of a Specified Criminal Activity except the Chief of Police shall issue a permit to any person convicted of any of the crimes described above if the person is otherwise qualified for a permit; and the longer of the following time periods has passed:

(A) Five years from date of the conviction; or

(B) Five years from release from confinement; or

(C) Five years from formal release from probation period; or

(D) Five years from formal release from parole.

(3) That the applicant has knowingly made a material misrepresentation in the application;

(4) That the applicant or any operator has had a license for an Adult-Oriented Business revoked for cause by this City or any other city or county within the last five years except as provided in this Chapter;

- (5) That the applicant is not at least eighteen (18) years of age;
- (6) That the applicant has not paid the required fee.

(f) The license, if granted shall expire one (1) year from the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding License, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the Chief of Police, but shall include a renewal form provided by the City, the required fee, and a copy of the license to be renewed. The sole purpose of the renewal application is to update the information provided by the applicant on the initial application.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding License. Notwithstanding Section 4.10.60, the Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate to determine whether the standards for renewal are satisfied. In considering such renewal, the Chief of Police shall use the same standards as used for issuance of an initial license. The Chief of Police shall extend the term of the immediately preceding License during the period of any investigation or examination required in order to determine whether the License should be renewed. The Chief of Police shall act upon applications for license renewal as provided herein for applications for initial licenses.

(g) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the Adult-Oriented Business and the single classification of Adult-Oriented Business as set forth herein, for which the license is issued.

(h) All licenses shall be posted in a conspicuous place at or near the entrance to the Adult-Oriented Business so that they may be easily read at any time by all persons entering the Adult-Oriented Business.

(i) Within thirty (30) calendar days of any change in the information originally submitted with the license application, all Licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this Chapter. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(j) Within thirty (30) calendar days of any change in Employee hiring or status, all Licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this Chapter. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(k) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within thirty (30) business days after its receipt, the applicant may begin operating the Adult-Oriented Business for the single classification of Adult-Oriented Business as set forth herein, for which the license was sought, subject

to strict compliance with the provisions of this Chapter for a period of 12 months subject to the renewal provisions as set forth in this Chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police from either granting or denying a completed application pursuant the terms of this Chapter even if more than thirty days has elapsed since the receipt of a completed application.

#### **4.31.110 TRANSFER OF ADULT-ORIENTED BUSINESS LICENSES.**

(a) It is a violation of this Chapter for a Licensee to operate an Adult-Oriented Business under the authority of an Adult-Oriented Business License at any place other than the address of the Adult-Oriented Business stated in the application upon which the license was issued.

(b) It is a violation of this Chapter for a Licensee to transfer ownership or control of an Adult-Oriented Business License to another person unless and until the transferee first obtains a written amendment to the license from the Chief of Police in accordance with and subject to the application and fee requirements set forth in this Chapter.

(c) It is a violation of this Chapter for a Licensee to transfer an Adult-Oriented Business License when the Chief of Police has notified the Licensee that the license has been suspended or revoked or that such action is pending.

(d) Any attempt to transfer a license either directly or indirectly in violation of this Chapter is void, and the license shall be deemed revoked.

### **Article 4 ADULT-ORIENTED BUSINESS EMPLOYEE PERMITS**

#### **4.31.200 EMPLOYEE PERMIT REQUIRED.**

(a) No person shall engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business, without a valid Adult-Oriented Business Employee Permit issued by the Chief of Police.

(b) All Employees of an Adult-Oriented Business shall have a valid Adult-Oriented Business Employee Permit issued by the Chief of Police.

(c) Before any applicant may be issued an Adult-Oriented Business Employee Permit, the applicant shall submit to the Chief of Police on a form to be provided by the City the following information:

(1) The applicant's legal name and any other name including "stage" names or aliases used by the applicant;

(2) Age, date, and place of birth;

- (3) Height, weight, hair and eye color;
- (4) Present residence address and telephone number;
- (5) Present business address and telephone number;
- (6) Date, issuing state and number of driver's license or other identification card information if applicable;
- (7) Social Security number; and,
- (8) Satisfactory written proof that the individual is at least eighteen (18) years of age.

(d) Attached to the application form shall be the following:

(1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(2) A statement detailing the permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously obtained or is seeking to obtain an Adult-Oriented Business Employee Permit in this City or any other county, city, state, or country, and whether such applicant has ever had a license, permit, or authorization to do business in an Adult-Oriented Business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted within the past five (5) years, as of the date of submitting the application, of a Specified Criminal Activity as defined in this Chapter and, if so, the particular California statute section listed in the definition of Specified Criminal Activity, the date, place and jurisdiction of each conviction.

(e) Every application for a permit under this Chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

(f) Every application for an Adult-Oriented Business Employee Permit, whether for a new permit or for a renewal of an existing permit, shall be accompanied by a non-refundable application, investigation and permit fee as set forth in the schedule of fees established from time to time by the City Council.

(g) The fact that an applicant possesses other types of state, City or county permits or licenses does not exempt the applicant for the requirement of obtaining an Adult-Oriented Business Employee Permit.

#### **4.31.205 INVESTIGATION AND ACTION ON APPLICATION.**

(a) Upon receipt of an application for an Adult-Oriented Business Employee Permit and the required non-refundable application, investigation, and licensing fee, the Chief of Police shall issue a 15-day temporary permit to the applicant.

(b) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within five (5) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have ten (10) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with Chief of Police as set forth herein

(c) Within fifteen (15) business days after the issuance of the temporary permit, the Chief of Police shall grant or deny the application and so notify the applicant as follows:

(1) If the application is approved, the Chief of Police will write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an Adult-Oriented Business Employee Permit.

(2) If the application is denied, the Chief of Police will write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(3) The documents specified in (1) and (2) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(d) The Chief of Police shall grant the application unless it is determined by a preponderance of the evidence that any of the following findings is true:

(1) That the applicant has been convicted of a Specific Criminal Activity except the Chief of Police shall issue a permit to any person convicted of any of the crimes described above if the person is otherwise qualified for a permit; and the longer of the following time periods has passed:

- (A) Five years from date of the conviction; or
- (B) Five years from release from confinement; or
- (C) Five years from formal release from probation period; or
- (D) Five years from formal release from parole.

(2) That the applicant has knowingly made a material misrepresentation in the application.

(3) That the applicant has had an Adult-Oriented Business Employee Permit revoked for cause by this City or any other city or county within the last five years except as provided in this Chapter.

(4) That the applicant is not at least eighteen (18) years of age.

(5) That the applicant has not paid the required fee

(e) The permit, if granted shall expire one (1) year from the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding Permit, the City Manager shall transmit to the permittee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the Chief of Police, but shall include a renewal form provided by the City, the required fee, and a copy of the permit to be renewed. The sole purpose of the renewal application is to update the information provided by the applicant on the initial application.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding Permit. Notwithstanding Section 4.10.085, the Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate to determine the standards for renewal are satisfied. In considering such renewal, the Chief of Police shall use the same standards as used for issuance of an initial permit. The Chief of Police shall extend the term of the immediately preceding Permit during the period of any investigation or examination required in order to determine whether the Permit should be renewed. The Chief of Police shall act upon applications for permit renewal as provided herein for applications for initial permits.

(f) The permit, if granted, shall state on its face the name of the person to whom it is granted, and the expiration date. The Chief of Police shall provide each person issued an Adult-Oriented Business Employee Permit with an identification card containing the name, address, photograph, and permit number of the Permit.

(g) Both the Permit and identification card shall be available for inspection at all times during which the Permittee is on the premises of an Adult-Oriented Business.

(h) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within fifteen (15) business days after its receipt, the applicant may begin employment at an Adult-Oriented Business, subject to strict compliance with the provisions of this Chapter for a period of 12 months subject to the renewal provisions as set forth in this Chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police from either granting or denying a completed application pursuant the terms of this Chapter even if more than thirty days has elapsed since the receipt of a completed application.

**4.31.210 TRANSFER OF EMPLOYEE PERMIT.** A permit holder shall not transfer ownership or control of an Adult-Oriented Business Employee Permit.

**Article 5**  
**DENIAL, SUSPENSION, AND REVOCATION OF LICENSE OR PERMIT**

**4.31.300 DENIAL OF LICENSE OR PERMIT.** When the Chief of Police denies application for a license or permit or the application for a renewal of a license or permit, other than due to the failure to pay the required fees, the applicant shall not be issued a license or permit for one (1) year from the date of denial. If, subsequent to denial, the Chief of Police finds that the basis for denial has been corrected or abated, the applicant shall be granted a license or permit if at least ninety (90) days have elapsed since the date denial became final and the applicant is otherwise qualified to obtain a license or permit.

**4.31.305 SUSPENSION OR REVOCATION OF LICENSE OR PERMIT.**

(a) A Licensee or Permittee may be subject to suspension or revocation of his or her License or Permit, or be subject to other appropriate remedial action, including the imposition of additional conditions, for any of the following causes arising from the acts or omissions of the Licensee or Permittee, or an employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business:

(1) The Licensee or Permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a License or Permit, or in any report or record required to be filed with the City.

(2) The Licensee or Permittee, employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business has engaged in or knowingly allowed or permitted, or has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the Adult-Oriented Business:

(A) Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.

(B) Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.

(C) Any conduct constituting a criminal offense which requires registration under Section 290 of the California Penal Code.

(D) The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of Sections 315, 316, or 318 or Section 647(b) of the California Penal Code.

(E) Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including but not limited to Sections 311 through 313.4.

(F) Any conduct prohibited by this Chapter.

(3) The Licensee or Permittee failed to abide by any lawful condition previously imposed by an authorized City official.

(4) The Licensee or Permittee failed to abide by any applicable provision of this Chapter.

(b) In accordance with the provisions of this Chapter, if the Chief of Police finds and determines that there are grounds for action, the Chief of Police shall propose one of the following:

(1) A warning;

(2) Suspension of the License or Permit for a specified period not to exceed six months;

(3) Revocation of the License or Permit.

(4) The Chief of Police shall propose the revocation of a License or Permit if it has been suspended within the proceeding (12) months.

(c) The revocation of a License or Permit shall continue for one (1) year, and the Licensee or Permittee shall not be issued an Adult-Oriented Business license or permit for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may apply for and be granted a new license or permit if at least ninety (90) days have elapsed since the date the revocation became effective and the applicant is otherwise qualified for a license or permit.

**4.31.306 SUSPENSION OR REVOCATION HEARING.** On determining that grounds for license or permit revocation or suspension exist, the Chief of Police shall furnish written notice of the proposed suspension or revocation to the Licensee or Permittee. Such notice shall set forth the time and place of a hearing to be conducted by a Hearing Authority appointed by the City Manager, and the grounds upon which the hearing is based, the pertinent Code sections at issue, and a brief summary of the facts in support of the suspension or revocation. The notice shall be mailed, postage

prepaid, to the last know address of the Licensee or Permittee, or shall be delivered to the Licensee or Permittee personally, at least ten (10) working days prior to the hearing date. At the hearing, all parties shall have a right to offer testimonial, documentary, and tangible evidence on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence upon which reasonable persons are accustomed to rely in the conduct of serious matters may be admitted. Any hearing under this Chapter may be continued for a reasonable time for the convenience of a party or witness. Notice of the Hearing Authority's decision shall be mailed to the applicant or Licensee or Permittee no later than seven (7) days after the close of the hearing. If the Hearing Authority determines that grounds for revocation or suspension exist, the Hearing Authority shall include in its written decision any one or more of the actions listed in section 4.31.305(b) to be effective within fourteen (14) days of the hearing.

#### **4.31.310 APPEAL.**

(a) All decisions of the Chief of Police and/or the Hearing Authority to issue, renew, deny, suspend or revoke a license or permit are final within thirty (30) calendar days. After denial of an application, renewal, or a suspension or revocation, the applicant or licensee or permittee may seek prompt judicial review of such decision in any court of competent jurisdiction as provided by law, including judicial review pursuant to Section 1094.8 of the California Code of Civil Procedure. Notwithstanding the applicant's or licensee's or permittee's right to initiate judicial review, the City shall, upon the written request of an aggrieved applicant, licensee, or permittee within three (3) business days of its receipt of the request, file an action with a court of competent jurisdiction seeking declaratory and injunctive relief, including temporary and preliminary relief, as to the propriety of the denial, revocation, or suspension.

(b) If, upon request, the City files such action seeking judicial review or the aggrieved applicant, licensee or permittee files the action, the City's revocation, suspension, or denial of renewal application will be stayed pending a judicial decision on the merits by a court of competent jurisdiction.

(c) If the City denies an initial application of a license or permit and the aggrieved applicant commences a legal action to determine the validity of the denial or makes a written request in the manner set forth herein that the City commence such action, the City shall issue a temporary license or permit if the court has not rendered a decision on the merits within the earlier of twenty (20) calendar days after the matter is submitted to the court or fifty (50) calendar days of the filing of the action. This temporary license or permit shall remain in effect only until the court in which the action is pending renders its decision on the merits as to the propriety of the denial.

**4.31.315 CONFIDENTIALITY.** The City deems confidential license and permit applications required by this Chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the applications or the information contained therein.

**Article 6**  
**DEVELOPMENT AND PERFORMANCE STANDARDS**

**4.31.400 PROHIBITION AGAINST MINORS.** It shall be unlawful for any Licensee, operator, or other person in charge of any Adult-Oriented Business to permit to enter, or remain within the Adult-Oriented Business, any person who is not at least eighteen (18) years of age or to provide any service for which this Chapter requires a license, to any person who is not at least eighteen (18) years of age.

**4.31.405 CONCEALING SPECIFIED ACTIVITIES AND ANATOMICAL AREAS FROM PUBLIC VIEW.** No Adult-Oriented Business shall be operated in any manner that permits the observation of any material or activities depicting or describing Specified Sexual Activities or Specified Anatomical Areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window, or other opening. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.

**4.31.410 POSTING NOTICES RELATING TO MINORS.** The building entrance to an Adult-Oriented Business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Such notice shall be constructed and posted to the satisfaction of the Planning Director or his or her designee.

**4.31.415 INDOOR AREAS OPEN TO VIEW BY MANAGEMENT.** All indoor areas of the Adult-Oriented Business where patrons or members of the public are permitted, excluding rest rooms and non-public areas of Adult Motels, shall be open to view by management at all times.

**4.31.420 BUILDING REQUIREMENTS.** The premises and grounds of all Adult-Oriented Businesses shall comply with the following;

(a) Maximum occupancy load, fire exits, aisles, parking and fire equipment shall be regulated, designed and provided in accordance with the fire department and building regulations and standards adopted by the City.

(b) The premises within which the Adult-Oriented Business is located shall provide sufficient sound-absorbing insulation so that noise generated inside the premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.

(c) All interior areas of the Adult-Oriented Business shall be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

- (1) Adult Bookstores - 20 foot-candles;

(2) Adult Theaters, Adult Motion Picture Theaters and Adult Cabarets - 5 foot-candles (except during performances, at which times lighting shall be at least 1.25 foot-candles);

(3) Adult Arcades - 10 foot-candles;

(4) Adult Motels - 20 foot-candles (in public areas)

(5) Nude Model Studios - 20 foot-candles.

(d) All off-street parking areas and premise entries of the Adult-Oriented Business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of at least one (1) foot candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the Adult-Oriented Business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

(e) The exterior of the Adult-Oriented Business shall be equipped with a security system that visually records and monitors all off-street parking areas provided for the Adult-Oriented Business during all times that the business is open or occupied for business.

(1) The surveillance equipment utilized shall provide continuous recording for at least a 24-hour period, with all recording maintained for a minimum of 72 hours.

(2) Immediately upon request, the surveillance recording for all or any portion of the previous 72-hour period shall be made available to the Chief of Police, or his or her designated representative. Such recordings shall be utilized only for purposes of investigation of an alleged violation of a local, state or federal law, or the enforcement thereof. Except as necessary to enforce a local, state or federal law, the City deems confidential the surveillance recordings required by this Chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the surveillance recordings or the information contained therein.

(3) Signs shall be posted in the parking area, near the entrances to the premises, and at a conspicuous location inside the premises in such a manner as to notify the public that the exterior of the premises is subject to recorded surveillance.

(f) The exterior portions of the building shall be painted in a single achromatic color unless the Adult-Oriented Business is a part of a commercial multi-unit center and the exterior portions of each individual unit in the commercial center, including the exterior portion of the business, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit center. Nothing in this provision shall be construed to

require the painting of an otherwise unpainted exterior portion of an Adult-Oriented Business.

(g) No exterior signage shall contain photographs, silhouettes, drawings, images or pictorial representations in any manner, depicting or making linguistic reference to nudity, specified anatomical areas, specified sexual activity, or any device or paraphernalia designed for use in connection with specified sexual activity.

**4.31.425 HOURS OF OPERATIONS.** An Adult-Oriented Business shall be open for business only between the hours of 10 a.m. and 12 a.m./midnight on any particular day.

**4.31.430 SECURITY GUARDS.** Adult-Oriented Businesses shall employ off-duty law enforcement officers or security guards in order to maintain the public peace and safety, based upon the following standards:

(a) Adult-Oriented Businesses shall provide at least one (1) officer or security guard at all times while the business is open. If the occupancy limit of the Adult-Oriented Business is greater than thirty-five (35) persons, an additional officer or security guard shall be on duty.

(b) Officers or security guards shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of these regulations. Officers and security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as an officer or security guard as required by applicable provisions of state law. No officer or security guard required pursuant to this Chapter shall act as a door person, ticket seller, ticket taker, admittance person, entertainer or performer, or sole occupant of the manager's station while acting as a security guard.

(c) Officers and security guards shall report any violation of law immediately to the responsible manager on the premises at the time the violation or threatened violation occurs, and shall prepare a written report outlining the violation or threatened violation observed. Copies of all written reports required by this Chapter shall be maintained on the premises and shall be available for inspection by law enforcement personnel at all times during regular business hours.

**4.31.435 REGISTER AND PERMIT NUMBER OF EMPLOYEES.** Every Licensee of an Adult-Oriented Business that provides live entertainment depicting Specified Anatomical Areas or involving Specified Sexual Activities must maintain a register of all past and current persons so performing at the Adult-Oriented Business and their permit numbers. Such register shall be available for inspection during regular business hours by any police officer of the City.

**4.31.440 INSPECTION.**

(a) When the Chief of Police, the Planning Director, and/or Code Enforcement Officers have reasonable cause to believe that violations of this Title and/or other

provisions of the Zoning Code are occurring on the premises where an Adult-Oriented Business is operating, they, and/or their authorized representatives, may conduct a reasonable inspection of the public areas of and areas otherwise open to plain view on or within, the premises or the Adult-Oriented Business to the extent allowed by law and during the business hours of the Adult-Oriented Business

(b) It is a violation of this Chapter for a person who operates an Adult-Oriented Business or that person's agent or Employee to refuse to permit such lawful inspection of the Adult-Oriented Business at any time it is open for business.

**4.31.445 RESTROOM FACILITIES.** The Adult-Oriented Business shall provide and maintain separate restroom facilities for male patrons and Employees, and female patrons and Employees. Male patrons and Employees shall be prohibited from using the restroom(s) for females, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. Female patrons and Employees shall be prohibited from using the restroom(s) for males, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. The restrooms shall be free from any Adult Material as defined in Section 4.31.010(b)(1) and (2). Restrooms shall not contain television monitors or other motion picture or video projection, recording, or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an Adult-Oriented Business which deals exclusively with the sale or rental of Adult Material which is not used or consumed on the premises, such as an Adult Bookstore or Adult Video Store, and which does not provide restroom facilities to its patrons or the general public.

**4.31.450 SPECIAL REGULATIONS -- LIVE ENTERTAINMENT.** The following additional requirements shall pertain to Adult-Oriented Businesses providing live entertainment distinguished or characterized by the depiction, description, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities, except for businesses regulated by the California Department of Alcoholic Beverage Control.

(a) No person shall perform live entertainment for patrons of an Adult-Oriented Business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least six (6) feet from the nearest area occupied by patrons. Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this Chapter. Performer shall mean any person who is an Employee or independent contractor of the Adult-Oriented Business, or any person who, with or without compensation or other form of consideration, performs live entertainment for patrons of an Adult-Oriented Business.

(b) The Adult-Oriented Business shall provide separate dressing room facilities for performers which are exclusively dedicated to the performers' use.

(c) The Adult-Oriented Business shall provide an entrance/exit for performers which is separate from the entrance/exit used by patrons.

(d) The Adult-Oriented Business shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the Adult-Oriented Business shall provide a minimum three (3) foot wide aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers capable of (and which actually results in) preventing any physical contact between patrons and performers.

(e) No performers, either before, during, or after performances, shall have physical contact with any patron and no patron shall have physical contact with any performer either before, during or after performances by such performer. This paragraph shall only apply to physical contact anywhere on or within the premises of the Adult-Oriented Business, including off-street parking areas.

(f) No patron shall directly pay or give any gratuity to any performer and no performer shall solicit any pay or accept gratuity from any patron.

(g) No owner or other person with managerial control over an Adult-Oriented Business shall permit any person on the premises of the Adult-Oriented Business to engage in a live showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This paragraph may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

#### **4.31.455 SPECIAL REGULATIONS -- ADULT MOTELS.**

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an Adult Motel.

(b) It is a violation of this Chapter for a person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an Adult-Oriented Business License to rent or sub-rent the same sleeping room to another person more the two (2) times in a period of time that is less than ten (10) hours.

(c) For purposes of paragraphs (a) and (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

#### **4.31.460 SPECIAL REGULATIONS -- FILMS, VIDEOS OR VIEWING ROOMS.**

A person who operates or causes to be operated an Adult-Oriented Business, including an Adult Arcade and other than an Adult Motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts Specified

Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:

(a) Upon application for an Adult-Oriented Business License, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of premises to an accuracy of plus or minus six (6) inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was first prepared.

(b) No alteration in the configuration or location of a manager's station may be made without the prior written approval of the Chief of Police.

(c) It is the duty of the Licensee of the Adult-Oriented Business to ensure that at least one properly permitted Employee is on duty and situated in each manager's station at all times that any patron is present inside the Adult-Oriented Business.

(d) The interior of the Adult-Oriented Business shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the Adult-Oriented Business to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing equipment. If the Adult-Oriented Business has two (2) or more designated manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the Adult-Oriented Business to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required by this Section must be by direct line of sight from the manager's station.

(e) It shall be the duty of the Licensee to ensure that the view area specified in this Section remains unobstructed at all times by any doors, curtains, partitions, walls, merchandise, display racks or other materials.

(f) It shall be the duty of the Licensee to ensure that no patron is permitted access to any area of the Adult-Oriented Business which has been designated as an area in which patrons will not be permitted pursuant to paragraph (a) of this section.

(g) No viewing room may be occupied by more than one (1) person at any time.

(h) No viewing room shall have any door, curtain, shutter, or any other device blocking or capable of blocking, wholly or partially, the entrance to the viewing booth.

(i) The Adult-Oriented Business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level.

(j) It shall be the duty of the Licensee to ensure that the illumination required by this Section is maintained at all times that any patron is present in the premises.

(k) No openings of any kind shall exist between viewing rooms or booths.

(l) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(m) The Licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(n) The Licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(o) The Licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition Board or other porous material shall be used within forty-eight (48) inches of the floor.

(p) The floors, seats, walls, and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, or saliva in any such booths shall be evidence of improper maintenance and inadequate sanitary controls.

(q) Customers, patrons, or visitors shall not be allowed to loiter in the vicinity of any such video booths, or remain in the common area of such Adult-Oriented Business, other than the restrooms, unless actively engaged in shopping for or reviewing the products available or on display for purchaser viewing. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.

(r) It is a violation of this Chapter for a person having a duty under this Section to knowingly fail to fulfill that duty.

#### **4.31.465 SPECIAL REGULATIONS -- NUDE MODEL STUDIOS.**

(a) A Nude Model Studio shall not employ any person under the age of eighteen (18) years.

(b) It is a violation of this Chapter for a person under the age of eighteen (18) years to appear Semi-Nude or in a State of Nudity in or on the premises of a Nude Model Studio. It is a defense to prosecution under this Section if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

(c) A Nude Model Studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

#### **4.31.470 SPECIAL REGULATIONS -- PUBLIC NUDITY.**

(a) It is a violation of this Chapter for a person knowingly and intentionally, in a public area of an Adult-Oriented Business (except a restroom), to appear in a State of Nudity;

(b) It is a violation of this Chapter for a person knowingly and intentionally, in an Adult Oriented Business, to engage in or perform the following Specified Sexual Activities:

(1) Actual sex acts, normal or perverted, consisting of intercourse, oral copulation or sodomy;

(2) Actual masturbation; and/or

(3) Excretory functions as part of or in connection with any of the activities described in subdivision (1) or (2) above or as part of or in connection with the fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breast.

(c) It is a violation of this Chapter for a person knowingly or intentionally, in a public area of an Adult-Oriented Business, to appear in a Semi-Nude condition unless the person is an Employee or performer who, while Semi-Nude, is upon a stage at least eighteen (18) above the level of the floor which is separated by a distance of at least six (6) feet from the nearest areas occupied by patrons.

(d) It is a violation of this Chapter for an Employee or performer while Semi-Nude in an Adult-Oriented Business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any Employee or performer in an Adult Oriented Business.

(e) It is a violation of this Chapter for an Employee or performer, in an Adult-Oriented Business, while Semi-Nude, to knowingly and intentionally, touch a patron or customer or the clothing of a patron or customer.

**4.31.475 PROHIBITION -- SEXUAL ENCOUNTER CENTERS.** A sexual encounter center is not a permitted use.

### **Article 7 ENFORCEMENT**

**4.31.500 EACH DAY SEPARATE OFFENSE.** Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day

during any portion of which any such person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

**4.31.505 PUBLIC NUISANCE.** Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the Municipal Code.

**4.31.510 INFRACTIONS.** Any person who violates, causes, or permits another person to violate any provision of this Chapter commits an infraction. Any person convicted of an infraction shall be subject to a fine to the maximum amount permitted by state law. Any person twice convicted of an infraction for repeat violations of the same provision within a one (1) year period, may be charged with a misdemeanor upon being issued a citation for the repeated violation of the same provision since, rather than simply a violation of a provisions of this Chapter, such repeat violations evidence a disregard of municipal authority. Any person convicted of a misdemeanor shall be subject to punishment by fine or imprisonment to the maximum permitted by state law. Pursuant to Government Code section 36900(a), the City Attorney may prosecute these violations in the name of the People of the State of California.

**4.31.515 CIVIL INJUNCTION.** The violation of any provision of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause for injunctive relief.

**4.31.520 ADMINISTRATIVE REMEDIES.** In addition to the remedies set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies, as set forth in the Municipal Code.

**4.31.525 REVOCATION OF LICENSE.** In addition to the remedies set forth above, violation of the provisions of this Chapter constitutes grounds for the revocation of an Adult-Oriented Business License and/or Adult-Oriented Business Employee Permit.

## CHAPTER 4.35

### OUTDOOR FESTIVALS

#### Article I

#### General Provisions and Requirements

##### Sections:

- 4.35.000 Purposes.
- 4.35.005 City Manager.
- 4.35.006 Exclusion for City Park and Recreation Department Festivals.
- 4.35.010 Definitions.
- 4.35.015 Same - Automobile Parking Space.
- 4.35.020 Same - Outdoor Festival.
- 4.35.025 Same - Sponsors and Promoters.
- 4.35.030 Landowner's Consent.
- 4.35.035 Sponsor Responsibilities.
- 4.35.040 Same - Water.
- 4.35.045 Same - Sanitary Facilities.
- 4.35.050 Same - Automobile Parking Spaces.
- 4.35.055 Same - Security Personnel.
- 4.35.060 Same - Fire Protection.
- 4.35.065 Same - Lighting Equipment.
- 4.35.070 Same - Sound Levels.
- 4.35.075 Same - Garbage.
- 4.35.080 Same - Emergency Communications.
- 4.35.085 Same - Access Ways.
- 4.35.090 Same - Dust.
- 4.35.095 Same - Food.
- 4.35.100 Same - Damage Reimbursement.
- 4.35.105 Same - Clean-up.
- 4.35.110 Limitation Upon Attendance.
- 4.35.115 Conduct Prohibited.
- 4.35.120 Advertising.
- 4.35.125 Days and Hours.
- 4.35.130 Termination of Festival.

#### Article 2

#### Special Business License

- 4.35.205 License Required.
- 4.35.210 Filing Time.
- 4.35.215 Application Contents.
- 4.35.220 Same - Identification of Applicants.
- 4.35.225 Same - Identification of Property Owners.
- 4.35.230 Same - Time - Attendance - Advertising.
- 4.35.235 Same - Provisions for Service.

- 4.35.240 Same - Maps and Diagrams.
- 4.35.245 Fingerprints and Photographs.
- 4.35.250 Processing of Application.
- 4.35.255 Issuance.
- 4.35.260 License Requirements.

**Article 1**  
**General Provisions and Requirements**

**4.35.000 PURPOSES.** In this state and elsewhere, outdoor festivals have been promoted and have attracted large numbers of persons, sometimes exceeding one hundred thousand. Occurrences at those outdoor festivals already held include the stealing of automobiles, abandonment of automobiles stolen elsewhere, totally unmanageable traffic congestion, slaughtering of cattle and other animals on adjoining property without permission of the owners thereof, unauthorized destruction of property, scattering of trash, garbage, and other debris on adjoining property, overnight camping at random locations, collision of automobiles with persons sleeping on the ground, and, generally, the commission of serious crimes with impunity due to the inability of police to patrol the area.

Such festivals, with their attendant large crowds create serious health and safety risks for persons attending and the general public thereafter unless adequate sanitary facilities, drinking water supplies, lighting, medical services, vehicular parking areas, supervision, and other services and guarantees are provided.

The regulatory provisions of this Chapter are necessary to insure that outdoor festivals are held only at suitable places and are subject to reasonable conditions for the protection of the public health, safety, and welfare.

**4.35.005 CITY MANAGER.** The City Manager is charged with the responsibility of administering the regulations imposed by this Chapter, and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing outdoor festivals, promulgate administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to outdoor festivals and the issuance and administration of Special Business Licenses therefor, as are vested in the Chief of Police under Chapter 4.02, Section 4.02.070, 4.02.085, 4.02.100 and 4.02.105; and Chapter 4.10, Sections 4.10.000 through 4.10.155. Any reference to the "Chief of Police" shall be deemed to be a reference to the City Manager in relation to outdoor festivals.

**4.35.006 EXCLUSION FOR CITY PARK AND RECREATION DEPARTMENT FESTIVALS.** This Chapter does not apply to outdoor festivals held at City parks and conducted under the direction of the City Parks and Recreation Department.

**4.35.010 DEFINITIONS.** As used in this Chapter, the terms contained in Sections 4.35.015 through 4.35.025 shall be ascribed the meanings contained therein, unless the context indicates otherwise.

**4.35.015 SAME - AUTOMOBILE PARKING SPACE --** shall mean any maintained space, not less than one hundred eighty square feet in area nor less than nine feet wide at any place, on or contiguous to the land on which the outdoor festival is

conducted, and so located and arranged as to permit the parking of an average size, six-passenger automobile.

**4.35.020 SAME - OUTDOOR FESTIVAL** -- shall mean any outdoor gathering of more than five hundred persons for the purpose of participating in or attending a dance, music carnival, "rock" festival, or like musical activity at which vocal or instrumental or both vocal and instrumental music is provided by professional or amateur performers or by prerecorded means, held at any place other than in a permanent building, stadium or like permanent installation which has been constructed or customarily used for the purpose of housing such activities, and to which gathering members of the public are invited or admitted with or without the payment of admission charges in any form.

**4.35.025 SAME - SPONSORS AND PROMOTERS** -- shall mean all persons and business entities having a direct financial interest in the proceeds to be derived from the outdoor festival, whether such proceeds arise from ticket sales, sales of film, radio, television, or sound recording rights, or otherwise.

**4.35.030 LANDOWNER'S CONSENT.** It shall be unlawful for any person to sponsor, conduct, operate, promote or advertise an outdoor festival unless the owner or owners of the land upon which the festival is or would be conducted have consented to the use thereof for such purposes. If the land is not solely owned by the person or persons sponsoring, conducting, operating, promoting or advertising the festival, such consent shall be evidenced by a written instrument containing the notarized signatures of all record owners.

**4.35.035 SPONSOR RESPONSIBILITIES.** Each person to whom a Special Business License required by Article 2 is issued, shall be responsible as licensee and at the sole cost and expense thereof, for provision of those facilities, services, resources and guarantees required by Sections 4.35.040 through 4.35.100.

**4.35.040 SAME - WATER.** The licensee shall provide drinking water of the quantity, quality, and from a source approved by the City Manager. Drinking fountains shall be provided as follows:

- (a) One drinking fountain for the first one hundred persons;
- (b) Two drinking fountains for more than one hundred but less than five hundred persons; and
- (c) One additional drinking fountain for each additional five hundred persons or fraction thereof.

**4.35.045 SAME - SANITARY FACILITIES.** The licensee shall provide sanitary facilities as follows: at least one water closet and one urinal, or in lieu thereof two patented chemical toilets, for every two hundred males, and at least one water closet or patented chemical toilet for every one hundred females, unless the City Manager finds that a lesser number is sufficient, in which case he or she shall designate each number. If both sexes are admitted to any sanitary facility, for purposes of determining the

required quantity of facilities the persons attending the outdoor festival shall be assumed to be equally divided by sex. Prior to the commencement of the outdoor festival, the City Manager shall inspect the sanitary facilities with regard to adequacy of quantity, functioning, and plans for periodic removal of wastes therefrom, and shall approve the sanitary facilities only if they meet applicable health standards. While any premises are being prepared for use for an outdoor festival or for parking or other uses incidental thereto, the licensee shall provide on the premises one patented chemical toilet for each twenty persons or fractional part thereof working at the job site. Every patented chemical toilet installed in accordance with this Section shall be maintained and operated in accordance with the rules and regulations approved by the City Manager.

**4.35.050 SAME - AUTOMOBILE PARKING SPACES.** On all premises on which an outdoor festival is conducted, or contiguous thereto and under the control of the applicant, in addition to those ways described in Section 4.35.080 of this Chapter, there shall be automobile parking spaces equal in number to one-fourth of the number of persons which the license permits to attend the outdoor festival, unless the City Public Works Director finds that a lesser number of parking spaces is sufficient in which case the licensee shall provide the lesser number of spaces. Such automobile parking spaces shall be graded, plainly and individually marked, and separated by a physical barrier from the area where patrons will watch the performances. At all times between two hours before the commencement of the outdoor festival and two hours after its termination the licensee shall provide parking attendants at all entrances and exits to the parking area within the area.

**4.35.055 SAME - SECURITY PERSONNEL.** At any outdoor festival, one off-duty law enforcement officer or uniformed security guard for each two hundred persons which the license permits to attend, whether such permissible attendance is present or not, shall be in constant attendance during the entire time the outdoor festival is in progress. Each officer or security guard shall be approved by the Chief of Police or shall be provided by a private patrol operator whose name and address has been stated in the application and who is licensed pursuant to Chapter 11 of Division 3 of the Business and Professions Code. The Chief of Police shall approve any security guard if the guard meets the qualifications stated in Sections 7526 and 7526.3 of the Business and Professions Code. The officers and security guards shall devote their entire attention and time to keeping order and enforcing all applicable statutes and ordinances, including this Chapter.

**4.35.060 SAME - FIRE PROTECTION.** The licensee shall provide such fire protection measures and equipment as the Chief of that Fire Protection District with jurisdiction over the site on which the outdoor festival is conducted finds reasonably necessary to provide fire protection to the immediate and adjoining premises and to persons participating in and attending the outdoor festival.

**4.35.065 SAME - LIGHTING EQUIPMENT.** If the hours during which the outdoor festival can be held as provided in the license are such that any portion thereof is between sunset of one day and sunrise of the following day, or if the license permits

any participant or person in attendance to remain overnight, the licensee shall provide such lighting, including light standards and electrical switches, and such power supply as the Chief of Police and director of public works find necessary for the public safety and welfare.

**4.35.070 SAME - SOUND LEVELS.** The licensee shall propose reasonable limits on sound emanating from the festival grounds into adjoining areas with resident homes or businesses. At the option of the Chief of Police, the licensee shall provide up to three sound monitoring locations at the edge of the property where the outdoor festival is to be conducted. The monitoring locations shall be equipped to measure the decibels of sound emanating from the festival grounds and, at the option of the Chief of Police, may be monitored by City personnel to assure compliance with the sound level limits set forth in the permit.

**4.35.075 SAME - GARBAGE.** The licensee shall provide solid waste receptacles to receive solid wastes at a ratio of one cubic yard of available receptacle space for each two hundred fifty persons which the license permits to attend the outdoor festival.

All solid waste receptacles shall be serviced once every twenty-four hours during the festival. Within seventy-two hours after the conclusion of an outdoor festival, the licensee shall clean the premises, including contiguous public roads, ways, and easements, removing all trash, garbage, and debris therefrom which matter would not have been deposited therein had not the outdoor festival occurred.

**4.35.080 SAME - EMERGENCY COMMUNICATIONS.** At all times during the conduct of an outdoor festival, the licensee shall maintain such emergency communications systems as the Chief of that Fire Protection District with jurisdiction over the site on which the outdoor festival is conducted and Chief of Police find reasonably necessary for fire and police protection.

**4.35.085 SAME - ACCESS WAYS.** The licensee shall provide all exterior and interior access ways which the Chief of Police and Director of Public Works find necessary for the use of those attending the outdoor festival. All such access ways shall be clearly marked and delineated by means of curbs or temporary buffers on the ground.

**4.35.090 SAME - DUST.** The licensee shall use such methods of dust control as are approved by the City Manager. The City Manager shall approve such methods if he finds that such methods will prevent the arising of dust to an extent which may endanger public health and safety.

**4.35.095 SAME - FOOD.** In selling, preparing, delivering, or serving food or beverages or both, all persons proposed by the licensee to sell food shall comply with the California Restaurant Act, Chapter 11 (beginning with Section 28600), Division 21, of the California Health and Safety Code and with Chapter 6.04 of the Municipal Code.

**4.35.100 SAME - DAMAGE REIMBURSEMENT.** The licensee and owner or owners of the premises upon which the outdoor festival would be held shall sign a unilateral written contract promising that they will reimburse all owners and occupants of property adjoining the subject premises for any and all loss, injury, or damages to such owners or occupants or to their property caused by the licensee, by the owner of the subject premises, or by any other person attending the outdoor festival, which damage would not have occurred had the outdoor festival not been held. Accompanying and securing this agreement shall be a surety bond in favor of the City of Elk Grove and all persons to whom the licensee or owner of the subject premises may be liable because of the above-required agreement. The bond shall be prepared by a corporate bonding company authorized to do business within the State of California by the Department of Insurance, and shall be in the amount of not less than fifty thousand dollars, or ten dollars per person permitted by the license to attend the outdoor festival, whichever is more.

**4.35.105 SAME - CLEAN-UP.** The licensee and owner or owners of the premises upon which the outdoor festival would be held shall sign a unilateral written contract promising that, within seventy-two hours after the conclusion of the outdoor festival, they will clean up the premises, including contiguous public roads, ways, and easements, and remove all debris, garbage, trash, litter, and other waste matter from, in, and around the premises. Accompanying and securing this agreement shall be a surety bond in favor of the City of Elk Grove and all persons to whom the applicant may be liable because of the above-required agreement prepared by a corporate bonding company authorized to do business in the State of California by the Department of Insurance, obligating the licensee and owner for all costs necessitated to clean up the premises and to remove debris, garbage, trash, litter, or other waste matter from, in, or around the premises. Such surety bond shall be in the amount of not less than five (\$5,000.00) thousand dollars.

**4.35.110 LIMITATION UPON ATTENDANCE.** Adequate facilities, services and accommodations for those in attendance of an outdoor festival and required to otherwise protect the public peace, health, safety and welfare necessitate a planned limit upon the volume of potential attendance and the establishment of means to ensure that the volume limit is not exceeded.

The licensee shall provide such facilities on the premises where a festival is to be conducted and such personnel as the Chief of Police deems necessary to effectively control the number of persons in attendance as required in order to ensure that the limit for which the Special Business License is issued is not exceeded.

The licensee shall not admit to the outdoor festival, and shall prevent the entrance thereto of, any person who does not possess a ticket, except a peace officer or other public officer in the performance of his duty. Admission to an outdoor festival shall be by ticket only. The licensee shall not sell, give, or otherwise distribute or cause to be distributed a greater number of tickets than the number of persons the license permits to attend. The licensee shall not admit any person to an outdoor festival if such

admission would result in a greater number of persons present than is permitted by the license.

The provisions of this Section shall not be construed to require that tickets be sold for money as distinguished from given away or exchanged for some other consideration. Nor shall the provisions of this Section be construed to require the persons desiring to attend to identify themselves either as a condition of receiving a ticket or of admission.

**4.35.115 CONDUCT PROHIBITED.** The attendant harm and danger caused by large numbers of persons who are under the influence of intoxicating liquor or prohibited drugs necessitate the following restrictions.

No person shall, nor shall any licensee permit any person to enter, be, or remain on any part of the premises on which an outdoor festival is being conducted which such person is in possession of, consuming, using, or under the influence of any alcoholic beverage or legally proscribed dangerous drugs or narcotics.

**4.35.120 ADVERTISING.** No person shall advertise or announce by any means or medium, including, but without limitation to, posters, pamphlets, handbills, newspaper, radio or television, the holding of an outdoor festival prior to the granting of a Special Business License permitting such outdoor festival.

Any and all such advertising shall contain reference to the fact that attendance is prohibited without possession of a ticket or other entitlement to attend, and the maximum number of persons permitted by the license to attend.

**4.35.125 DAYS AND HOURS.** The licensee shall operate the outdoor festival only on those days and during those hours specified in the Special Business License.

**4.35.130 TERMINATION OF FESTIVAL.** During the conduct of an outdoor festival for which a Special Business License has been issued under the provisions of Chapter 4.10 and this Chapter, the Chief of Police shall be empowered to interrupt and terminate the festival, order the cessation thereof, and order all persons in attendance to disburse if he or she finds any of the following:

(a) That the actual attendance at the festival exceeds the maximum attendance authorized by the License; or

(b) That violations of Section 4.35.115 are occurring in such volume or under such circumstances that available law enforcement and security resources are inadequate to effectively enforce the prohibitions of that Section; or

(c) That any service on the site of the festival required by those in attendance is insufficient, and the insufficiency endangers the health, safety or welfare of those in attendance; or

(d) That conduct violating the penal laws of the State of California is occurring in such volume or under such circumstances that law enforcement and security resources are insufficient to effectively prevent such violations; or

(e) That the decibel level of sound intruding into neighboring properties exceeds the standards set by the license.

It shall be unlawful for any person to violate an order issued by the Chief of Police under the authority conferred by this Section.

## **Article 2 Special Business License**

**4.35.205 LICENSE REQUIRED.** No person shall sponsor, conduct, promote, advertise or sell or furnish tickets or other authority for an outdoor festival unless under and by authority of a valid, unexpired and unrevoked Special Business License authorizing the outdoor festival issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.35.210 FILING TIME.** Notwithstanding the provisions of Chapter 4.10, an application for a Special Business License to conduct an outdoor festival shall be filed not later than ninety calendar days in advance of the date the festival is proposed to commence.

**4.35.215 APPLICATION CONTENTS.** In addition to the matters prescribed by Section 4.10.030, an application for a Special Business License to conduct an outdoor festival shall contain that information and material prescribed by Sections 4.35.220 through 4.35.240.

**4.35.220 SAME - IDENTIFICATION OF APPLICANTS.** The application shall include the name (including aliases), age, residence, mailing address, e-mail address, if any, and telephone numbers of each person making the application. If the application is filed by a partnership, the name (including aliases), age, residence and mailing address, the telephone numbers of each partner shall be included. If the application is filed by a corporation, the application shall be signed by the president, vice president and secretary thereof and contain their residences, mailing addresses, e-mail address, if any, and telephone numbers, contain the telephone numbers, the mailing addresses, and the street addresses of the principal place of business of the corporation, and include a certified copy of the articles of incorporation and the bylaws of the corporation.

**4.35.225 SAME - IDENTIFICATION OF PROPERTY OWNERS.** The application shall include the names, addresses and telephone numbers of the owners of the premises upon which the proposed outdoor festival, including automobile parking and other incidental uses, is to be held, and the exact location, legal description, and area of these premises. If any of the owners of the premises is a partnership, the names, addresses, e-mail address, if any, and telephone numbers of all partners shall be included. If any of the owners of the premises is a corporation, the street address and telephone numbers of the principal place of business of the corporation, together

with the names, addresses, e-mail addresses, if any, and telephone numbers of the principal officers thereof, shall be included.

**4.35.230 SAME - TIME - ATTENDANCE - ADVERTISING.** The application shall include:

- (a) The date or dates and the hours during which the proposed outdoor festival is proposed to be conducted;
- (b) A statement of the maximum number of persons proposed to be admitted to the outdoor festival on each day;
- (c) Specification of the means of identifying the persons permitted to attend the festival, whether by tickets or otherwise; the number of tickets or other entitlements to admission to be issued for distribution; the names and addresses of all persons who are to receive such entitlements for distribution; and the number of such entitlements to be provided to each distributor;
- (d) Identification of all fencing, the number and location of admission gates, security and other measures proposed to ensure that actual attendance does not exceed the maximum prescribed by the License; and
- (e) The text of all advertising intended for the purpose of publicizing the festival, which shall be subject to approval only in relation to compliance of the text with those requirements prescribed by Section 4.35.120.

**4.35.235 SAME - PROVISIONS FOR SERVICES.** The application shall include a detailed statement of the applicant's plans to supply all facilities, services, resources and guarantees required by Sections 4.35.040 through 4.35.105; together with:

- (a) The names and addresses of all business entities or other person intended to supply the facilities, services and resources, coupled with an exact description of the facilities, services or resources each business entity or other person is intended to supply;
- (b) Contracts or other written statements executed by the providers showing the charges to be imposed for the facilities, services or resources to be provided, and the dates and amounts of all deposits or other advance payments required therefor; and
- (c) Financial statements by the applicant showing the availability of funds with which to make any deposits or advance payments required.

The application shall include copies of the written instruments required by Sections 4.35.030, 4.35.100 and 4.35.105. The bonds required by Sections 4.35.100 and 4.35.105 shall be filed with the City Manager not later than the date of and as a condition precedent to issuance of the Special Business License.

**4.35.240 SAME - MAPS AND DIAGRAMS.** The application shall include a map of white background print, drawn to scale, showing:

- (a) The location of the property on which the proposed outdoor festival and all related activities will be held;
- (b) The location of all highways, streets, alleys, lots, and parcels of land within seven hundred feet of the exterior boundaries of the proposed use;
- (c) All access ways to the property;
- (d) All exterior access ways;
- (e) The location of all buildings and structures on the premises, or to be erected thereon, including, but without limitation to, all bandstands, stages, tents other facilities for performers, and bleachers, tents or seats for those attending;
- (f) The location of all loudspeakers; and
- (g) The location of all toilets, medical facilities, lighting, emergency communications, drinking facilities, and solid waste receptacles.

**4.35.245 FINGERPRINTS AND PHOTOGRAPHS.** An application shall not be deemed completed until each of the following persons associated with an applicant has been fingerprinted and photographed at the Police Department:

- (a) All general partners, if the applicant is a partnership;
- (b) All joint venturers, if the applicant is a joint venture; and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this Section would apply if the partnership or corporation were the applicant;
- (c) A sole proprietor, if the applicant is a sole proprietorship;
- (d) All owners of more than ten percent of the voting shares of stock, if the applicant is a commercial corporation;
- (e) All directors, if the applicant is either a commercial or non-profit corporation;
- (f) All members of the management committee, if the applicant is a partnership or joint venture;
- (g) All members of a governing body or other Board or committee to which management is entrusted, if the applicant is an unincorporated association; and

(h) Each president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm who is the applicant.

**4.35.250 PROCESSING OF APPLICATION.** Upon receipt of a fully completed application, the City Manager shall provide copies thereof to the Chief of Police, Director of Public Works, Chief of the Fire Protection District with jurisdiction over the site where the outdoor festival is to be conducted, and Planning Director. Each of these officials shall determine whether, with regard to their specific areas of responsibility under this Chapter, the proposed outdoor festival can be held without violating any of the provisions of this Chapter, and shall make such determinations as are otherwise required by the provisions of this Chapter.

Each such official shall submit to the City Manager within twenty (20) calendar days following the date of filing of a completed application his or her written findings, determinations and requirements.

**4.35.255 ISSUANCE.** Notwithstanding the provisions of Section 4.10.040, the City Manager shall act upon the application not later than thirty calendar days following the date of filing of the application, and the provisions of Section 4.10.040(c) shall not constitute grounds for denial of a Special Business License to conduct an outdoor festival.

The City Manager shall issue the Special Business License within thirty days after the date on which the application is filed, unless, in addition to the grounds prescribed by Section 4.10.040, either:

(a) The Planning Director, Chief of Police, Director of Public Works, Chief of the Fire Protection District with jurisdiction over the site where the outdoor festival is to be conducted, or City Manager has found in writing that the proposed outdoor festival sites or facilities would not comply with all health, zoning, fire and safety requirements and standards imposed by the laws (including ordinances) applicable to the site where the outdoor festival is to be conducted, including this Chapter; or

(b) The Planning Director, Chief of Police, Director of Public Works or City Manager finds in writing that any of the facilities, services, resources or guarantees proposed by the applicant as required by this Chapter are insufficient to satisfy any discretionary requirement imposed by any of these officials pursuant to authority conferred by this Chapter; or

(c) The City Manager finds in writing that because of the inadequacy of financial resources of the applicant or for other reasons that there is a significant risk that any of the facilities, services, resources or guarantees required of the applicant by this Chapter will not be provided.

**4.35.260 LICENSE REQUIREMENTS.** A Special Business License authorizing an outdoor festival pursuant to the provisions of this Chapter, shall state on its face, and

the City Manager shall be vested with discretionary authority to determine based upon considerations of health, safety and welfare as identified by this Chapter, the following:

- (a) The maximum number of persons authorized to attend the festival on each date the festival will be conducted;
- (b) The dates and hours during which the festival may be conducted; and
- (c) Such conditions pertaining to conduct of the festival as may be deemed appropriate.

To the extent that the License authorizes a lower maximum number of persons to attend the festival than proposed by the applicant, authorizes the festival on fewer dates or during more restricted hours than proposed by the applicant, or contains conditions to which the applicant objects, such provisions of the License shall be appealable in the same manner and in accordance with the same procedure as if the application had been denied, and the appeal shall be governed by the procedures and standards prescribed by Sections 4.10.110 through 4.10.130.

## **CHAPTER 4.54**

### **ADDITIONAL REGULATIONS AND PROHIBITIONS FOR BUSINESSES**

#### **Article 1 Street Businesses**

Sections:

- 4.54.000 Purposes.
- 4.54.005 Definitions.
- 4.54.010 Prohibitions.
- 4.54.015 Exceptions.
- 4.54.020 Food Vendors.

#### **Article 2 Aggressive Solicitation**

- 4.54.100 Purposes.
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- 4.54.110 Aggressive Solicitation Prohibited.
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- 4.54.390 Temporary Fireworks Stand.
- 4.54.400 General Requirements for Licenses.
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#### **Public Convenience Determination for Alcohol Licenses**

- 4.54.500 Application for Determination of Public Convenience.
- 4.54.510 Review of Applications.
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## **Article 1 Street Businesses**

**4.54.000 PURPOSES.** Regulation of the sale of merchandise upon the public streets and sidewalks within the City is necessary for the purpose of promoting the free and safe flow of vehicular and pedestrian traffic. The City Council finds that the use of such rights-of-way for such purposes in violation of the prohibitions of this Article would constitute an interruption of the free flow of traffic and a serious and dangerous hazard to the public.

**4.54.005 DEFINITIONS.** As used in this Article, the following terms shall be ascribed the following meanings:

(a) "Public Streets" -- shall mean that portion of any County, State or public road or highway within the City which is utilized for motor vehicle or bicycle traffic, including any improved shoulder adjacent to traffic lanes, and excluding sidewalks.

(b) "Sidewalks" -- shall mean any right-of-way within the City which is improved for public pedestrian traffic, including paved walks and pathways.

(c) "Stand" -- shall mean any fixed, temporary, permanent or mobile rack, counter, shelving, vehicle or other structure or device utilized for the purpose of transporting, storing, carrying or displaying merchandise or for the purpose of conducting sales of merchandise.

(d) "Merchandise" -- shall mean any item of personal property, including but not limited to, written materials, foods and wares.

**4.54.010 PROHIBITIONS.** Except as otherwise provided by Section 4.54.015, it shall be unlawful for any person to:

(a) Hawk or peddle merchandise upon the public streets; or

(b) Place a stand or merchandise upon a sidewalk for the purpose of hawking or peddling merchandise.

**4.54.015 EXCEPTIONS.** The provisions of this Article shall not be applicable to or deemed to prohibit:

(a) The placement of newspaper racks upon sidewalks; or

(b) The peddling or hawking of merchandise by the taking of orders or delivering of commodities from any vehicle which is parked not longer than required in order to complete a single transaction adjacent to the premises or residents of the customer, patron or purchaser.

**4.54.020 FOOD VENDORS.** No person operating a vehicle from which candy, confections, ice cream, beverages or other articles of food are sold or offered for sale under the authority of Section 4.54.015(b):

(a) shall park or stand the vehicle for purposes of sale within three hundred fifty feet of the grounds of any public school in which children at or below the twelfth grade level are enrolled, and which is in session; or

(b) shall sell any non-food items including, but not limited to, toys, clothing, or fireworks.

## **Article 2 Aggressive Solicitation**

**4.54.100 PURPOSES.** The City Council finds that aggressive solicitation negatively impacts the quality of life of residents of the City. Patrons of commercial districts in which aggressive solicitation occurs are less likely to patronize the City's businesses and negatively impact the public interest in economic growth and tax revenues to the City. Mindful of everyone's right of free speech, the City Council finds there is a reasonable balance between those interests and the rights of listeners to be left alone -- even in public places. Furthermore, the City Council takes notice that the specific provisions of this Article have been judicially upheld by the California Supreme Court.

**4.54.105 DEFINITIONS.** For purposes of this Article:

(a) "Solicit, ask or beg" includes using the spoken, written, or printed word, or bodily gestures, signs or other means with the purpose of obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services.

(b) "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, an apartment house or hotel not constituting a room or apartment designed for actual residence.

**4.54.110 AGGRESSIVE SOLICITATION PROHIBITED.**

(a) No person shall solicit or beg in an aggressive manner in any public place.

(b) "Aggressive manner" means any of the following:

(1) Approaching or speaking to a person, or following a person before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, damage to or loss of property, or otherwise be intimidated into giving money or other thing of value;

(2) Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent in the course of soliciting, asking or begging;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

(4) Using violent or threatening gestures toward a person solicited either before, during, or after soliciting, asking or begging;

(5) Persisting in closely following or approaching a person after the person solicited has been solicited and informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or any other thing of value to the solicitor; or

(6) Using profane, offensive or abusive language that is inherently likely to provoke an immediate reaction, either before or after solicitation.

#### **4.54.115 ALL SOLICITATION PROHIBITED AT SPECIFIED LOCATIONS.**

(a) Banks and ATMs. No person shall solicit, ask, or beg within 15 feet of any entrance or exit of any bank, savings and loan association, credit union, or check cashing business during its business hours or within 15 feet of any automated teller machine during the time it is available for customers' use. However, when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. No person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility. Nothing in this paragraph shall be construed to prohibit the lawful vending of goods and services within such areas.

(1) Definitions. For purposes of this section:

(A) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(B) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(C) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(D) "Check cashing business" means any person duly licensed as a check seller, bill payer, or prorater pursuant to Division 3 of the California Financial Code, commencing with section 12000.

(E) "Automated teller machine" shall mean any electronic information processing device that accepts or dispenses cash in connection with a credit, deposit, or convenience account.

(F) "Automated teller machine facility" shall mean a secure area comprised of one or more automated teller machines, and any adjacent space that is made available to banking customers after regular banking hours.

(2) Exemptions. The provisions of this Subdivision shall not apply to any unenclosed automated teller machine located within any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings as long as such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.

(b) Motor vehicles and parking lots.

(1) Motor Vehicles. No person shall approach an operator or occupant of a motor vehicle for the purpose of soliciting, asking or begging while such vehicle is located in any public place.

(2) Parking lots. No person shall solicit, ask or beg in any public parking lot or structure any time after dark. "After dark" means any time from one-half hour after sunset to one-half hour before sunrise.

(3) Exemptions. This Subdivision shall not apply to any of the following:

(A) to solicitations related to business that is being conducted on the subject premises by the owner or lawful tenants;

(B) to solicitations related to the lawful towing of a vehicle; or

(C) to solicitations related to emergency repairs requested by the operator or other occupant of a vehicle.

(c) Public Transportation Vehicles and Stops.

(1) "Public transportation vehicle" shall mean any vehicle, including a trailer bus, designed, used or maintained for carrying 10 or more persons, including the driver; or a passenger vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire.

(2) Any person who solicits, asks or begs in any public transportation vehicle, or within ten feet of any designated or posted public transportation vehicle stop, is guilty of a violation of this section if:

(A) He or she remains there after being asked to leave by the owner, driver, or operator of a public transportation vehicle; the agent of the owner, driver or operator of a public transportation vehicle; the owner or manager of a public transportation facility; the agent of the owner or manager of a public transportation facility; a member of a security force employed by the public transportation facility; or by a peace officer, as defined in Chapter 4.5 of Title 3 of the California Penal Code (commencing with Penal Code, § 830); or

(B) Within the immediately preceding 30 days, he or she engaged in a solicitation at that location and had been asked to leave by a person specified in Paragraph (A), above.

(C) Paragraph (B) above is not violated if a person who has been requested to leave enters the property within the designated period and solicits, asks, or begs with the express authorization of a person specified in Paragraph (A) above.

(d) Restaurants. Any person who solicits, asks, or begs in any outdoor or indoor dining area of a restaurant or other establishment serving food for immediate consumption is guilty of a violation of this section if:

(1) He or she remains there after being asked to leave by the owner, manager or supervisor of the restaurant or other food establishment; the agent of the owner, manager or supervisor of the restaurant; a member of a security force employed by the restaurant; or by a peace officer, as defined in Chapter 4.5 of Title 3 of the California Penal Code (commencing with Penal Code, § 830), acting at the request of any of the persons specified in this Subdivision; or

(2) Within the immediately preceding 30 days, he or she engaged in a solicitation at that location and had been asked to leave by a person specified in Paragraph (1) above.

(3) Paragraph (2) above is not violated if a person who has been requested to leave enters the property within the designated period and solicits, asks, or begs with the express authorization of a person specified in Paragraph (1) above.

**4.54.120 PENALTY.** A violation of this section is punishable as a misdemeanor or infraction, chargeable at the City Attorney's discretion. Nothing in this Article shall limit or preclude the enforcement of other applicable laws.

**4.54.125 SEVERABILITY.** The provisions of this Article are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Article, or the invalidity of the application thereof to any person

or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

### **Article 3 Drug Paraphernalia**

**4.54.200 PURPOSES.** The illegal use of controlled substances within the City creates serious social, medical and law enforcement problems. The illegal use of such substances by persons under eighteen years of age is a matter of great public interest. It is causing serious physical and psychological damage to the youth of this community, and impairment of educational achievement and of the efficiency of the educational system, increases in non-drug related crime and a threat to the ability of the community to ensure future generations of responsible and productive adults, all to the detriment of the health, safety and welfare of the residents of Elk Grove.

The proliferation of the display of drug paraphernalia in retail stores within the City, and the distribution of such paraphernalia intensifies and otherwise compounds the problem of illegal use of controlled substances within this community.

A ban only upon the display and distribution of drug paraphernalia to persons under eighteen years of age would not be practical. The person who displays or distributes drug paraphernalia would have difficulty determining who could lawfully view or receive drug paraphernalia. The already thinly staffed law enforcement agencies would be subjected to intolerable added enforcement burdens by adding age of a person who views or receives paraphernalia as an element of a prohibition upon display and distribution. A significant number of high school students are eighteen years of age or older. It would be lawful to distribute paraphernalia to some students attending the same school in which the distribution to other students would be prohibited. Permitted display and distribution to adults within the community would symbolize a public tolerance of illegal drug use, making it difficult to explain the rationale of programs directed against similar abuse by youth. The problem of illegal consumption of controlled substances by adults within this community is significant and substantial, necessitating a cessation of the encouragement of drug abuse which the display and distribution of drug paraphernalia create.

This Article is a measure which is necessary in order to discourage the illegal use of controlled substances within the City.

**4.54.205 DEFINITIONS.** As used in this Article, the following terms shall be ascribed the following meanings:

(a) "Business" means a fixed location, whether indoors or outdoors, at which merchandise is offered for sale at retail.

(b) "Controlled substance" means those controlled substances set forth in Sections 11054, 11055, 11056, 11057 and 11058 of the California Health and Safety Code, identified as Schedules I through V, inclusive.

(c) "Display" means to show to a patron or place in a manner so as to be available for viewing or inspection by a patron.

(d) "Distribute" means to transfer ownership or a possessory interest to another, whether for consideration or as a gratuity. "Distribute" includes both sales and gifts.

(e) "Patron" means a person who enters a business for the purpose of purchasing or viewing as a shopper merchandise offered for sale at the business.

**4.54.210 SAME - DRUG PARAPHERNALIA.** As used in this Article, the terms "drug paraphernalia" mean all equipment, products, and any materials of any kind which are intended by a person charged with a violation of this Article for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of any law of the state. "Drug paraphernalia" includes, but is not limited to, all of the following:

(a) Kits intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices intended for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances intended for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, intended for use in cutting controlled substances;

(g) Separation gins and sifters intended for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Blenders, bowls, containers, spoons and mixing devices intended for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, and other containers intended for use in packaging small quantities of controlled substances;

(j) Containers and other objects intended for use in storing or concealing controlled substances; and

(k) Objects intended for use in injecting, inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls,

(2) Water pipes,

(3) Carburetion tubes and devices,

(4) Smoking and carburetion masks,

(5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand,

(6) Miniature cocaine spoons and cocaine vials,

(7) Chamber pipes,

(8) Carburetor pipes,

(9) Air-driven pipes,

(10) Bongs.

**4.54.215 PROOF.** In determining whether an object is "drug paraphernalia", a court or other authority may consider, in addition to all other logically relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use,

(b) The proximity of the object to controlled substances,

(c) The existence of any residue of controlled substances on the object,

(d) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver to persons whom he knows, intend to use the object to facilitate a violation of the laws of the state relating to controlled substances,

(e) Instructions, oral or written, provided with the object concerning its use,

(f) Descriptive materials, accompanying the object which explain or depict its use.

(g) National and local advertising concerning its use,

- (h) The manner in which the object is displayed for sale,
- (i) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise,
- (j) The existence or scope of legitimate uses for the object in the community, and
- (k) Expert testimony concerning its use.

**4.54.220 DISPLAY OF DRUG PARAPHERNALIA.** Except as authorized by law, it is unlawful for any person to willfully maintain or operate any business knowing or under circumstances where one reasonably should know that drug paraphernalia is displayed at such business.

Except as authorized by law, it is unlawful for any person who is the owner of a business, an employee thereof or one who works at such business as an agent of the owner, to willfully display drug paraphernalia at such business.

**4.54.225 DISTRIBUTION OF DRUG PARAPHERNALIA.** Except as authorized by law, it is unlawful for any person to willfully distribute to another person drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, product, process, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of any law of the state.

**4.54.230 EXCEPTIONS.** No provision of this Article shall be deemed, whether directly or indirectly, to authorize any act which is otherwise prohibited by any law of the state or require any act which is otherwise prohibited by any law of the state. Nor shall any provision of this Article be deemed, whether directly or indirectly, to prohibit any act or acts which are prohibited by any law of the state.

#### **Article 4 Fireworks**

**4.54.300 GENERAL PROHIBITION AGAINST POSSESSION, SALE OR USE OF FIREWORKS.** Except as otherwise provided in this Article, no person shall possess, sell, use, display or explode any rocket, firecracker, roman candle, squib, torpedo, torpedo cane, fire balloon, wire core sparkler, wooden core sparkler, black cartridge or other combustible device or explosive substance or any kind of fireworks, by whatsoever name known, within the City.

**4.54.310 EXCEPTION - CERTAIN PUBLIC DISPLAYS.** Public displays of fireworks may be given with a written permit issued by the fire chief, or the fire chief's designee, of the fire district within which the display is to be given so long as such display takes place under the supervision and direction of a State of California licensed fireworks operator.

**4.54.320 EXCEPTION - SAFE AND SANE FIREWORKS.** It shall not be unlawful to possess, sell, use, display or discharge within the City those fireworks as are defined and classified as "safe and sane fireworks" in Part 2 (commencing with Section 12500) of Division 11 of the California Health and Safety Code during that time period beginning at 12:00 noon on June 28 and ending at 10.00 p.m. on July 5 of the same year.

**4.54.330 LICENSE TO SELL FIREWORKS REQUIRED.** It shall be unlawful for any person to sell "safe and sane fireworks" within the City without a valid City business license authorizing such sales.

**4.54.340 WHOLESALE STORAGE OF FIREWORKS.** The wholesale storage of fireworks shall be unlawful in the City without valid permits for such storage from the fire district in whose jurisdiction the storage site is located and the Chief Building Inspector. Any such storage is limited to the period from June 1st through July 15th of each year.

**4.54.350 LICENSE RESTRICTED.**

(a) No City business license authorizing the sale of "safe and sane fireworks" shall be issued to any person, firm, corporation, organization or group other than organizations which are exempted from the payment of the bank and corporation tax by Sections 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g), 23701(h), 23701(i), 23701(j), 23701(k), 23701(l), 23701(m), 23701(n), 23701(o), 23701(p), 23701(q), 23701(r), 23701(s), 23701(t), 23701(u), 23701(v), 23701(w) of the Revenue and Taxation Code as long as the organization satisfies the following criteria:

- (1) It has its principal and permanent meeting place in the City of Elk Grove;
- (2) It has been organized and established in the City of Elk Grove for a continuous period of at least one (1) year immediately proceeding the application for a permit; and
- (3) It has a bona fide membership of at least twenty (20) members.

(b) No organization shall submit more than two applications for licenses to sell fireworks within the City. Submittal of more than two such applications shall be grounds for denial of all applications.

(c) City business licenses authorizing the sale of "safe and sane fireworks" shall not be transferable to another organization.

(d) Transfer of temporary stands from the location for which the license was initially issued may be made if the application is made to the City Manager on or before the first day of June, and if any such location change has been approved in writing by the fire district having jurisdiction, the Chief Building Inspector, and otherwise complies with all provisions of this Article regulating the location of temporary fireworks stands.

#### **4.54.360 APPLICATION.**

(a) All applications for a City business license to sell fireworks shall be in writing to the City Manager on forms supplied by the City. Applications shall be received and filed with the City Manager on or before the second Tuesday in April of each year. Applications shall specify the proposed location of the fireworks stand, the name, address and telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored, such other information as may be required by the City Manager, and an application fee in an amount periodically set by the City Council.

(b) The application shall be made in triplicate. The original of the application shall be retained by the City Manager, one copy shall be transmitted to the fire district in whose jurisdiction the proposed fireworks stand will be located, and one copy shall be sent to the City Building Inspection Division.

(c) Applicants for a license shall be notified by the City Manager of the tentative approval or denial of the application for a City business license by the first Monday in May of each calendar year. Within two weeks of the notification of the tentative approval of the City business license, the applicant shall furnish to the City's Risk Manager evidence of insurance providing comprehensive general liability coverage written on an occurrence basis, including but not limited to premises/operations, personal injury contractual liability, independent contractors, and products/completed operations, with a \$1 million combined single limits for bodily injury and property damage. The insurance policy shall designate the City, its officers, agents, employees and volunteers as additional insureds as to products sold and to premises/operations of the named insured. The insurance policy shall further be endorsed to provide that any insurance and/or self insurance maintained by the City of Elk Grove shall apply in excess of, and not contribute with, insurance provided by the applicant. The City Risk Manager shall be the certificate holder. In the event of non-renewal or cancellation of the insurance policy, thirty (30) days advance notice shall be provided to the the City's Risk Manager. The insurance policy shall be limited to the specific location for which the City business license is issued. The City Manager shall issue the license to the applicant upon the presentation and approval of required proof of insurance.

(d) A copy of the City business license shall be transmitted to the fire district in whose jurisdiction the proposed fireworks stand will be located.

(e) The continued validity of any City business license issued pursuant to this Article shall be subject to the requirement that at least one of the responsible adults listed in the licensee's application shall attend a fireworks stand operator seminar conducted by the fireworks industry and approved by a fire department or fire district within the City. The failure of a licensee to have such a responsible individual attend such safety seminar shall subject the City business license to revocation.

#### **4.54.370 DENIAL OF LICENSE.**

(a) The City Manager shall issue the City business license to sell fireworks unless:

(1) The City Manager finds in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit a determination respecting compliance with the requirements of this Article;

(2) The City Manager finds in writing that the applicant is not in compliance with any of the requirements of this Article;

(3) The City Manager finds in writing that the applicant falls within the provisions of Section 4.54.420(c) of this Article; or

(4) Either the fire district in whose jurisdiction the proposed stand will be located or the City Building Inspection Division fails to approve the application.

(b) Any denial of a license pursuant to this section may be appealed pursuant to the procedures set forth in Section 4.54.420(b) of this Article.

#### **4.54.380 OPERATION OF STAND.**

(a) No person shall sell fireworks to any person under the age of eighteen.

(b) Sale of fireworks shall begin no earlier than 12:00 noon on June 28th and shall not continue after 10:00 p.m. on July 5th of the same year. Sale of fireworks shall be permitted only from 9:00 a.m. to 10:00 p.m. daily.

(c) No person other than the licensee organization shall operate the stand for which the license is issued or share or otherwise participate in the profits of the operation of such stand.

(d) No person other than the individuals who are members of the licensee organization or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of fireworks at such stand.

(e) No person under the age of eighteen shall sell or participate in the sale of fireworks.

(f) No person shall be paid any consideration by the licensee or any wholesale distributor of "safe and sane" fireworks for selling or otherwise participating in the sale of fireworks at such stand except compensation may be paid for security personnel during non-sale hours and to the party authorizing location of the stand on its property.

(g) Fireworks stands shall be removed from the temporary locations by noon on July 18th, and all accompanying litter shall be cleared from such locations by that date and time.

**4.54.390 TEMPORARY FIREWORKS STAND.** All retail sales of "safe and sane" fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is hereby prohibited. Temporary stands shall be subject to the following provisions:

(a) No fireworks stand shall be located within twenty-five feet of any other building or within one hundred feet of any gasoline pump or distribution point.

(b) Fireworks stands need not comply with the provisions of the applicable Building Code except all stands shall be erected under the supervision of the Chief Building Inspector, who shall require that stands be constructed in a manner that will reasonably insure the safety of attendants and patrons and that any electrical installations shall comply with all applicable codes.

(c) No stand shall have a floor area in excess of seven hundred and fifty square feet.

(d) Each stand shall have at least two exits. Each stand in excess of forty feet in length shall have at least three exits spaced approximately equidistant apart except in no case shall the distance between exits exceed twenty feet. Exit doors shall be not less than twenty-four inches wide and six feet and two inches in height and shall swing in the direction of exit travel.

(e) Each stand shall be provided with two (2) two and one-half gallon "water-type" (minimum rating 2A) fire extinguishers in good working order and easily accessible for use in case of fire.

(f) Fireworks stands shall be located on property zoned SC, LC, GC, AC, TC, M-1 or M-2, or in any other zoning classification if the County's Chief Building Inspector certifies in writing to the City Manager that the operation of a fireworks location in such other zoning classification will not endanger the health and safety of the community or create a fire hazard to surrounding properties.

**4.54.400 GENERAL REQUIREMENTS FOR LICENSEES.**

(a) Stands shall not be located closer than six hundred feet apart, unless separated by a principal arterial roadway.

(b) All weeds and combustible material shall be cleared from the location of the stand to a distance of at least twenty-five feet surrounding the stand.

(c) "NO SMOKING" signs shall be prominently displayed on and in the fireworks stand.

(d) Each stand must have an adult watchman in attendance and in charge thereof when the stand is being used for sale, dispensing or storage of fireworks.

(e) All unsold stock of fireworks in the hands of the retailer after 10:00 p.m. on the 5th day of July shall be returned to the distributor or wholesaler and removed from the City within ten days. On closing of stands, all litter shall be removed from the premises.

(f) No fuel-powered generator or similar equipment shall be allowed within fifty (50) feet of a fireworks stand.

**4.54.410 ENFORCEMENT.** The division of authority for enforcement of this Article shall be as follows:

(a) The chief of any fire protection district or his designated representatives shall have authority to enforce this Article and issue citations for violations in their respective districts.

(b) The City Building Inspector shall have authority to enforce this Article in any area lying without any fire protection district.

(c) The City Building Inspector shall have authority to enforce this Article in any fire protection district upon request of the chief of the fire protection district or the governing body thereof.

**4.54.420 REVOCATION OF LICENSE - APPEAL.**

(a) The City Building Inspector may revoke, immediately and without notice or hearing, the license of any licensee who violates the provisions of Section 4.54.360(e), Section 4.54.380(a), (b) or (e), or Section 4.54.400(d). If the revocation occurs between June 22nd and July 5th, the City Building Inspector shall inform the licensee that the licensee may seek review of the City Building Inspector's decision by the City Manager, or the City Manager's designee, on the next business day. At the earliest opportunity on the next business day after the revocation, the City Building Inspector shall provide the City Manager with written notice that a fireworks business license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. If requested by the licensee, the City Manager, or the City Manager's designee, shall meet with the licensee on that day to review the City Building Inspector's decision. The decision of the City Manager or his designee shall be final. If the revocation occurs before or after the specified period, the appeal procedures of subsection (b) shall apply.

(b) The City Building Inspector may revoke the license of any licensee who violates any provision of this Article not specified in subsection (a). Such revocation shall not take effect for five days, during which time the licensee may seek review of the City Building Inspector's decision by submitting a written request for review to the City Manager. The City Building Inspector shall provide the City Manager with written notice that a fireworks license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. The City Manager, or the City Manager's

designee, shall meet with the licensee and the City Building Inspector to review the City Building Inspector's decision. The decision of the City Manager or his designee shall be final.

(c) Any licensee whose permit has been revoked pursuant to subsections (a) or (b) hereof shall be barred from receiving a license under this Article for five (5) years from the date of revocation.

#### **4.54.430 PENALTY; INFRACTION.**

(a) Notwithstanding the provisions of Section 1.01.190 or any other section of this Code, and with the exception of the fourth and subsequent violation of this Article within one (1) year as provided in subdivision (c) of this section, the violation of any of the provisions of this Article is an infraction subject to the procedures set forth in Penal Code sections 19.6 and 19.7.

(b) Every violation of any provision of this Article constituting an infraction is punishable as follows:

(1) a fine not exceeding one hundred (\$100) dollars for a first violation;

(2) a fine not exceeding two hundred (\$200) dollars for a second violation of this Article within one year; and

(3) a fine not exceeding five hundred (\$500) dollars for a third violation of this Article within one year.

(c) The fourth and each subsequent violation of this Article within one (1) year shall constitute a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than six (6) months, or both.

**4.54.440 SEIZURE OF FIREWORKS.** The Chief, or the Chief's designee, of the fire district in whose jurisdiction a fireworks stand is located may seize, take, remove or cause to be removed, at the expense of the licensee, all stocks of fireworks offered or exposed for sale, stored or held in violation of this Article when such violation creates an imminent threat to public health or safety.

**4.54.450 CONCURRENT AUTHORITIES.** This Article is not the exclusive regulation for fireworks within the City. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore and hereafter enacted by the County, the State, or any other legal entity or agency having jurisdiction.

### **Article 5**

#### **Public Convenience Determination For Alcohol Licenses**

**4.54.500 APPLICATION FOR DETERMINATION OF PUBLIC CONVENIENCE.** Any person whose application for any alcohol license is subject to a determination of public convenience or necessity by the City pursuant to Business and Professions Code

section 23958.4, shall submit an application to the City for a determination whether or not the public convenience and necessity would be served by the granting of such license. Such application shall be made on forms approved by the City Manager and shall contain such information as required by him or her. At a minimum, any application shall contain that information required by §110-01 of the Zoning Code of the City of Elk Grove. The application shall be accompanied by payment of a fee to be established by resolution of the City Council calculated to offset the costs of the review and determination.

#### **4.54.510 REVIEW OF APPLICATIONS.**

(a) Upon receipt of such request for a determination of public convenience or necessity or notice of an application for an alcohol license from the Department of Alcohol Beverage Control ("ABC"), the City Manager shall refer such application to the departments and advisory bodies of the City for review and comment.

(b) At a minimum, the Chief of Police shall determine whether there are existing problems regarding criminal activity at the applicant premises or in the area surrounding the applicant premises. If the Chief of Police determines that there are such existing problems with criminal activity he shall report such problems, in writing, to the City Manager.

(c) At a minimum, the Department of Community Services shall determine whether the applicant premises are within the appropriate land use designations and have received all required entitlements to permit the type of sale of alcoholic beverages described in the application. The Department shall report its determination, in writing, to the City Manager.

(d) At a minimum, the Department of Community Services shall also determine whether there is a pending zoning enforcement action regarding the applicant premises. If the Department determines that there is a pending enforcement action, it shall report such, in writing, to the City Manager.

(e) At a minimum, the City personnel responsible for Business Licenses shall determine whether any required business license has been issued and is in good standing for the applicant premises. If the City personnel determine that a license is required and has not been issued or is not in good standing, they shall report such, in writing, to the City Manager.

(f) At a minimum, the Chief Building Inspector shall determine whether there are any building code violations at the applicant premises and shall report such, in writing, to the City Manager.

(g) The City Manager shall also determine whether any protests were lodged with the ABC in relation to the applicant's request for a license with that body.

(h) The written reports required by this section are to be received by the City Manager within fifteen (15) days from the date the application is forwarded to such departments and advisory bodies.

#### **4.54.520 HEARING REQUIRED.**

(a) Proceedings to determine the public convenience or necessity of issuing any alcohol license subject to Business and Professions Code section 23958.4(b)(2) shall be scheduled before the City Council. Notice of the hearing shall be given in the same manner as required by Section 110-04 of the Zoning Code of the City of Elk Grove.

(b) The hearing shall be held without regard to the technical rules of evidence and all persons desiring to appear shall be permitted to do so. The City Manager or his or her designee shall present the results of all written reports from the City departments and advisory bodies. The alcohol license applicant shall be required to demonstrate, by substantial evidence, that the public convenience or necessity will be served by the issuance of a license.

(c) The hearing may be continued from time. At the conclusion of the hearing, the City Council shall determine, within the limits of Business and Professions Code section 23958.4(b)(2) whether the public convenience or necessity will be served by the issuance of a license for the alcohol license applicant premises. The determination shall be reduced to writing by the City Manager and shall be served by mail upon the alcohol license applicant and ABC.

(d) The City Council may determine that the public convenience or necessity will be met only if certain conditions (specifically authorized by Business and Professions Code section 23800 to 23805 (particularly sections 23800(a) and 23801) are imposed upon any license issued by the Department of Alcoholic Beverage Control. Such conditions shall be included in the City Council's decision and shall be submitted by the City within the time periods specified in Business and Professions Code in order to preserve the rights of the City to seek imposition of such conditions.

#### **Section 5: No Mandatory Duty of Care.**

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

#### **Section 6: Severability.**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the

invalidity of any portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

**Section 7: Effective Date and Publication.**

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to Government Code section 36933(c)(1).

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 14<sup>th</sup> Day of December 2005.

\_\_\_\_\_  
DANIEL BRIGGS, MAYOR OF THE  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**ORDINANCE NO. 41-2005**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
REPEALING TITLE 4 AND CHAPTER 5.04 OF THE ELK GROVE MUNICIPAL CODE  
AND ENACTING A NEW TITLE 4 REGARDING BUSINESS LICENSING AND  
RELATED MATTERS**

The City Council of the City of Elk Grove does ordain as follows:

**Section 1: Purposes and Authority.**

Under California Constitution art. XI, Sec. 7, the City of Elk Grove may enact ordinances to preserve and protect the public safety, health, and welfare. To this end, the City Council of the City of Elk Grove has undertaken a comprehensive revision of Title 4 of the Municipal Code that regulates businesses as part of the licensing of business.

**Section 2: Repeal of Title 4 and Chapter 5.04.**

Title 4 and Chapter 5.04 of the Elk Grove Municipal Code are hereby repealed.

**Section 3: Enactment of New Title 4.**

A new Title 4 is hereby enacted and added to the Elk Grove Municipal Code to read as follows:

**TITLE 4**

**BUSINESS REGULATION**

Chapters:

***General Provisions for Licenses and Permits***

- 4.02 General Provisions for Business Licenses
- 4.04 Solicitation Licenses and Permits
- 4.06 General Business Licenses
  - Article 1 - Applicability and Issuance
  - Article 2 - Denial and Revocation
- 4.10 Special Business Licenses and Employee Permits
  - Article 1 - Applicability and Issuance
  - Article 2 - Denial and Revocation
  - Article 3 - Additional Special License Requirements

***Particular Special Business Licenses***

- 4.15 Taxicabs
- 4.16 Medical Cannabis Dispensaries
- 4.20 Cardrooms
- 4.21 Bingo Games
- 4.22 Bingo Parlors
- 4.23 Bingo Suppliers

- 4.25 Pawnbroker, Secondhand Dealers and Junk Dealers
- 4.26 Junk Tire Storage
  - Article 1 - Special Business License Required
  - Article 2 - Requirements-Services
  - Article 3 - Penalties
- 4.27 Tobacco Retailers
- 4.30 Adult-Related Establishments
  - Article 1 - General Provisions
  - Article 2 - Licenses and Permits
- 4.31 Adult-Oriented Businesses
  - Article 1 - General Provisions
  - Article 2 - Definitions
  - Article 3 - Adult-Oriented Business Licenses
  - Article 4 - Adult-Oriented Business Employee Permits
  - Article 5 - Denial, Suspension, and Revocation of License or Permit
  - Article 6 - Development and Performance Standards
  - Article 7 - Enforcement
- 4.35 Outdoor Festivals
  - Article 1 - General Provisions and Requirements
  - Article 2 - Special Business License
- 4.36 - 4.50 *Reserved for Special Business Licenses*

***Other Business Regulation***

- 4.54 Additional Regulations and Prohibitions for Businesses
  - Article 1 - Street Businesses
  - Article 2 - Aggressive Solicitation
  - Article 3 - Drug Paraphernalia
  - Article 4 - Fireworks
  - Article 5 - Public Convenience Determination for Alcohol Licenses

## CHAPTER 4.02

### GENERAL PROVISIONS FOR BUSINESS LICENSES

#### Sections:

- 4.02.010 Purposes.
- 4.02.015 Organization of Title.
- 4.02.020 Definitions.
- 4.02.021 Same - "Solicitation Activity."
- 4.02.022 Same - "Solicitor."
- 4.02.023 Same - "Solicitation Permit."
- 4.02.024 Same - "Business."
- 4.02.025 Same - "Employee Permit."
- 4.02.030 Same - "Fixed Location."
- 4.02.035 Same - "General Business License."
- 4.02.040 Same - "Person."
- 4.02.045 Same - "Convicted."
- 4.02.050 Same - "Special Business License."
- 4.02.055 Authority of City Officers.
- 4.02.060 License Fees.
- 4.02.065 Transferability.
- 4.02.070 Transferability - Partial Change in Ownership -  
Special Business License.
- 4.02.075 Transferability - Partial Change in Ownership -  
General Business License.
- 4.02.076 Transferability - Partial Change in Function -  
General Business License.
- 4.02.080 Term.
- 4.02.085 Administration.
- 4.02.090 Notices.
- 4.02.095 Hearing Authority.
- 4.02.100 Violations.
- 4.02.105 Inspection.
- 4.02.110 Laws Not Enforced.
- 4.02.115 Statutory References.
- 4.02.120 Effective Date.
- 4.02.125 Severability.
- 4.02.130 Continuity.

**4.02.010 PURPOSES.** The purposes of this Title are to regulate businesses and other enterprises within the City in order to insure compliance with City ordinances and State laws, protect the public, health, safety, and welfare in the event of a disaster, prevent disturbances of neighborhoods and nuisances, and otherwise, protect the health, safety and welfare of the residents of the City.

A vast array of City Ordinances and State laws administered and enforced by City officials regulate the location, construction, improvements in, off-street parking for and other aspects of business-associated enterprises with fixed locations. Such regulation is for the purpose of protecting members of the public against building, safety and other hazards, adverse environmental impacts, risks to health and of public nuisance, risks of fire, disasters, and other life-threatening dangers, and other threats to the public peace, health, safety and welfare.

A purpose of this Ordinance and each of its chapters is to license all enterprises within the City's jurisdiction in order to maintain certain vital information about such enterprises operating within the City that could be detrimentally affected by or could be essential to provide assistance in the event of an extraordinary natural or man-made disaster.

Additionally, other purposes of this Ordinance and each of its chapters are to license enterprises that typically generate significant ordinance enforcement effort, promote improved enforcement of related Ordinances, reduced overall enforcement costs, provide a higher level of protection of the public, and reduce the risk that well-intentioned business operators are prejudiced by the unexpected enforcement of regulations at a time when compliance is least convenient.

Additional purposes of this Ordinance and each of its chapters are to license enterprises that generate economic activity to promote and protect the economic health and safety of the City by providing an economic data base about enterprises operating within the City so as to allow public officials to plan and anticipate economic threats to the well being of the City.

The purposes set forth herein are incorporated into every chapter of this title and each chapter may or may not set forth additional specific purposes for regulation of particular types of businesses.

The City Council does hereby declare that it finds any one of these manifold purposes sufficient in and of itself for justification for the adoption of this Ordinance and independently each of its chapters, and it further declares that it would have adopted this Ordinance and independently each of its chapters in their entirety based upon any one of the above-stated purposes, and invalidation of any one purpose or more of the above purposes would not have caused the City Council not to adopt the entire Ordinance or independently each of its chapters.

**4.02.015 ORGANIZATION OF TITLE.** The provisions of this Title 4 are organized as follows:

(a) This Chapter 4.02 contains introductory and master provisions governing the application of the balance of the Chapters in this Title.

(b) Chapter 4.04 establishes, defines the applicability of, and proscribes procedures and the basis for issuance, denial, renewal and revocation of the Solicitation License and Solicitor Permits for door-to-door, cold-calling solicitation and similar solicitation methods.

(c) Chapter 4.06 establishes, defines the applicability of, and prescribes procedures and the basis for issuance, denial, renewal and revocation of the General Business License.

(d) Unless a different or more specific provision is provided for in Chapters 4.15 through 4.50, Chapter 4.10 establishes, defines the applicability of, and prescribes procedures and the basis for issuance, denial, renewal and revocation of the Special Business License and Employee Permits.

(e) Chapters 4.15 through 4.50 establish special procedural and substantive regulations applicable to specified business enterprises required to obtain a Special Business License and personnel thereof required to obtain Employee Permits.

(f) Chapter 4.54 contains regulations and prohibitions applicable to specified business enterprises or solicitation activities.

**4.02.020 DEFINITIONS.** Unless the context indicates otherwise, the definitions of terms contained in Sections 4.02.021 through 4.02.050 shall govern the meaning of those terms as used in this Title.

**4.02.021 SAME- "SOLICITATION ACTIVITY"** - shall mean actions of any person who attempts to sell, solicit or take orders for goods, wares, merchandise, books, periodicals, subscriptions, photographs, and any personal service by going from private residence to private residence, or by appointment arranged by an unsolicited contact with a resident of the private residence, or by any other similar method and not from a fixed business location within the City.

**4.02.022 SAME- "SOLICITOR"** - shall mean a person who engages in solicitation activities as a sole business owner or as an agent, representative, employee, or independent contractor to a person or entity required to obtain a solicitation license.

**4.02.023 SAME- "SOLICITATION PERMIT"** - shall mean a Permit issued by the Chief of Police to a solicitor and required pursuant to the provisions of Chapter 4.04.

**4.02.024 SAME- "BUSINESS"** - shall mean any enterprise or endeavor by a Person operated or conducted for profit or non-profit purposes.

**4.02.025 SAME- "EMPLOYEE PERMIT"** - shall mean a Permit issued by the Chief of Police or other designated official to certain personnel retained as employees,

independent contractors or otherwise to perform specified duties or functions by particular types of enterprises required by Chapters 4.10 through 4.50 to possess a Special Business License for the purpose of insuring protection of the public health, safety or welfare.

**4.02.030 SAME- "FIXED LOCATION"** - shall mean a particular place where an enterprise is either regularly conducted or kept open, or is conducted or kept open on four or more days during any consecutive thirty-day period. An enterprise operated from a residence shall be deemed to be conducted at a fixed location.

**4.02.035 SAME- "GENERAL BUSINESS LICENSE"** - shall mean a license issued by the City Manager and required pursuant to the provisions of Chapter 4.06 below, in order to insure compliance with specified ordinances, prevent disturbances of neighborhoods and nuisances, and prevent safety hazards.

**4.02.040 SAME- "PERSON"** - shall mean a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture or other individual or entity carrying on a business for which a Permit or License must first be procured, and shall include any officer, employee, agent or other representative by or through whom the business is operated or conducted.

"Person" shall not include a public agency or any officer, employee or agent thereof while acting in the capacity as such.

**4.02.045 SAME- "CONVICTED"** - or "conviction" in relation to the outcome of criminal charges shall include a plea of nolo contendere.

**4.02.050 SAME- "SPECIAL BUSINESS LICENSE"** - shall mean a license issued by the Chief of Police or other designated official and required pursuant to the provisions of Chapters 4.10 through 4.50 for specified types of businesses which are potentially injurious to the public interest, are not regulated by the State in such a manner as to preempt local regulation, and which the health, safety and welfare of the community demand be operated by responsible persons in compliance with all laws, including any special regulations applicable to such businesses.

**4.02.055 AUTHORITY OF CITY OFFICERS.** Whenever reference in this Title is made to the City Council or any department, office, division, officer or official, the reference shall be deemed to be to, respectively, the City Council, or a department, office, division, officer or official of the City.

Whenever in this Title an authority or power is vested in or a duty is imposed upon an officer or official, a City employee subordinate to the officer or official to whom an appropriate delegation has been made shall be entitled to exercise the power or authority and perform the duty.

**4.02.060 LICENSE FEES.** The City Council may, by resolution and from time to time, prescribe fees for the issuance and renewal of Solicitation Licenses, Solicitor Permits, General Business Licenses, Special Business Licenses and Employee

Permits, fees for special oversight of some Special Business Licenses, and fees for the filing of appeals relating to denial of such Permits or Licenses or the suspension or revocation thereof. Such fees shall be for the sole purpose of defraying costs incurred in the administration of this Title, and shall be prescribed in amounts yielding revenues which do not exceed the costs of administration by each office and department charged with responsibility under this Title. To the extent the City Council determines to be practical, such fees may be varied in amounts for different types of permits or licenses, types of businesses, issuance and renewal, and on the basis of other factors, for the sole purpose of apportioning relative regulatory costs to parties regulated. Commercial enterprises subject to Unrelated Business Taxable Income under sections 511 to 515 of the Internal Revenue Code not exempted by 4.06.010(a) and operated by certain types of non-profit organizations may be exempted from fees authorized herein, if a contribution from the general or another fund supported by tax revenues is made by the City Council to underwrite the costs of regulation.

Fees related to the costs which a department incurs in reviewing and acting upon a particular type of application for a license or permit may be made payable within a general fee chargeable by the City Manager, or may be charged individually by the department reviewing and acting upon the application as a condition precedent to processing of the approval required from that department.

All fees for the issuance and renewal of permits and licenses shall be paid at the time of and with the filing of the application with the City Manager or pursuant to a request for approval by another department charged with the responsibility of reviewing the application. All fees for an appeal shall be paid at the time of and with the filing of the appeal. No application or request for approval or appeal shall be deemed valid or complete until all prescribed fees have been paid.

**4.02.065 TRANSFERABILITY.** A Solicitation License, General Business License or Special Business License shall not be transferable or assignable from one person to another.

Each such license shall terminate and be deemed to have no further force or effect upon: (a) a transfer from one person to another of the whole ownership of the business or enterprise; or, (b) a change of the whole function or operation for which the permit or license has been issued.

During the term of a General Business License or a Special Business License and within thirty (30) days of the occurrence thereof, the holder shall file in writing with the City Manager notice of: (a) the transfer from one person to another of the whole ownership of the business or enterprise, or, (b) a change of the whole function or operation for which the permit or license has been issued.

**4.02.070 TRANSFERABILITY - PARTIAL CHANGE IN OWNERSHIP SPECIAL BUSINESS LICENSE.** During the term of a Special Business License the holder of the permit or license shall file in writing with the Chief of Police notice of each:

- (a) addition or deletion of a general or limited partner, when the holder is a partnership;
- (b) addition or deletion of a joint venturer, when the holder is a joint venture;
- (c) transfer of more than one-half of one percent of the voting shares of stock, when the holder is a commercial corporation;
- (d) change of directors, when the holder is either a for profit or non-profit corporation;
- (e) change of membership in management committee composed of persons holding ownership interests, when the holder is a partnership or joint venture;
- (f) change in membership of a governing body or other board or committee to which management is entrusted, when the holder is an unincorporated association; and
- (g) change in president or general manager, vice-president or chief assistant manager, secretary and treasurer, or any officer with equivalent or similar authority.

The holder of a license or permit shall provide in writing such detailed information respecting any such change as the Chief of Police may require.

A termination of a Special Business License shall be deemed to have occurred whenever the Chief of Police determines that effective management or control of the holder has been transferred in significant part to a person whose character or business responsibility was not reviewed at the time the license was issued, and when written notice of the Chief of Police's determination and of termination of the license is served on the holder. The effective date of termination shall be fifteen days following the date of service of the notice of termination except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.075 TRANSFERABILITY - PARTIAL CHANGE IN OWNERSHIP GENERAL BUSINESS LICENSE.** During the term of a General Business License the holder shall file in writing with the City Manager notice of each: (a) addition or deletion of a general partner, when the holder is a partnership; (b) addition or deletion of a joint venturer, when the holder is a joint venture; and (c) transfer of more than ten percent of the voting shares of stock, when the holder is a commercial corporation.

A termination of the license shall be deemed to have occurred whenever the City Manager determines that a change in ownership has occurred in significant part to another person and when written notice of the determination and of termination is served upon the holder. The effective date of termination shall be fifteen days following the date of service of the notice of termination except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.076 TRANSFERABILITY - PARTIAL CHANGE IN FUNCTION GENERAL BUSINESS LICENSE.** During the term of a General Business License the holder of the permit or license shall file in writing with the City Manager notice of any change in the business function, operation, or enterprise for which the permit or license has been issued. The holder shall provide in writing such detailed information relating to any alteration in the business function, operation, or enterprise as the City Manager may require.

A termination of the license shall be deemed to have occurred when the City Manager determines that any such change materially alters the business function, operation, or enterprise for which the license has been issued in a manner which requires a new investigation of the applicability of or compliance with the laws enforced through the license, and when written notice of the determination and of termination is served upon the holder.

The effective date of termination shall be fifteen days following the date of service of notice of termination except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.080 TERM.** General Business Licenses shall expire when the person to whom the License is issued ceases operations authorized thereby. The term of a General Business License shall be two years from the date of issuance. Licenses previously issued under prior provisions of this section prescribing a three year term shall expire three years from the date of issuance and shall then be reissued upon qualification for a two year term.

Solicitation Licenses and Special Business Licenses shall expire when the person to whom the License is issued ceases operations authorized thereby. The term of a Solicitation License, Special Business License, a Solicitor Permit, and an Employee Permit shall be one year from the date of issuance.

**4.02.085 ADMINISTRATION.** Except as otherwise provided, the City Manager is charged with the responsibility of administering General Business Licenses, and shall be authorized from time to time to promulgate and enforce such rules or regulations consistent with the purposes, intent, and express terms of this Title as he or she deems necessary to implement such purposes, intent and express terms. Whenever in this Title the City Manager is charged with responsibility to administer a particular provision, the City Manager may delegate such responsibility to other departments and subordinate personnel of the City.

Except as otherwise provided, the Chief of Police is charged with the responsibility of administering Special Business Licenses, and shall be authorized from time to time to promulgate and enforce such rules or regulations consistent with the purposes, intent and express terms of this Title as he or she deems necessary to implement such purposes, intent and express terms. No rules or regulations promulgated by the City Manager or Chief of Police, or amendments thereof, shall be

enforced or become effective until thirty (30) calendar days following the date on which the proposed rules or regulations are filed with the Clerk of the City Council.

**4.02.090 NOTICES.** Any notice or other writing authorized or required by this Title shall be deemed served and effective for all purposes on the date when it is reduced to writing and is either personally delivered to the party to whom it is directed or is deposited in the United States mail, postage prepaid, and addressed to the party to whom it is directed. When under the provisions of this Title any notice or other writing is authorized or required to be filed, it shall not be deemed to have been filed until it is received in the office of the official with whom filing is required.

Whenever a provision in this Title requires a public hearing to be conducted, notice of the time, date, place and purpose of the hearing shall be published at least once not later than ten calendar days in advance of the date of commencement of the hearing in a newspaper of general circulation which is published within the County. The same type of notice shall also be served on each Licensee whose License would be affected by the action taken at the conclusion of the hearing.

**4.02.095 HEARING AUTHORITY.** Whenever the term "Hearing Authority" is utilized in this Title, it shall be deemed to refer to a person assigned the responsibility of conducting a hearing by the City Manager. The City Manager shall be authorized to assign hearing responsibilities from time to time to:

(a) City management personnel who the City Manager finds are qualified by training and experience to conduct such hearings;

(b) Any attorney who the City may employ for the purpose of conducting administrative hearings;

(c) Attorneys engaged in practice within the Sacramento community who are retained by contract to conduct such hearings; or

(d) Administrative Law Judges assigned to the State of California Office of Administrative Hearings.

The City Manager is hereby authorized to contract in the name of the City for the retention of hearing services either by attorneys engaged in private practice or the Office of Administrative Hearings at rates which do not exceed those payable by the City for the legal defense of tort liability claims within financial limitations established by the City's annual budget.

**4.02.100 VIOLATIONS.** Except as otherwise specifically provided, pursuant to the provisions of Government Code Section 36900, violation of any of the provisions contained in this Title shall constitute an infraction subject to a fine of one hundred (\$100.00) dollars for each day or any portion thereof a violation continues.

Violation of any of the following provisions of this Title following service at the business of a written notice by an enforcing official advising of the violation and ordering

a cessation thereof, shall pursuant to the provisions of Section 1.01.190 of Title 1 of this Code, constitute a misdemeanor: Sections 4.06.005, 4.06.006, 4.10.005, 4.15.015, 4.16.010, 4.20.010, 4.21.005, 4.22.020, 4.23.025, 4.25.005, 4.34.200, 4.34.210, 4.35.205, 4.54.010, 4.54.020, 4.54.105, 4.54.220, 4.54.225, 4.54.300, 4.54.330 and 4.54.340. As used in this Paragraph, an enforcing official includes the Chief of Police, City Manager and any other City officer charged with the responsibility of administering the provisions of this Title. Pursuant to the provisions of Section 836.5 of the Penal Code, City personnel acting under the direction and control of the City Manager, shall be authorized to enforce and arrest persons without a warrant for violations of those provisions within those Chapters and Articles of this Title which are assigned, respectively, to the administrative responsibility of the City Manager.

Violation of any of the provisions of this Title may be remedied by injunction or other civil proceedings commenced in the name of the City by the City Attorney. In prosecution of criminal violations of this Title, the City Attorney may, in his or her discretion, reduce the charge of a misdemeanor to an infraction.

**4.02.105 INSPECTION.** The City Manager and Chief of Police are charged with the responsibility of enforcing the provisions of this Title, and to that end may inspect any and all types or classes of businesses which are by this Title licensed and regulated. The City Manager, Chief of Police, and their deputies or subordinate personnel may enter any place of business which is subject to the provisions of this Title for the purpose of inspection for compliance with this Title.

The City Manager and Chief of Police may, during the term of a license, require the licensee to complete a license information update form for the purpose of assuring continued compliance with this Title. The licensee shall, within fifteen (15) calendar days of the date of mailing by the City Manager of such an information form, file the completed form with the City Manager or to the Chief of Police, whichever officer has requested the information update form.

**4.02.110 LAWS NOT ENFORCED.** There are many ordinances and other laws applicable to businesses licensed under Chapters 4.06 through 4.50 which are not sought to be enforced under that licensing process. Such laws include, but are not limited to, building, fire, electrical and other codes and regulations contained in Chapter 4.54 of this Title, and noise control, sewage disposal and other health measures. It has been determined that the administrative costs of enforcing such laws would result in fee levels which are so high as to exceed the benefits produced by such enforcement.

Neither the issuance of a General Business License nor a Special Business License shall be deemed to constitute a representation that the business so licensed or the premises upon which it is situated complies with such ordinances or other laws. Nor shall the existence of such an unrevoked License be deemed to preclude any criminal or civil remedy for violation of such ordinances or laws, including, but not limited to, the closure of the business if otherwise warranted under remedies sought to be invoked. The possession of either a General Business License or Special Business License shall

not be deemed to relieve the holder of the requirement to apply for or obtain any other License or Permit required by ordinance or statute.

**4.02.115 STATUTORY REFERENCES.** Any reference to a state or federal statutory or regulatory provision contained in this Title shall be interpreted to refer to such provision as it may be amended or renumbered from time to time.

**4.02.120 EFFECTIVE DATE.** The provisions of this Title shall become effective February 1, 2006.

**4.02.125 SEVERABILITY.** The provisions of this Title are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Title, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this title, or the validity of its application to other persons or circumstances.

**4.02.130 CONTINUITY.** Except as specifically amended or changed in the repeal and reenactment of this Title, the reorganization or renumbering of this Title shall not be construed as a substantive change and the regulation of businesses in the City is continued as was construed under prior law without substantive change.

## **CHAPTER 4.04**

### **SOLICITATION LICENSES AND PERMITS**

#### **Sections:**

- 4.04.000 Purposes.
- 4.04.010 Solicitation License and Solicitor Permit Required.
- 4.04.015 Exemptions.
- 4.04.020 Statement of Exemption.
- 4.04.025 Solicitation License Application.
- 4.04.030 Solicitation License Issuance.
- 4.04.035 Conditions on Solicitation License and Permit.
- 4.04.040 Solicitors.
- 4.04.045 Solicitor Permit.
- 4.04.050 Renewal.
- 4.04.055 Suspension or Revocation.
- 4.04.060 Appeal.

**4.04.000 PURPOSES.** City Council finds that door-to-door solicitation, including appointments arranged through cold calling residents of the City, historically have generated complaints regarding the sale of goods, services, securities, investments, and other products. With unfortunate frequency, many solicitation schemes prey upon the elderly and infirm of the community. Without the requirement that such solicitors obtain a permit from the City, residents are exposed to higher risk of unfair sales and business practices by businesses and organizations with no physical presence in the City and therefore less accountability for their business practices. For these reasons, the City Council a licensing of such businesses and their solicitor agents is required to protect the public, safety, and welfare.

**4.04.010 SOLICITATION LICENSE AND SOLICITOR PERMIT REQUIRED.** It is unlawful for any person or entity to engage in, conduct or carry on any business, exhibition, occupation or service that is based upon solicitation activities as defined in Section 4.02.021, without first having, upon written application, procured a solicitation license from the City Manager.

It is unlawful for any person employed or working on behalf of a business engaged in a solicitation business to engage in the solicitation activities as defined in Section 4.02.021, without first having, upon written application, procured a solicitor permit from the City Manager.

**4.04.015 EXEMPTIONS.** This Chapter does not apply to:

- (a) Girl Scouts, Camp Fire Girls, Boy Scouts, Little League members and members of similar organizations when soliciting on behalf of such organizations;
- (b) Persons who represent a fixed place of business in the City who regularly make deliveries, normally not involving personal contact with customers for the purpose of making sales or obtaining orders, over an established route and who only occasionally make calls on persons residing within the area covered by such route for the purpose of obtaining additional customers for such regular deliveries. The foregoing provisions intended to cover only such persons as milk delivery persons, newspaper delivery persons and other persons engaged in substantially similar activities;
- (c) Persons soliciting charitable contributions on behalf of any nonprofit corporation or nonprofit voluntary unincorporated association organized for charitable purposes.
- (d) Persons who go from private residence to private residence for political purposes or for the purpose of influencing legislation.

**4.04.020 STATEMENT OF EXEMPTION.**

- (a) Every person claiming to be entitled to exemption from the payment of any license fee or from any other requirement provided for in this Chapter upon the ground that such license casts a burden upon his or her right to engage in commerce with foreign nations or among the several states, or conflicts with the laws of the United

States respecting interstate commerce, shall file a verified statement with the City Manager, disclosing the interstate or other character of his or her business entitling such exemption. The statement shall contain the name and location of the company or firm for which the orders are to be solicited or secured, the name of the nearest local or state manager, if any, and his or her address, the kind of goods, wares or merchandise to be delivered, the place from which the same are to be shipped or forwarded, the method of solicitation or taking orders, the location of any warehouse, factory or plant within the state, the method of delivery, the name and location of the residence of the applicant, and any other facts necessary to establish such claim of exemption. A copy of the order blank, contract form or other papers used by such person in taking orders shall be attached to the affidavit. The affidavit may be filed by a firm on behalf of one or more employees or representatives of the firm who are subject to the requirements of this Chapter.

(b) If the City Manager determines that a license fee is not applicable with respect to any person because of interstate commerce requirements, a license fee shall not be required and the person may be issued an exempt license. Such license shall be valid only for the purpose of authorizing solicitation of orders to be filled directly from another state. Any person who is eligible for a license pursuant to this section shall be subject to all applicable provisions of this chapter.

**4.04.025 SOLICITATION LICENSE APPLICATION.** A person may apply for a solicitation license by filing an application with the City Manager and paying the required fees. The City Manager shall forward the application for the solicitation license to the Chief of Police for investigation in the same manner as provided for a Special Business License under 4.10.035.

**4.04.030 SOLICITATION LICENSE ISSUANCE.**

The City Manager shall issue a solicitation license unless he or she finds that:

(a) The City Manager finds in writing that the application is not complete despite requests for supplemental information;

(b) The City Manager finds in writing that the application or any supplementary material contains false information;

(c) The City Manager finds in writing that any of the following persons has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially injure another; and the City Manager concludes that by reason of the crime or act there is a substantial risk that the applicant would not conduct the enterprise in a law abiding manner or in a manner which does not subject patrons of the enterprise to risk of harm or criminal, deceitful or otherwise unethical practices:

(1) A general or limited partner of a partnership which possesses an ownership interest in the enterprise;

(2) A joint venturer in a joint venture which possesses an ownership interest in the enterprise and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this Section would apply if the partnership or corporation were the sole owner of the enterprise;

(3) A sole proprietor when the enterprise is a sole proprietorship;

(4) An owner of more than one-half of one percent of the voting shares of stock when a commercial corporation possesses an ownership in the enterprise;

(5) A director, when either a commercial or non-profit corporation possesses an ownership in the enterprise;

(6) A member of a management committee when a partnership or joint venture possesses an ownership interest in the enterprise;

(7) A member of a governing body or other Board or committee to which management is entrusted, when an unincorporated association possesses an ownership interest in the enterprise; or,

(8) A president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm possessing an ownership interest in the enterprise.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.01 et seq.

(d) The City Manager finds in writing that when the applicant or enterprise is a "contractor," as that term "contractor" is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, the applicant has failed to provide sufficient proof, as determined by the City Manager, that the applicant is licensed to engage in the business as a contractor, by the State of California, Contractors' State License Board, and that the license is presently valid, effective, not suspended, and in good standing.

**4.04.035 CONDITIONS ON SOLICITATION LICENSE AND PERMIT.** Every solicitation license issued by the City Manager shall include the following conditions:

(a) Solicitation activities shall not be conducted by any license holder or any solicitor between the hours of 9:00 p.m. to 8:00 a.m. the following day weekdays, 9:00 p.m. on Fridays to 9:00 a.m. on Saturdays, and 9:00 p.m. on Saturdays to 10:00 a.m. on Sundays;

(b) Every solicitor shall carry on his or her person the City-issued solicitor permit at all times when conducting solicitation activities and shall produce such permit to any law enforcement officer upon demand; and

(c) Any other condition reasonably related to protection of the public interest in solicitation activities.

**4.04.040 SOLICITORS.** The employees, agents, solicitors or representatives of any firm, irrespective of the form of organization, may be covered under a single license obtained by and issued in the name of the firm as long as each such person holds a valid solicitor permit issued pursuant to Section 4.04.045.

**4.04.045 SOLICITOR PERMIT.**

(a) It is unlawful for any solicitor to conduct solicitation activities within the City without having first obtained a solicitor permit pursuant to this section.

For the purposes of this section the word "solicitor" includes all employees, agents, solicitors or representatives of any firm, irrespective of the form of organization, subject to the solicitation license requirement of this Chapter.

(b) A solicitor may file a written application for a solicitor's permit with the City Manager, giving the name and address of the applicant, the firm or organization which he represents, a description of the purpose for which the applicant proposes to conduct solicitation activities and such other information the City Manager and Chief of Police may require.

(c) The City Manager shall refer the applicant to the Chief of Police who shall fingerprint and photograph the applicant and obtain reports from the state Department of Justice of any record regarding the applicant which is available from those agencies. After an applicant has been fingerprinted and photographed by the Chief of Police, the applicant shall be issued temporary permit by the City Manager, valid for forty-five (45) days, unless the Chief of Police, based on a check of any immediately available record or source of information regarding the character of the applicant or the business responsibility of the firm which he represents disapproves the issuance of a temporary permit. If the Chief of Police disapproves, his reasons for disapproval shall be specified in writing, a copy of which shall be delivered to applicant. When he or she receives the reports, the Chief of Police shall forward them to the City Manager together with any other relevant information from the Chief of Police's files regarding the applicant and the firm which the applicant plans to represent in the City.

(d) On the face of each permit, including temporary permits, there shall be placed each of the following:

- (1) The solicitor's permit number;
- (2) The solicitor permit holder's name and address;
- (3) The name and address of the firm or organization which the holder represents;
- (4) A physical description of the holder or a photo ID;
- (5) The expiration date of the permit.

(e) While engaged in solicitation activities, the solicitor's permit shall be carried on the person of solicitor who, upon demand, shall show such permit to any person authorized to enforce this chapter.

**4.04.050 RENEWAL.** Not later than forty-five (45) days prior to expiration of the term of a Solicitation License or a Solicitor's Permit, the City Manager shall transmit to the licensee or permit holder by mail an application for renewal. The application for renewal shall be on such a form, and include such information, as prescribed and required by the City Manager.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the immediately preceding License. The City Manager may provide an option for businesses to renew and pay license and permit fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a solicitation license or solicitor's permit renewal electronically, the Licensee consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the renewal was submitted with a manual signature consistent with Civil Code section 1633.1 et seq

**4.04.055 SUSPENSION OR REVOCATION.**

A Solicitation License issued pursuant to this Chapter may be immediately suspended or revoked during its term if the City Manager finds in writing that one or more of the following grounds exist:

- (a) That information in the latest application was untrue;
- (b) That the City Manager or the Chief of Police has acquired information supporting a finding that one of the persons listed in Section 4.04.045(c) has a new criminal conviction or a criminal conviction previously undisclosed;
- (c) That the Licensee or any one of the Licensee's Solicitors has violated one or more conditions imposed; or
- (d) That the Licensee or any one of the Licensee's Solicitor's has violated any term, condition or requirement or prohibition established by this Chapter or

Chapter 4.02, which are applicable to the License or the holder, or any administrative regulation promulgated thereunder, or any other applicable law.

**4.04.060 APPEAL.** Any person aggrieved by any decision or action of any City officer or employee may file a written notice of appeal with the City Manager within fifteen days following of the date of issuance of written notice of such decision or action. Any such appeal shall be conducted by the City under the provisions of sections 4.10.115 to 4.10.150 to the extent equally applicable to determination of an appeal of a denial of initial application or renewal, or the proposed suspension or revocation of a solicitation license or solicitor's permit under this Chapter.

## **CHAPTER 4.06**

### **GENERAL BUSINESS LICENSES**

#### **Article 1**

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**Article 1**  
**Applicability and Issuance**

**4.06.000 PURPOSES.** The purposes of this Chapter are set forth in Section 4.02.010.

**4.06.005 LICENSE REQUIRED.** Except as provided by Section 4.06.010, no person shall operate or conduct at a fixed location within the City any enterprise whatsoever, including but not limited to, a manufacturing, fabricating, processing, assembly or repair; wholesaling or storage; lodging, rental housing, or other temporary or permanent housing; entertainment; service; retailing; educational; hospital or other medical care; or business or professional office enterprise; home occupation or family contractor's business; or other facility to which members of the general public are invited; or adult-related uses as defined in this Title; unless under and by authority of a valid, unexpired and unrevoked General Business License authorizing the enterprise issued pursuant to the provisions of this Chapter. It is intended by this Chapter to license, unless expressly exempted, every enterprise operated at a fixed location which is of a type described by this section, whether the enterprise is operated for commercial, non-profit, charitable or other purposes, and whether the enterprise is operated or conducted independently or in association with or at the same location as an enterprise or activity for which a License is not required.

A person shall be deemed to operate or conduct an enterprise and violate this Section if the person, without a required General Business License in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for or in charge of the enterprise for which the License is required.

**4.06.006 TEMPORARY CONCESSIONS.** No person shall operate or conduct within the City a Temporary Concession, whether or not the Temporary Concession is conducted at a fixed location, unless under and by authority of a valid, unexpired and unrevoked General Business License issued pursuant to the provisions of this Chapter authorizing the Temporary Concession at the location where it operates.

As used in this Section, and except as hereinafter expressly provided, a "Temporary Concession" is any out-of-doors retail sales operation, whether conducted for an hour or less, a day, or longer, established for the purpose of selling flowers, produce, Christmas trees or greens, clothing, paintings or other artistic products, books or other written materials, or other goods from a table, stand, temporary sheltered enclosure, cart, motor vehicle or similar equipment.

A "Temporary Concession" shall not be deemed to include:

(a) The sale of Christmas trees or greens in connection with and on the same premises as a supermarket, hardware or home maintenance or repair store, or other established business, if a temporary structure and electrical wiring are not employed in connection with such sales;

(b) Residential “garage sales” conducted for the purpose of disposing household goods formerly utilized in a home which have become surplus where such garage sale is conducted on the residential premises where the goods to be sold were utilized;

(c) The sale from stands of fireworks preceding and in connection with the celebration of the Fourth of July as such temporary sales are permitted as provided in Chapter 4.54;

(d) The sale of agricultural products on the site where the product is grown; and

(e) The sale or offering for sale or distribution from public sidewalks or pedestrian circulation areas of shopping centers or malls of products to pedestrians who are traversing such areas or patrons of retail stores.

The exemption of the above activities from the temporary concessions licensing requirement shall not be deemed to authorize any activity which is illegal under other laws or to exempt any such activities from other applicable laws; or to deprive the owner or occupant of private property of any otherwise applicable right to consent to such activity.

Notwithstanding the provisions of Section 4.02.085, the Chief of Police shall enforce the provisions of this Section by citing and charging pursuant to the provisions of Section 4.02.100 such persons who violate this Section.

**4.06.010 EXEMPTIONS.** A business license shall be issued to the following enterprises at no charge and marked as “EXEMPT” upon the completion of an application that demonstrates to the satisfaction of the City Manager that the business qualifies for an exemption provided in law including, but not limited to, the following California constitutional or statutory exemptions:

(a) Any non-profit organization exempt from tax as provided in section 501(c)(3) of the Internal Revenue Code (churches, educational institutions, charitable organizations, and scientific organizations) to the extent of its tax-exempt activities, however, no exemption is granted to any commercial business activity of a 501(c)(3) organization for which it has Unrelated Business Taxable Income as provided in section 511-515 of the Internal Revenue Code (bookstores, coffeeshops, child care centers, etc.);

(b) Any apartment, rooming house, duplex, and other residential facility in which living units are rented or leased solely on a term of thirty days and longer;

(c) Any agricultural activities such as the growing of crops or raising of livestock and all the auxiliary and ancillary uses incidental to operation of a farm or ranch, however, no exemption is granted to any wholesaling, processing or storage of products of multiple farms or other cooperative marketing arrangement;

(d) Any sale of produce (vegetables, nuts, fruits, etc.) raised on the same parcel of land from a roadside stand served by no public utility services on a seasonable basis not to exceed four (4) months;

(e) Any enterprise that solely manufactures, sells, purchases, possesses or transports alcoholic beverages as provided in Cal. Constitution, art. XX, § 22;

(f) Any enterprise operating as a bank or financial corporation subject to the in lieu taxes payable to the State under California Revenue and Taxation Code section 23182

(g) Any enterprise operating solely as an intercity transportation business for household goods or other property for hire that is under the jurisdiction of the Public Utilities Commission pursuant to Public Utilities Code section 5327;

(h) Any commercial traveler whose business is limited to goods, wares, and merchandise sold or dealt in at wholesale as provided in California Business and Professions Code section 16002;

(i) Any enterprise operating solely as a real estate auctioneer whose principal place of business is located outside the City as provided in California Business and Professions Code section 16002.1;

(j) Any cafe musician who plays a musical instrument at any retail establishment where food or alcoholic beverages are sold or given away as provided in California Business and Professions Code section 16000.5;

(k) Any enterprise operating solely for the solicitation of donations for the support of veterans by federally chartered veterans' organizations specified in Title 36 of the United States Code as provided in California Business and Professions Code section 16001.7

(l) Any person honorably discharged or honorably relieved veteran who is unable to earn a livelihood from manual labor as provided in California Business and Professions Code section 16001.5;

(m) Any blind person operating a vending facility as provided in California Welfare and Institutions Code section 19633;

(n) Any residential care facility or residential day care home of six or less people, or a small family day care of eight children or less as provided in California Health and Safety Code sections 1523.1(b), 1566.2, 1568.05(b), 1569.185, 1596.803 or 1597.45;

(o) Any professional services business, not based at a location within the City, whose work in the corporate limits, in the judgment of the City Manager, constitutes such a de minimus contact with the City that the imposition of the regulatory fee would

unfairly burden intercity business as provided in *City of San Jose v. Ruthroff & Englekirk Consulting Structural Engineers, Inc.* (1982) 131 Cal.App.3d 462; and

(p) Any Adult-Oriented Business as defined and regulated in Chapter 4.31.

**4.06.055 HOME OCCUPATIONS.** Unless exempt under Section 4.06.010, a General Business License shall be required for any business, enterprise or activity which is operated or conducted as a Home Occupation. A General Business License shall also be required for a family contractor's business.

As used in this Chapter, a "Home Occupation" shall mean and include any commercial use conducted in a dwelling unit which is also utilized for residential purposes. The terms "Family Contractor's Business" shall mean a business operated at or from a residence which employs only members of the resident's family, and which may include the storage of contractor's equipment or supplies at the residence of one of the family members engaged in the business.

**4.06.060 ZONING ENFORCEMENT.** The administration of the General Business License under the provisions of this Chapter shall assist the City Manager and the Community Services Director or any successor City division to enforce the provisions of the City of Elk Grove Zoning Code, as those provisions may hereafter be amended, and the terms, conditions and requirements of rezoning ordinances and any and all contracts associated therewith, variances, conditional use permits and other legislative and administrative approvals issued pursuant to the Zoning Code.

**4.06.065 NUMBER OF LICENSES.** In instances where space within an office building, shopping center, warehouse, department store or other structure or property is leased for business or commercial use, each tenant of the premises operating an enterprise required to be licensed hereunder shall apply for and obtain a General Business License.

When a particular enterprise has more than one fixed location or branch within the City, a separate General Business License shall be required for each location or branch.

Certain types of persons required to obtain General Business Licenses hereunder are also required to obtain a Special Business License or other license or permit under this or other Titles. The issuance of a Special Business License or other license or permit for an enterprise shall not be deemed to excuse the requirement that a General Business License be obtained, and the provisions of this Chapter are declared to be independently applicable to each enterprise to which the provisions of this Chapter apply.

The provisions of this Chapter shall also be deemed to be independently applicable to any enterprise required to be licensed hereunder which is also required by any State or other law to obtain a license, permit or certificate.

**4.06.070 APPLICATION FILING.** All applications for General Business Licenses shall be filed in the office of the City Manager, or in the office of his or her designee.

**4.06.075 APPLICATION CONTENTS.** The application for a General Business License shall be filed on a form and contain such information as is prescribed by the City Manager, including the following:

- (a) The name and address of the person or entity who owns the enterprise for which application is made;
- (b) A complete description of the enterprise to be conducted at the location for which the license is sought;
- (c) The address of the location for which the license is sought;
- (d) The assessor's parcel number;
- (e) The number of employees reporting to and/or located at the business site. If the business is seasonal, the highest and lowest number of employees reporting to and/or located at the business site with the corresponding month or months of the year for each period;
- (f) The number of electronic, mechanical and video games to be operated in the business;
- (g) Whether or not the applicant or enterprise is a contractor, as that term is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, and if such contractor is licensed as a contractor by the State of California, Contractors' State License Board, with a license in good standing, and the License Number and Class thereof; and,
- (h) Such other and further information as is deemed necessary to enforce the City of Elk Grove Zoning Ordinance, and administer the provisions of this Chapter.

The City Manager may provide an option for businesses to initially apply and pay business license fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a business license application electronically, the applicant consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the application was submitted with a manual signature consistent with Civil Code section 1633.1 et seq.

**4.06.080 INVESTIGATION.** The City Manager shall refer the application for review by:

- (a) The City Manager and the Community Services Director; and

- (b) The Chief of Police, if the enterprise requires a Special Business License.

The City Manager and Community Services Director shall examine the application for the purpose of determining whether the enterprise complies with the City of Elk Grove Zoning Ordinance, and whether any conditions should be attached to issuance of the License. Inspection of the site shall be conducted as necessary to determine applicability, compliance with, or the adequacy of corrections to achieve compliance with such laws.

**4.06.085 ISSUANCE.** The City Manager shall act upon an application not later than forty-five (45) days after the date a complete application is validly filed except where Section 4.06.206 of this Chapter is applicable. An application is complete and deemed validly filed when all information requested on the application form is provided by the applicant and any associated fees paid. The City Manager shall act upon the application by issuing the license unless one of the following occurs:

- (a) The City Manager, the City Manager, or the Community Services Director find in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit determinations respecting compliance with the City of Elk Grove Zoning Ordinance;

- (b) The City Manager or the Community Services Director finds in writing that the enterprise at the location proposed would violate the City of Elk Grove Zoning Ordinance, and that such violation or violations must be corrected in advance of the conduct of the enterprise; or

- (c) With respect to an enterprise required by Chapter 4.10 to obtain a Special Business License, the Special Business License has not been issued; or,

- (d) Pursuant to Business and Professions Code Section 16100 subdivision (c), when the applicant or enterprise is a “contractor”, as that term is defined in Section 7026, et seq., of the Business and Professions Code, and the as determined by the City Manager the applicant has failed to provide sufficient proof that he or she holds a State of California Contractor’s License presently valid, effective, not suspended, and in good standing.

Unless issued to a Temporary Concession not operated from a fixed location, a General Business License issued under this Chapter shall authorize the holder thereof to operate or conduct a business enterprise only on such property the address of which is stated on the license. In the event the licensee ceases to use the property for the business, activity or enterprise listed, the License shall have no further force or effect and becomes void.

**4.06.090 CONDITIONS.** Upon recommendation by the City Manager or the Community Services Director, the City Manager may issue the General Business License upon such conditions as are necessary to ensure safety and prevent the enterprise from disturbing the peace and tranquility of the neighborhood in which it is located. Such conditions may include the following:

(a) With respect to minor and correctable violations of the City of Elk Grove Zoning Ordinance, that the holder of the License correct the violation within a prescribed period of time;

(b) Limitations upon hours or days of operation; when required in order to prevent disturbance of the peace and quiet of a neighborhood caused by the enterprise or the patrons thereof at a particular location;

(c) The provision of adequate off-street parking to prevent the enterprise from inconveniencing neighbors or causing traffic disruptions at a particular location;

(d) The installation of on-site improvements required to prevent operation of the enterprise from disturbing its neighbors at a particular location; or

(e) Other conditions related to operations or improvements demonstrated under the particular circumstances to be necessary in order to prevent hazards, disturbance of the peace, quiet or safety of the neighborhood or other nuisance.

Such conditions may be imposed at the time a General Business License is initially issued, upon renewal of the License, or at any time during the term of the License.

**4.06.095 PROCEDURE FOR IMPOSITION.** Any condition imposed pursuant to the provisions of Section 4.06.090, together with the written reasons therefor, whether established at the time of issuance, at the time of renewal or during the term of a general business license, shall be served upon the applicant or holder in a written notice.

The conditions shall become effective fifteen (15) days following the date of service of the notice thereof except if an appeal is filed within the time and in the manner prescribed, the conditions shall not become effective until the appeal is finally determined.

**4.06.100 CONTENTS AND DISPLAY OF LICENSES.** The General Business License shall include but not be limited to a complete description of the enterprise for which it is issued, the date of issuance and date of expiration, and a description of any and all conditions upon which the license has been issued. The License shall be conspicuously posted at the place of business in full public view.

**4.06.105 APPLICATION FOR RENEWAL.** Not later than forty-five (45) days prior to expiration of the term of a General Business License, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be on such a form, and include such information, as prescribed and required by the City Manager, including the following:

(a) A description of any change in the type of business conducted on the premises since the last License was issued; and

(b) A description of any and all improvements which the applicant has made upon the premises since the last License was issued.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the immediately preceding License. The City Manager may provide an option for businesses to renew and pay business license fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a business license renewal electronically, the Licensee consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the renewal was submitted with a manual signature consistent with Civil Code section 1633.1 et seq.

**4.06.110 PROCESSING AND ISSUANCE - RENEWAL.** An application for renewal shall be investigated and processed in the manner prescribed by Section 4.06.080. The City Manager shall act upon the application for renewal not later than thirty days after the date a valid application is filed unless the applicant has filed with him or her, before expiration of the 30 days, written notice of a request for extension of the time within which action is taken on the application for renewal by the City Manager on grounds that such additional time is required by the applicant to prepare and present plans or other information, obtain zoning variances or other permits, remodel the premises or make other corrections necessary to comply with the City of Elk Grove Zoning Ordinance or for other similar reasons. The City Manager may, pursuant to such a notice request, extend the time within which action is required by the City Manager on the application to such a period as the he or she deems reasonable and appropriate to accomplish the corrections. The City Manager shall act upon the application for renewal within the 30 day period, or the extended period of time, as applicable, by issuing the renewed license unless:

- (a) One or more of the conditions identified in Section 4.06.085 apply; or,
- (b) The City Manager finds in writing that one or more conditions applicable to the preceding license at the same location have been violated, and it is determined pursuant to the provisions of Section 4.06.090 that such conditions shall also be applicable to the renewed license.

With respect to any application for renewal which is filed on or before the date of expiration of the immediately preceding License, the City Manager shall extend the term of the immediately preceding License, without charge, during the period of any investigation required in order to determine whether the License should be renewed.

**4.06.115 UNDETECTED VIOLATIONS.** Under Sections 4.06.085 and 4.06.110 the City Manager is required to issue new and renewed General Business Licenses in the absence of any identified deficiencies or violations of laws. Such action is required within limited time periods in order to promote expeditious processing of applications and reduce damaging delays to applicants in awaiting administrative determinations.

The mandates of Sections 4.06.085 and 4.06.110 may result in the issuance of General Business Licenses notwithstanding the existence of violations of the laws sought to be enforced. Therefore, neither the issuance nor receipt of a General Business License shall constitute evidence of compliance with the City of Elk Grove Zoning Ordinance, or, as required pursuant to Section 16100 of the Business and Professions Code, evidence of compliance with the licensing provisions of contractors, as contractors are defined in Business and Professions Code section 7026, or valid licensure by the Contractors State License Board, or a representation or assurance to the recipient upon which reliance is authorized or intended by the City that the enterprise for which the License is issued or the property or premises upon or in which it is housed complies with such laws.

## **Article 2 Denial and Revocation**

**4.06.200 GROUNDS FOR DENIAL.** The City Manager shall deny an initial application for or application for renewal of a General Business License if any written finding of Section 4.06.085 applies.

The City Manager shall also deny an application for renewal upon a finding that one or more conditions applicable to the preceding License at the same location have been violated, if, pursuant to the provisions of Section 4.06.090, it is determined that such conditions should also be applicable to the renewed License.

**4.06.205 METHOD OF DENIAL.** A denial of an initial application or application for renewal of a General Business License by the City Manager shall be in writing, with the reasons stated therefor. Written notice of the denial, together with a copy of the provisions of this Chapter, shall be served upon the applicant pursuant to the provisions of Section 4.02.090.

Denial of an initial application or application for renewal of a General Business License shall relate solely to the location at which the enterprise is proposed, and shall not affect the conduct of such enterprise at another location within the City.

With respect to denial of an application for renewal or termination, the immediately preceding General Business License shall be deemed to be in full force and effect for a period of fifteen days following the date of service upon the applicant of the notice of denial or of termination. In the event the applicant files an appeal from the denial or termination in the manner and within the time prescribed by Section 4.06.210, the immediately preceding General Business License shall continue in full force and effect during the pendency of the appeal, until the date of final decision by the appellate authority.

**4.06.206 REQUEST FOR EXTENSION.** The denial of an initial application or application for renewal of a General Business License shall be set aside by the City Manager if the applicant has filed with the him or her a timely written notice of a request for extension of time within which action is taken on grounds that additional time is

required to prepare and present plans or other information, obtain zoning variances or other permits, remodel the premises or make other corrections for the purpose of remedying violations of the City of Elk Grove Zoning Ordinance or for other similar reasons. Such written request for extension shall be filed with the City Manager not later than fifteen days after the date of service of the notice of denial prescribed in Section 4.06.205. The City Manager shall by regulation establish reasonable periods of time to grant a licensee or applicant extension in order for the licensee or applicant to complete the tasks enumerated above in this section.

If the period of extension elapses without correction of the deficiencies for which the extension was granted, within fifteen (15) days from the last day of that period of extension, the City Manager shall deny the application pursuant to the procedure set forth in Section 4.06.205. If the deficiency for which the extension was granted is corrected, the City Manager shall issue the General Business License no later than fifteen (15) days from the last day of the period of extension as provided in Section 4.06.085 or Section 4.06.110.

**4.06.210 APPEALS.** The holder of a General Business License or applicant therefor may file an appeal from the following:

- (a) The denial of an initial application for or application for renewal of a General Business License pursuant to the provisions of Section 4.06.200;
- (b) The imposition of conditions at the time of issuance of an initial or renewed General Business License or during the term thereof, pursuant to the provisions of Section 4.06.095; or
- (c) The termination of a General Business License as a result of a change in ownership or a business function pursuant to the provisions of Sections 4.02.075 or 4.02.076.

Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the City Manager not later than fifteen days after the date of service of the notices prescribed by Sections 4.02.075, 4.02.076, 4.06.095, or 4.06.205, as the case may be. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which complaint is made shall be deemed to have been waived.

**4.06.215 APPEAL HEARING.** Not later than twenty (20) days following the date of filing an appeal within the time and in the manner prescribed by Section 4.06.210, the Hearing Authority shall conduct a hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date and place of the hearing shall be served upon the appellant not later than ten (10) days preceding the date of the hearing.

During the hearing, the burden of proof shall be upon the City Manager. The provisions of the California Administrative Procedure Act (commencing at Section 11500 of the Government Code) shall not be applicable to such hearings; nor shall

formal rules of evidence in civil or criminal judicial proceedings be applicable. At the conclusion of the hearing, the Hearing Authority shall prepare a written decision which either shall grant or deny the appeal, and contains findings of fact and conclusions of law. The written decision, including a copy thereof, shall be filed with the City Manager and served by the Hearing Authority upon the appellant not later than ten (10) days following the date on which the hearing is closed.

**4.06.220 FINALITY OF DETERMINATION.** The decision by the Hearing Authority shall become final upon the date of filing and service with respect to any appeal from either denial of an initial application for a General Business License pursuant to Section 4.06.200 or termination of a License as a result of a change in ownership or change in function pursuant to Section 4.02.075 or 4.02.076.

With respect to an appeal from either denial of an application for renewal of a General Business License pursuant to Section 4.06.200 or from the imposition of conditions upon a License pursuant to Section 4.06.095, the decision by the Hearing Authority shall become final fifteen days following the filing and service thereof unless review of the decision by the City Council is requested either by the City Manager or appellant. Such review may be requested by filing with the Clerk of the City Council a written request for review not later than fifteen calendar days following the date of filing and service of the Hearing Authority's decision. The request for review shall state in detail the reasons therefor and error alleged in the Hearing Authority's decision, and shall have attached thereto a copy of the decision.

**4.06.225 REVIEW BY CITY COUNCIL.** Upon receipt by the Clerk of the City Council of the request for review, a hearing shall be scheduled before the City Council within sixty (60) days. The City Council shall be authorized to deny the introduction of evidence and decide the matter after oral argument presented during the hearing, or to admit supplementary evidence with respect to challenges or particular findings, or reject the findings and conclusions and conduct a de novo hearing. The determination by the City Council granting or denying the appeal shall be final, and shall be accompanied by findings of fact and conclusions of law, which may consist of an adoption by reference of those by the Hearing Authority. The decision of the City Council shall become final upon its filing with the Clerk of the City Council and service upon the City Manager and the applicant or licensee pursuant to Section 4.02.090 hereof. Pursuant to the granting of an appeal, the City Council shall be authorized to order the issuance, renewal or continuance of a license upon such terms and conditions as in the discretion of the City Council are deemed to be necessary and appropriate.

**4.06.230 GROUNDS FOR REVOCATION.** Any General Business License issued pursuant to this Chapter may be revoked during its term upon one or more of the following grounds:

(a) That the enterprise is operated in a manner or is housed on premises or within a building which violates or is in violation of City of Elk Grove Zoning Ordinance;

(b) That the holder of the License has violated one or more conditions upon which the License has been issued; or,

(c) That the enterprise is that of contractor as defined in Section 7026, et seq., of the Business and Professions Code, and the City Manager finds that the licensee possesses no State of California Contractor's License presently valid, effective, not suspended, and in good standing .

**4.06.235 METHOD OF REVOCATION.** The City Manager may revoke a General Business License by issuing a written notice of revocation, stating the reasons therefor, and serving same, together with a copy of the provisions of this Chapter, upon the holder of the License. The revocation shall become effective fifteen days after the date of service, unless the holder of the License files an appeal within the time and in accordance with the provisions of Section 4.06.240. If such an appeal is filed, the revocation shall not become effective until a final decision on the appeal is issued.

**4.06.240 APPEAL OF REVOCATION.** Within fifteen days following the date on which the notice of revocation is served, the holder of the License may file a written appeal with the City Manager, stating the reasons therefor. If such an appeal is not filed within the time and in the manner prescribed above, the right to review of the revocation shall be deemed to have been waived.

A hearing on such appeal shall be conducted by the Hearing Authority. Notice of the time, date and place of the hearing shall be served upon the appellant not later than ten (10) days before the commencement thereof. The burden of proof shall be upon the City Manager. Except as provided herein to the contrary, the hearing shall be scheduled and conducted in the manner and a decision shall be issued and served as prescribed by Section 4.06.215 and Section 4.06.220. The decision shall become final as prescribed, and be subject to review by the City Council at the request of either the City Manager or appellant, pursuant to the procedure for review prescribed by Section 4.06.220.

Any review by the City Council shall be scheduled, conducted in the manner, determined, and have the effect prescribed by Section 4.06.225. A hearing shall be held promptly but not later than sixty (60) days from the date of filing of a request for review with the Clerk of the City Council.

**4.06.245 EFFECT OF REVOCATION.** With respect to any enterprise required by the provisions of Chapter 4.10 of this Title to possess a Special Business License, revocation of the Special Business License shall automatically and without notice also revoke each General Business License issued for the same business at each location at which the enterprise is located.

With the foregoing exception, revocation of a General Business License shall terminate only the privilege of doing business at the location to which the License relates.

**4.06.250 OTHER PROCEDURES.** Any administrative remedy, including an appeal procedure, applicable to the interpretation, administration or enforcement of this Title and the City of Elk Grove Zoning Ordinance shall be exhausted. The failure to exhaust such a remedy shall constitute grounds for denial of an appeal under this Article.

**4.06.255 JUDICIAL REVIEW OF ADMINISTRATIVE DETERMINATION.**

An applicant for, or holder of, a General Business License may seek immediate judicial review in any court of competent jurisdiction as provided by law of any determination rendered by the City Council pursuant to Section 4.06.225 hereof upon such determination becoming final.

## **CHAPTER 4.10**

### **SPECIAL BUSINESS LICENSES AND EMPLOYEE PERMITS**

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**Article 1**  
**Applicability and Issuance**

**4.10.000 PURPOSES.** There are certain types of enterprises which require special investigation, review and regulation in order to ensure that the public health, safety and welfare is adequately protected. The necessity to conduct such investigation, review and regulation arises for reasons which include, but are not necessarily limited to, the following:

(a) the tendency of certain types of enterprises to engage, whether intentionally or unintentionally, in the promotion of crime, whether through the sale of stolen goods or otherwise;

(b) the tendency of certain types of enterprises to be placed where criminal activity occurs either by virtue of the type of clientele attracted or for other reasons;

(c) the fact that patrons of particular types of enterprises are vulnerable to fraudulent charging or other practices either because of the nature of the business, the type of service or merchandise offered, the circumstances under which the merchandise or service is purchased, or for other reasons;

(d) the fact that certain types of enterprises create health or safety risks which require special regulation; and

(e) the fact that certain types of enterprises require access to private property, particularly residential property, or frequent residential neighborhoods, generating high risks to the safety of persons and property.

Other types of enterprises provide services essential to the health, safety or welfare of the community, and require special regulation in order to insure delivery of such services in a volume, manner and quality sufficient to insure protection of the community.

The purposes of this Chapter are to establish special regulations applicable to the types of enterprises regulated hereunder, and to regulate such enterprises through a Special Business Licensing procedure in order to protect and safeguard the health, safety and welfare of the residents within the City.

**4.10.005 LICENSE REQUIRED.** No person shall, unless under and by authority of a valid unexpired and unrevoked Special Business License, conduct or operate within the City, whether singularly or in connection with another type of enterprise, the following:

(a) Any enterprise or activity for which a Special Business License is required by Chapter 4.15 through 4.50, inclusive;

(b) Antique Dealers - in firearms, jewelry, art objects, furniture or other valuables;

- (c) Automobile Dismantlers - and marketers of used parts for automobiles;
- (d) Automobile Repairs - when the person or firm makes calls at the home or business of the customer to make repairs;
- (e) Circuses and Carnivals - including the maintenance of animals for display to, riding by or petting by children;
- (f) Sales of Concealable Firearms - including gunpowder;
- (g) Home Repair Services - consisting of services related to the repair or maintenance of single family residential dwellings, mobilehomes, or gardens by persons who are not licensed to perform such services by the State of California, including businesses offering energy-saving appliances, equipment, or services, whether in connection with solar, wind or other power;
- (h) Purchase or Sale of Metals - including precious and scrap metals;
- (i) Auto Towing - consisting of persons who engage in the business of towing automobiles which require repair, are abandoned on public rights of way, or are parked illegally;
- (j) Repossession or Storage of Automobiles - or any other thing of value;
- (k) The Operator of Each Booth - in a bazaar, flea market, farmer's market, or other similar type of auction established for the purpose of selling merchandise, including food, for private gain;
- (l) Private Security Companies;
- (m) Tree Trimmers;
- (n) Motorcycle Sales - including the sale of new and used parts;
- (o) Wrecking Yards - including automobile dismantling and the buying and selling of automobiles of scrap metal or parts;
- (p) Dating and Introduction Services;
- (q) Swimming Pool Cleaning Services;
- (s) Janitorial, Maid, or Carpet Cleaning Services;
- (t) Pool Halls - one pool table or more is a pool hall;
- (u) Itinerant Food Vendors;
- (v) Movie and Television Productions;

(w) Dance Clubs, Halls, and Public Dances.

A person shall be deemed to operate or conduct an enterprise or activity and violate this Section and, if applicable, corresponding prohibitions in Chapters 4.15 through 4.50, inclusive, if the person, without a Special Business License in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for or in charge of the enterprise or activity for which the License is required.

Notwithstanding the foregoing businesses required to obtain a Special Business License, the City will accept on a reciprocal basis a Special Business License or Employee Permit from the County of Sacramento for businesses that are based outside of the City but deliver mobile-based business services to the residents of the City including, but not limited to, Carpet Cleaners, Janitorial or Maid Service, Lawn Care or Tree Trimming, Auto Towing and Repossession, Mobile Auto Repair, Taxicabs, Massage, Private Security, and Home Repair.

**4.10.010 NUMBER OF LICENSES REQUIRED.** If a person conducts or operates more than one of the types of enterprises described by Section 4.10.005, a separate Special Business License shall be required for each type of enterprise which the person operates or conducts.

A person who operates or conducts more than one store, office, outlet or other branch of a particular type of enterprise described by Section 4.10.005 shall not be required to obtain more than one Special Business License for that type of enterprise, regardless of the number of stores, offices, outlets or branches operated or conducted.

**4.10.015 BUSINESS LOCATION.** Except as otherwise expressly provided, a Special Business License shall be required for each particular type of enterprise described by Section 4.10.005 which is operated or conducted within the City, whether or not the enterprise is operated at a fixed location within the City.

An enterprise shall be deemed to be operated or conducted within the City if representatives of the enterprise offer or sell goods or services or provide services within the City, whether the enterprise is operated from a fixed location within another jurisdiction, and whether the enterprise has a fixed location at all.

**4.10.020 SPECIAL REGULATIONS.** Certain of the types of enterprises described by Section 4.10.005 are subjected to special regulations governing their operations. These regulations are set forth in Chapters 4.15 through 4.50. Except as otherwise provided, the provisions of this Chapter shall be fully applicable to the enterprises identified by Chapters 4.15 through 4.50.

The provisions of this Chapter shall be independently applicable to any enterprise described by Section 4.10.005 which are also regulated under the provisions of Chapter 4.06. The issuance of a General Business License to an enterprise described by Section 4.10.005 shall not excuse the enterprise from the requirement that a Special Business License be obtained pursuant to the provisions of this Chapter. The

issuance of a Special Business License shall not be deemed to relieve the holders of a requirement, under Chapter 4.06, that a General Business License be obtained. A Special Business License shall not be deemed to authorize operation of an enterprise business at a particular location, if a General Business License is required and there is no such License in full force and effect.

**4.10.025 APPLICATION FILING.** All applications for Special Business Licenses shall be filed with the City Manager. The City Manager shall receive any fee required for the application, assure that the application is complete, and refer the application to the Chief of Police for processing, investigation, review and action. The City Manager shall verify pursuant to Section 16100 of the Business and Professions Code that before the City issues a special business license to an enterprise as a “contractor,” as that term is defined in Section 7026, Article 2, Chapter 9, Division 3 of the Business and Professions Code, that the applicant or licensee is licensed by the State of California, Contractors' State License Board.

**4.10.030 APPLICATION CONTENTS.** The application for a Special Business License shall be filed on a form and contain such information as is prescribed by the City Manager and the Chief of Police, including the following:

(a) A complete description of the type, nature and extent of the enterprise to be conducted and for which application is made;

(b) The address of each location from which the enterprise for which application is made will be operated;

(c) The name and address of the person who owns the enterprise for which application is made;

(d) Such information as is necessary to permit the determinations prescribed by Section 4.10.040(c);

(e) Identification of each type and location of enterprise conducted by the owner within the City;

(f) Whether or not the applicant or enterprise is a “contractor”, as that term is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, and if such contractor is licensed as a contractor by the State of California, Contractors' State License Board, with a license in good standing, and the License Number and Class thereof;

(g) Such other and further information as is deemed necessary to administer the provisions of this Chapter; and

(h) An affirmation under penalty of perjury that the information contained in the application is true and correct.

**4.10.035 INVESTIGATION.** The Chief of Police shall conduct such investigation of the background of the owner or owners and persons managing or supervising the enterprise as is deemed appropriate. The Chief of Police shall evaluate each application to determine whether the operation of the enterprise would involve an unreasonable risk to the health, safety or general welfare of the public. Those persons described by Section 4.10.040(c) shall be fingerprinted and photographed; and consideration shall be given to the criminal record, if any, and character of the owner and other persons connected with the enterprise, the business responsibility of the firm and the owner, and the manner in which the owner intends to conduct the enterprise.

**4.10.040 ISSUANCE.** The Chief of Police shall issue the Special Business License within ninety (90) days after the date of application unless either

(a) The Chief of Police finds in writing that the applicant fails to provide information in connection with the application requested by the Chief of Police as a basis for enabling the Chief of Police to make his or her determination;

(b) The Chief of Police finds in writing that any of the material statements made in the application or any information submitted supplementary thereto is incorrect or untrue;

(c) The Chief of Police finds in writing that any of the following persons has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would not conduct the enterprise in a law abiding manner or in a manner which does not subject patrons of the enterprise to risk of harm or criminal, deceitful or otherwise unethical practices:

(1) A general or limited partner of a partnership which possesses an ownership interest in the enterprise;

(2) A joint venturer in a joint venture which possesses an ownership interest in the enterprise and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this Section would apply if the partnership or corporation were the sole owner of the enterprise;

(3) A sole proprietor when the enterprise is a sole proprietorship;

(4) An owner of more than one-half of one percent of the voting shares of stock when a commercial corporation possesses an ownership in the enterprise;

(5) A director, when either a commercial or non-profit corporation possesses an ownership in the enterprise;

(6) A member of a management committee when a partnership or joint venture possesses an ownership interest in the enterprise;

(7) A member of a governing body or other Board or committee to which management is entrusted, when an unincorporated association possesses an ownership interest in the enterprise; or,

(8) A president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm possessing an ownership interest in the enterprise.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.01 et seq.;

(d) The Chief of Police makes any finding in writing authorized as a basis for denial of the License by Chapters 4.15 through 4.50, or finds in writing that the applicant does not satisfy any requirement applicable to the enterprise for which application is made established by Chapters 4.15 through 4.50; or,

(e) The Chief of Police finds in writing that when the applicant or enterprise is a "contractor," as that term "contractor" is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, the applicant has failed to provide sufficient proof, as determined by the Chief of Police, that the applicant is licensed to engage in the business as a contractor, by the State of California, Contractors' State License Board, and that the license is presently valid, effective, not suspended, and in good standing.

If an application does not show on its face a basis for denial, the Chief of Police may, in his or her sole discretion, issue a Temporary Special Business License for a period not to exceed ninety days, pending processing and investigation of the application and final determination thereof.

**4.10.045 CONDITIONS.** The Chief of Police may issue a Special Business License upon such conditions relating to method or manner of operation of the enterprise as he or she deems necessary to adequately protect members of the public in their patronage or dealings with the enterprise, or to reduce the incidence, detect the commission of, or identify perpetrators of crime. Such conditions may be imposed at the time a Special Business License is initially issued, upon renewal of the License, or at any time during the term of the License.

Any condition imposed pursuant to the provisions of this Section, whether established at the time of issuance, at the time of renewal or during the term of a Special Business License, shall be embodied, together with the reasons therefor, in a

written notice which is served upon the applicant or holder. The condition shall become effective fifteen days following the date of service of the notice thereof except if an appeal therefrom is filed within the time and in the manner prescribed, the condition shall not become effective until the appeal is finally determined.

**4.10.050 CONTENT AND DISPLAY OF LICENSES.** The Special Business License shall contain but not be limited to a complete description of the enterprise, authorized by the License, the name of the enterprise so licensed, the name and address of the owner or owners of the enterprise, the address of each location of the business covered by the License, and any conditions upon which the License is issued. The License shall be conspicuously posted at each location of the enterprise in full public view.

**4.10.055 CHANGES IN STATUS.** During the term of any Special Business License issued hereunder, in addition to the information required by Section 4.02.070, the holder of the License shall file in writing with the Chief of Police any changes in or new locations of the enterprise so licensed. The Chief of Police shall issue an amended License which shows any changed or new locations of the enterprise so licensed.

**4.10.060 RENEWAL OF LICENSES.** Not later than forty-five (45) days prior to expiration of the term of a Special Business License, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the City Manager and the Chief of Police.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding License. The Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate. The Chief of Police shall extend the term of the immediately preceding License during the period of any investigation or examination required in order to determine whether the License should be issued.

The Chief of Police shall act upon the application for renewal not later than thirty (30) days after the date a valid application is filed. The renewed License shall be issued unless:

(a) The Chief of Police finds in writing that one or more of the conditions identified in Section 4.10.040 apply;

(b) The Chief of Police finds in writing that the Licensee has violated any term, condition, requirement, or prohibition imposed by this Chapter, Chapter 4.02, or Chapters 4.15 through 4.58 of Title 4 which are applicable to the License or the holder, or any administrative regulations promulgated thereunder, or any other applicable law; or,

(c) The Chief of Police finds in writing that one or more conditions applicable to the preceding License have been violated.

**4.10.065 EMPLOYEE PERMITS.** With respect to certain types of enterprises described by Section 4.10.005, protection of the public health, safety and welfare require that personnel retained by the enterprises to perform specified functions or duties be of good moral character, not have been convicted of particular criminal offenses, and, in certain instances, possess minimum skills necessary to insure public safety. Personnel required to possess such minimum qualifications are identified by the provisions of Chapters 4.15 through 4.50. The procedures set forth in this Chapter relating to Employee Permits shall be applicable to all personnel required by Chapter 4.15 through 4.50 to possess minimum qualifications which are subject to review by the Chief of Police.

**4.10.070 PERMIT REQUIRED.** Whenever under the provisions of Chapters 4.15 through 4.50, personnel of a particular enterprise are required to meet minimum qualifications or possess a permit or license, it shall be unlawful for a person to perform the duties or functions specified and unlawful for the holder of a Special Business License to permit the person to perform such duties or functions unless the person has first applied for and obtained an Employee's Permit.

**4.10.075 APPLICATION FILING.** Applications for an Employee's Permit shall be filed with the City Manager. The City Manager shall receive any fee required for the application, assure that the application is complete, and refer the application to the Chief of Police for processing, investigation, review and action.

**4.10.080 APPLICATION CONTENTS.** The application for an Employee's Permit shall be filed on a form and contain such information as is prescribed by the Chief of Police, including the following:

- (a) The name, current residential address and e-mail address, if any, of the applicant;
- (b) The name and address of the business which has retained the services of the applicant for which the Permit is required; and
- (c) A description of the duties or function which the applicant is to perform for the business.

**4.10.085 INVESTIGATION.** The Chief of Police shall conduct such investigation of the background of the applicant for an Employee's Permit as is necessary in order to determine whether the minimum qualifications which have been prescribed are satisfied and as otherwise deemed appropriate. Such investigation shall include the fingerprinting and photographing of the applicant.

**4.10.090 ISSUANCE OF PERMIT.** Except as hereinafter provided, the Chief of Police shall issue the Employee's Permit within thirty (30) days after the date the application is filed unless he or she finds in writing that the applicant is disqualified for the Permit under regulations prescribed by Chapters 4.15 through 4.50. If the Chief of Police's investigation has not been completed by the date issuance of the Permit is required, but that portion of the investigation which has been completed has disclosed

no basis for denial of the Permit, the Chief of Police shall issue a Temporary Employee's Permit, the term of which shall extend no longer than one hundred twenty (120) days from the date of issuance. A Temporary Employee's Permit shall expire upon either the date of expiration of its term, the date of issuance of an Employee's Permit, or the date of service of notice that an Employee's Permit has been denied. While in force and effect, a Temporary Employee's Permit shall otherwise be accorded the same status as an Employee's Permit.

**4.10.095 INCIDENTS OF EMPLOYEE PERMITS.** An Employee's Permit shall not be transferable or assignable from one person to another. The Permit shall contain such information as the Chief of Police requires, including the permit holder's name and address, the name and address of the enterprise or enterprises retaining his or her services for which the Permit is issued, the expiration date of the Permit, a description of the duties or functions which the Permit authorizes to be performed, and a physical description of the Permit holder.

The holder of an Employee Permit shall carry same on his or her person at all times services authorized by the Permit are being performed, and shall display the Permit for inspection upon request by any peace officer.

Applications for renewal shall be filed, processed and Permits issued in the manner and pursuant to the standards and procedures prescribed by Sections 4.10.075 through 4.10.090.

## **Article 2 Denial and Revocation**

**4.10.100 GROUNDS FOR DENIAL - LICENSES.** The Chief of Police shall deny an initial application for a Special Business License if written findings in Section 4.10.040 are made.

The Chief of Police shall deny an application for renewal of a Special Business License if any of the written findings described by Section 4.10.060 are made.

**4.10.105 GROUNDS FOR DENIAL - PERMITS.** The Chief of Police may deny an initial application for or application for renewal of an Employee Permit if the Chief of Police finds in writing that the applicant therefor is disqualified for the Permit under the provisions of Chapters 4.15 through 4.50.

**4.10.110 METHOD OF DENIAL.** A denial of an initial application or application for renewal of either a Special Business License or Employee Permit by the Chief of Police shall be in writing, with the reasons stated therefor. Written notice of the denial, together with a copy of the provisions of this Chapter and any provisions of Chapters 4.15 through 4.50 which are applicable to the License or Permit, shall be served upon the applicant pursuant to the provisions of Section 4.02.080.

Denial of an initial application or application for renewal of a Special Business License shall prohibit operation of the enterprise at any location within the City.

With respect to denial of an application for renewal of a Special Business License or Employee Permit or termination of a Special Business License pursuant to Section 4.02.070, the License immediately preceding Special Business License or the Permit immediately preceding the Employee Permit shall be deemed to be in full force and effect for a period of fifteen days following the date of service upon the applicant of the notice of denial or termination. In the event the applicant files an appeal from the denial or termination in the manner and within the time prescribed by Section 4.10.115, the immediately preceding Special Business License or Employee Permit shall continue in full force and effect during the pendency of the appeal, until the date of final decision by the appellate authority.

**4.10.115 APPEALS.** The holder of a Special Business License or Employee Permit or applicant therefor may file an appeal from the following:

(a) The denial of an initial application for or application for renewal of a Special Business License or Employee Permit pursuant to the provisions of Sections 4.10.100 or 4.10.105;

(b) The imposition of conditions at the time of issuance of an initial or renewed Special Business License or during the term thereof, pursuant to the provisions of Section 4.10.045; or

(c) The termination of a Special Business License as a result of a change in ownership, pursuant to the provisions of Section 4.02.070.

Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the Chief of Police not later than fifteen days after the date of service by the Chief of Police of the notices prescribed by Sections 4.02.070, 4.10.045 or 4.10.110, as the case may be. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which complaint is made shall be deemed to have been waived.

**4.10.120 APPEAL HEARING.** Not later than thirty (30) days following the date of filing an appeal within the time and in the manner prescribed by Section 4.10.115, the Hearing Authority shall conduct a hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date and place of the hearing shall be served upon the applicant not later than ten (10) days preceding the date of the hearing.

During the hearing, the burden of proof shall be upon the Chief of Police. The provisions of the California Administrative Procedure Act (commencing at Section 11500 of the Government Code) shall not be applicable to such hearing; nor shall formal rules of evidence in civil or criminal judicial proceedings be applicable. At the conclusion of the hearing, the Hearing Authority shall prepare a written decision which either grants or denies the appeal, and contains findings of fact and conclusions. Notice of the written decision, including a copy thereof, shall be filed with the Chief of Police

and served upon the appellant not later than ten (10) days following the date on which the hearing is closed.

**4.10.125 FINALITY OF DETERMINATION.** A decision by the Hearing Authority pursuant to Section 4.10.120 shall become final fifteen (15) days following the filing and service thereof unless review of the decision by the City Council is requested either by the Chief of Police or appellant. Such review may be requested by filing with the Clerk of the City Council a written request for review not later than fifteen (15) calendar days following the date of service of the Hearing Authority's decision. The request for review shall state in detail the reasons therefor and error alleged in the Hearing Authority's decision, and shall have attached thereto a copy of the decision.

**4.10.130 REVIEW BY CITY COUNCIL.** Upon receipt by the Clerk of the request for review, a hearing shall be scheduled promptly before the City Council but no later than sixty (60) calendar days following the date of filing of the notice of appeal. The City Council shall be authorized to deny the introduction of evidence and decide the matter after oral argument presented during the hearing, or to admit supplementary evidence with respect to challenges or particular findings, or reject the findings and conclusions and conduct a de novo hearing. The determination by the City Council granting or denying the appeal shall be final, and shall be accompanied by findings of fact and conclusions, which may consist of an adoption by reference of those by the Hearing Authority. Pursuant to granting an appeal, the City Council shall be authorized to order the issuance of a license or permit upon such terms and conditions as in the discretion of the City Council are deemed to be necessary and appropriate.

**4.10.135 GROUNDS FOR REVOCATION AND SUSPENSION - LICENSES.** Any Special Business License issued pursuant to this Chapter may be suspended for not longer than one year or revoked during its term if the Chief of Police finds in writing that one or more of the following grounds exist:

(a) That information in the latest application was untrue as provided in Section 4.10.040(b);

(b) That the Chief of Police has acquired information supporting a finding that one of the persons listed in Section 4.10.040(c) has a new criminal conviction or a criminal conviction previously undisclosed;

(c) That the holder of the License has violated one or more conditions imposed pursuant to Section 4.10.045; or

(d) That the holder of the License has violated any term, condition or requirement or prohibition established by this Chapter, Chapter 4.02, or Chapters 4.15 through 4.54 which are applicable to the License or the holder, or any administrative regulation promulgated thereunder, or any other applicable law.

**4.10.140 GROUNDS FOR REVOCATION AND SUSPENSION - PERMITS.** Any Employee Permit issued pursuant to this Chapter may be suspended for not more

than one year or revoked during its term if the Chief of Police finds in writing the existence of grounds for revocation prescribed by Chapters 4.15 through 4.50.

**4.10.145 METHOD OF REVOCATION OR SUSPENSION.** The Chief of Police may commence proceedings for the suspension or revocation of a Special Business License or Employee Permit by issuing a written notice of suspension or revocation. The notice shall state the reasons for suspension or revocation and shall be served, together with a copy of the provisions of this Chapter and any provisions of Chapters 4.15 through 4.50 which are applicable to the License or Permit, upon the holder of the License or Permit. Except as provided below, the suspension or revocation shall become effective fifteen (15) days after the date of service unless the holder files an appeal within the time and in accordance with the provisions of Section 4.10.150. If such an appeal is filed the suspension or revocation shall not, except as provided below, become effective until a final decision on the appeal is issued.

A Special Business License or Employee Permit may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal pursuant to the commencement of proceeding for the suspension or revocation of the License or Permit, if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the License or Permit. In the event the Chief of Police orders a temporary suspension, the notice of suspension or revocation shall be delivered personally to each place of business licensed or to which the Permit relates, served upon the Licensee or Permittee, and shall contain the following:

- (a) The finding justifying the temporary suspension;
- (b) The time, date and place at which the Licensee or Permittee may appear in advance of the commencement of the temporary suspension for the purpose of responding to the Chief of Police to the charges in the notice; and
- (c) The time and date on which the temporary suspension commences, which shall not be earlier than twenty-four (24) hours following the time and date of delivery of the notice.

**4.10.150 APPEAL OF REVOCATION OR SUSPENSION.** Within fifteen (15) days following the date on which the notice of suspension or revocation is served, the holder of the Special Business License or Employee Permit may file a written appeal at the office of the Chief of Police stating the specific reasons therefor and grounds asserted for relief. If such an appeal is not filed within the time and in the manner prescribed above, the right to review of the suspension or revocation shall be deemed to have been waived.

A hearing on such appeal shall be conducted by the Hearing Authority within (30) days of the filing of such a notice of appeal. Notice of the time, date, and place of the hearing shall be served upon the appellant not later than ten (10) days before the commencement thereof. The burden of proof shall be upon the Chief of Police. The

hearing shall be conducted in the manner and a decision shall be issued and served as prescribed by Section 4.10.120. The decision shall become final as prescribed and be subject to review by the City Council at the instance of either the Chief of Police or appellant, pursuant to the procedure for review prescribed by Section 4.10.125. Any review by the City Council shall be scheduled, conducted in the manner, determined and have the effect prescribed by Section 4.10.130.

**4.10.155 EFFECT OF REVOCATION OR SUSPENSION.** The revocation of a Special Business License or Employee Permit shall terminate the right of the holder of the License or Permit to engage in the enterprise authorized by the License or perform the service authorized by the Permit, as the case may be, anywhere within the City for a period of five (5) years following the effective date of revocation. At the conclusion of such period, the former holder may file a written application for issuance of a new License or Permit with City Manager. Upon investigation by the Chief of Police and a new recommendation that must be reviewed by the City Council, the License or Permit may be granted or denied by the City Council. The City Council may, in its sole discretion, grant or deny the application pursuant to such terms and conditions as it may prescribe, and may, in addition to other matters, consider factors relating to the rehabilitation of the applicant in making its determination.

In the event of revocation of a Special Business License, neither the spouse, domestic partner, child, brother, sister or parent of the holder of the revoked License, nor a person possessing an ownership interest in the enterprise for which the License was revoked or who was an employee thereof, shall be entitled to issuance of a Special Business License for the enterprise except upon filing and review of a new written application filed with City Manager, investigation by the Chief of Police, and a new recommendation of the Chief of Police that must be reviewed by the City Council. The Chief of Police may recommend grant of the application to the City Council with such conditions in order to ensure that the person whose conduct constituted the basis for the revocation does not exercise any control or influence over the enterprise or the person to whom the license is issued or the Chief of Police may recommend denial of the application. The City Council may deny the application or grant it with such conditions, in its sole discretion, it deems necessary to protect the public health, safety, and welfare.

The suspension of a Special Business License or Employee Permit shall terminate the right of the holder of the License or Permit to engage in the enterprise authorized by the License or perform the service authorized by the Permit, as the case may be, anywhere within the City for a period of up to one (1) year following the effective date of the suspension. At the conclusion of the suspension, the license or permit is subject to the normal applicable renewal process.

## Article 3

### Additional Special License Requirements

#### Division 1 - Dances

**4.10.300 DEFINITIONS.** As used in this Division the following terms shall be ascribed the following meanings:

(a) "Dance club" means any club or association of persons which conducts dancing for its members or bona fide guests more often than once a month, and to which the public is not admitted.

(b) "Club dance" means any dance held by a dancing club.

(c) "Public dance" means a gathering of persons in or upon any premises where dancing is permitted with or without charge therefor, and to which premises the public is admitted.

(d) "Public dance hall" means a place where dancing is conducted, whether for profit or not for profit, and at which the public is allowed to dance, with or without charge.

**4.10.305 LICENSE REQUIRED.** No person shall operate a public dance, club dance, dancing club or a public dance hall in the City unless under and by authority of a valid, unexpired and unrevoked Special Business License issued pursuant to the provisions of this Chapter and Division authorizing public dances, club dances, a dance club, or public dance hall. In addition, such business is also required to apply for and obtain a Conditional Use Permit from the City Planning Department.

**4.10.310 ISSUANCE.** The Chief of Police shall issue the Special Business License unless, in addition to the grounds prescribed by Section 4.10.040, the City Planning Department finds in writing that it cannot make the appropriate findings and mitigation measures to justify the issuance of the Conditional Use Permit for the proposed club dance or dancing club.

**4.10.315 HOURS.** The Chief of Police may grant written permission for any dance hall, public dance or club dance to remain open between two a.m. and six a.m. on each New Year's Day. With the foregoing exception, and except as provided below, it shall be unlawful for the owner, operator, proprietor or sponsor of a public dance, club dance or public dance hall to authorize or conduct dancing at any time between the hours of two a.m. and twelve noon.

The City Council finds that the crime of operating a motor vehicle while under the influence of alcohol occurs with serious frequency at and immediately following two a.m., when bars close. For the purpose of reducing the incidence of such crime by delaying the departure of intoxicated persons until they have sobered, the Chief of Police shall, upon written request, issue or amend a Special Business License for a

public dance, club dance or public dance hall, or issue written permission if no such License is required, authorizing the conduct of dancing between two a.m. and four a.m., if the Chief of Police finds the following:

(a) That the establishment where the dancing is conducted sells alcoholic beverages for on-site consumption in compliance with a license so authorizing issued by the California Alcoholic Beverage Control Board;

(b) That the establishment where the dance is conducted will remain unlocked and available for routine and special inspections by law enforcement authorities during the extended dancing hours;

(c) That no alcoholic beverages are either sold or consumed on the premises during the extended dancing hours; and

(d) That the establishment where the dancing is conducted serves, during the extended dancing hours, a sit-down or buffet meal which is either prepared in an on-site kitchen or provided by a catering service.

The above requirements shall constitute on-going conditions of the authorization to conduct dancing during the extended hours, conditions of any Special Business License which has been issued, and the violation thereof shall constitute grounds for revocation of the permission and of any License.

**4.10.320 EXEMPTION.** Dances held by fraternal organizations, lodges, veterans' organizations, church groups, farm associations, for the members thereof or bona fide guests by schools for the students thereof, or by student groups under the supervision and control of the school authorities, shall be conducted in compliance with Section 4.10.315, but may be conducted without a Special Business License and shall not otherwise be subject to the provisions of this Division.

## **Division 2 - Poolhalls**

**4.10.330 LICENSE REQUIRED.** No person shall operate a poolhall without possessing a valid, unexpired and unrevoked Special Business License authorizing the poolhall issued pursuant to the provisions this Chapter and Division.

**4.10.335 POOLHALL.** As used in this Division, the term "poolhall" shall mean any place where one or more billiard, pool or combination tables are maintained, and where a charge is made for use of such tables by members of the general public.

**4.10.340 MINORS PROHIBITED.** Except as hereinafter provided, it shall be unlawful for an operator of a poolhall to permit any person who is under the age of eighteen years to be present in a poolhall at a time when pool or billiards are being played; and unlawful for a person under the age of eighteen years to be present in a poolhall at a time when pool or billiards are being played.

A person who is under the age of eighteen years may be present in a poolhall at a time when pool or billiards are being played if:

(a) The person is accompanied in the poolhall by his or her parent or legal guardian; or

(b) A written consent signed by the parent or legal guardian authorizing such presence is filed with the operator of the poolhall.

### **Division 3 - Movie and Television Productions**

**4.10.350 PURPOSES.** It is not uncommon for motion picture productions to necessitate or otherwise result in the disruption of motor vehicle traffic, the unusual utilization of public facilities, the employment of actual or potentially dangerous explosives or other activity which could endanger public safety, the creation of noise which disturbs the public quiet or convenience, the attraction of crowds of sightseers, or other circumstances which require the commitment of public resources in order to ensure adequate protection of the health, safety and welfare of the community.

The purposes of this Division are to provide for the licensing of motion picture productions in order to ensure that necessary public resources are provided at the times and in the manner required to protect the health, safety and welfare; that the Licensee bears the cost of such public resources; and that the motion picture productions are otherwise conducted under conditions and in a manner which avoids risk to the health, safety or welfare of the community.

**4.10.355 DEFINITIONS.** As used in this Division, the following terms shall have the following meaning:

“MOTION PICTURE PRODUCTION.” The terms “Motion Picture Production” shall mean and include any activity attendant to staging or filming or videotaping of commercial motion pictures or television shows, programs, or advertising.

“STILL PHOTOGRAPHY.” The terms “Still Photography” mean and include all activity attendant to staging or making commercial still photographs.

**4.10.360 CITY MANAGER.** The City Manager or his or her designee is charged with the responsibility of administering the regulations imposed by this Division, and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing motion picture productions, promulgate administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to motion picture productions and the issuance and administration of Special Business Licenses therefor, as are vested in the Chief of Police under Chapter 4.02 and Chapter 4.10. Any reference to the “Chief of Police” shall be deemed

to be a reference to the City Manager or his designee in relation to motion picture productions.

**4.10.365 LICENSE REQUIRED.** No person shall use any public or private property, facility or residence within the City for a motion picture production unless under and by authority of a valid, unexpired and unrevoked Special Business License authorizing the motion picture production issued pursuant to the provisions this Chapter and Division.

**4.10.370 EXCEPTIONS.** The provisions of this Division shall not be applicable to the following:

- (a) Reporters, photographers or cameramen in the employ of a newspaper, news service, television station or similar entity engaged in the on-the-spot recording of news events concerning those persons, scenes or occurrences which will be published, telecast or broadcast;
- (b) Any motion picture production at a studio located within the City;
- (c) Commercial still photography.

**4.10.375 PROCESSING OF APPLICATION.** Upon receipt of a fully completed application, the City Manager shall provide copies thereof to the Chief of Police, the Chief of any Fire Protection District having jurisdiction over the geographical territory in which the motion picture production is to occur, and any other official whose jurisdiction or authority would be affected by the motion picture production. Each of these officials shall determine whether, with regard to their specific areas of responsibility, any conditions are necessary in order to ensure that the proposed motion picture production does not endanger the public health or safety, whether the commitment of any public resources (including staffing) is necessary in order to minimize disruption caused by or risk to the public health or safety resulting from the motion picture production, and, if so, the estimated cost thereof. Each such official shall submit to the City Manager within fifteen (15) calendar days following the date of filing of a completed application his or her written findings, determinations and requirements.

**4.10.380 ISSUANCE.** Notwithstanding the provisions of Section 4.10.040, the City Manager shall act upon the application not later than thirty (30) calendar days following the date of filing of the application, and the provisions of Section 4.10.040(c) shall not constitute grounds for denial of a Special Business License to conduct a motion picture production.

The City Manager shall issue the Special Business License within thirty (30) calendar days after the date on which the application is filed unless, in addition to the grounds prescribed by Section 4.10.040, either the Director of Public Works, the Chief of Police or the Chief of any Fire Protection District with jurisdiction over the territory in which the motion picture production is proposed finds in writing that the production would constitute a hazard to public safety, and that there are no conditions upon which the License could be issued which would eliminate the hazard.

**4.10.385 CONDITIONS.** Pursuant to the provisions of Section 4.10.045, the City Manager may issue a Special Business License authorizing a motion picture production upon conditions which relate to the following:

(a) The time, place or manner of conducting the motion picture production, for the purpose of reducing disruption of traffic, disruption of public services, disruption of the public peace or quiet, or the minimization of any hazard to the public safety which could result from the production;

(b) The deposit of such cash amounts as may be necessary to cover the costs of any public resources (including personnel) required to be provided by the City or any Fire Protection District with jurisdiction over the territory in which the production is proposed, required in order to facilitate the production or reduce the disruption of traffic, public peace and quiet or safety hazards arising therefrom;

(c) If the motion picture production involves a potential risk of a safety hazard to the public, a requirement that the Licensee enter into an agreement indemnifying the City and any Fire Protection District with jurisdiction over the area where the production will occur, and, in their capacities as such, their officers, employees and agents, against any liability which may arise out of or result from the production, secured by liability insurance in such amount as is required by the Risk Management Office of the Department of Personnel Management and in such form and by such an insurer as may be required by the City Attorney.

**4.10.390 DISRUPTION OF PRODUCTION.**

(a) No person, after first being warned to cease the conduct, shall engage in conduct intentionally designed to disrupt motion picture or television production undertaken pursuant to a license issued under the authority of this chapter.

(b) For purposes of this section conduct which disrupts motion picture or television production includes, but is not limited to:

(1) Creating or causing audible interference to the recording of sound;

(2) Interfering with the ability of a production to achieve consistent light levels by shining or reflecting light onto a set or at a camera or by utilizing some other artificial means to adversely affect lighting;

(3) Interfering with the entrance or egress of production equipment or personnel;

(4) Placing any obstacles at any location where production is occurring.

## Division 4 - Itinerant Food Vendors

**4.10.400 LICENSE REQUIRED.** No person shall operate lunch wagons, ice cream wagons or any other vehicle for the sale of food upon the streets within the City for the purpose of selling food within residential neighborhoods or commercial centers, unless under and by authority of a valid, unexpired and unrevoked Special Business License authorizing such activity issued pursuant to the provisions of this Chapter and this Article.

Licensees shall comply with the prohibitions contained in Section 4.54.020.

**4.10.405 DEFINITION - "ITINERANT FOOD VENDOR."** An itinerant food vendor is any person who sells food from a lunch or ice cream wagon, cart, or other vehicle while parked in residential neighborhoods or commercial centers.

**4.10.410 EMPLOYEE PERMIT REQUIRED.** No person shall, as an employee or other person performing services for an owner or proprietor, engage in Itinerant Food Vending without possessing a valid, unexpired and unrevoked Employee Permit issued pursuant to the provisions of this Chapter and this Article.

**4.10.415 APPLICATION FOR PERMIT.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to provide services identified by Section 4.10.400 shall contain a list of each conviction of the applicant, plea of guilty or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged and the offense of which the applicant was convicted.

**4.10.420 ISSUANCE OF PERMIT.** Upon receipt of an application for an Employee Permit to perform services as an Itinerant Food Vendor, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit unless he or she finds pursuant to Section 4.10.090 any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.10.415, or is otherwise incomplete;

(b) That information contained in the application is false or otherwise inaccurate; or

(c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would not perform his or her duties in a law-abiding manner or in a manner which does not subject patrons to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 482(a).

**4.10.425 REVOCATION OF PERMITS.** An Employee Permit may be suspended or revoked pursuant to Section 4.10.140 upon any of the following grounds:

- (a) Violation of any of the duties, requirements or prohibitions contained in this Division;
- (b) Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to Section 4.02.085;
- (c) Misrepresentation of a material fact contained in the application; or
- (d) That since issuance or renewal of the Permit the Chief of Police has acquired information supporting a finding under Section 4.10.420(c) in relation to the holder of the Permit.

## **CHAPTER 4.15**

### **TAXICABS**

#### **Sections:**

- 4.15.000 Purposes.
- 4.15.005 Definitions.
- 4.15.010 Application of Chapter.
- 4.15.015 Licenses and Permits Required.
- 4.15.020 Owner Operators.
- 4.15.025 Term of License.
- 4.15.030 Equipment Standards, Certificate, and Inspection.
- 4.15.035 Taximeter Accuracy and Certificate.
- 4.15.040 Rates and Charges.
- 4.15.045 Displays within Taxicabs.
- 4.15.050 Taxicab Markings and Identification.
- 4.15.055 Taxicab Equipment.
- 4.15.060 Passenger Services.
- 4.15.065 Administrative Regulation of Practices.
- 4.15.070 Duties of Special Business License Holders.
- 4.15.075 Specific Requirements for Taxicab Business -  
Special Business License.
- 4.15.080 Applications for Special Business Licenses.
- 4.15.082 Issuance or Renewal of Special Business Licenses.
- 4.15.085 Contents of Licenses - Supplementary Information.
- 4.15.090 Applications for Employee Permits.
- 4.15.095 Issuance or Renewal of Employee Permit.
- 4.15.097 Employee Permit Void Upon Termination of Employment.
- 4.15.099 Employee Permit - Controlled Substance and Alcohol Testing,  
Reporting Test Results.
- 4.15.100 Revocation or Suspension of Special Business Licenses.
- 4.15.105 Revocation or Suspension of Employee Permits.

**4.15.000 PURPOSES.** Taxis are an integral component of the public transportation system within the City of Elk Grove. They provide vital and necessary transportation services to the local and traveling business community, tourists, the elderly and handicapped, and others. Unethical business practices, deception of the traveling public, criminal conduct, or conditions which threaten the safety of passengers would damage the image of the City, impair tourism and harm the economic development and well being, deprive the public of vitally necessary transportation, require the commitment of inordinate financial resources to law enforcement, and otherwise be detrimental to the health, safety and welfare of the residents of the City.

Pursuant to the provisions of Section 5353(g) of the Public Utilities Code and Section 53075.5 of the Government Code, the purposes of this Chapter are to insure that the taxi industry delivers transportation services to the public in a lawful, ethical, safe and convenient manner for the protection and promotion of the health, safety, welfare and convenience of the residents of the City.

**4.15.005 DEFINITIONS.** Unless the provision or the context otherwise requires, the definitions set forth in this Section govern the construction of this Chapter 4.15.

(a) "Taxicab" - shall mean every motor-propelled vehicle, except sight-seeing and interurban buses, which is designed for carrying not more than eight persons excluding the driver, which is used solely or mainly for the transportation of passengers for compensation over the public streets of the City, irrespective of whether the operations extend beyond the boundaries of the City, and between such points and over such route as may be directed by the passenger.

(b) "Taximeter" - shall mean and embrace any instrument or device attached to a vehicle and designed or intended to measure mechanically the distance traveled by such vehicle, to record the time the vehicle is in waiting, and to indicate upon such record by figures or designs the fare to be charged in dollars and cents.

(c) "Taxicab Business" - shall mean the practice of owning or possessing an ownership interest in one or more taxicabs or providing direction, management or control, for the purpose of providing, assisting in the provision of, or coordinating the provision of taxicab services to members of the general public.

**4.15.010 APPLICATION OF CHAPTER.** Except as otherwise specifically provided, the provisions of this Chapter and Chapter 4.10 shall not apply to the operation of taxicabs transporting passengers: from a point outside the City to a destination within the City; or, en route from a point outside the City to a destination outside the City.

**4.15.015 LICENSES AND PERMITS REQUIRED.** Except as provided by Section 4.15.010, within the City: no person shall operate or conduct a Taxicab Business unless under and by authority of a valid, unexpired, and unrevoked Special Business License authorizing such Taxicab Business issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.15; and, no person shall operate a taxicab without a valid,

unexpired, and unrevoked Employee Permit issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.15.

**4.15.020 OWNER OPERATORS.** A person who owns or leases as lessee or possesses another ownership interest in a taxicab and who operates the taxicab, shall be required to qualify for and obtain an Employee Permit, and, unless the taxicab is covered by a Special Business License issued to another person, a Special Business License.

**4.15.025 TERM OF LICENSE.** The term of a Special Business License authorizing a Taxicab Business, and an Employee Permit, shall be one year.

**4.15.030 EQUIPMENT STANDARDS, CERTIFICATE, AND INSPECTION.**

(a) A taxicab shall be in compliance with applicable equipment standards provisions of the California Vehicle Code or any administrative regulations pertaining to safety issued by the Chief of Police pursuant to the provisions of Section 4.02.085.

(b) The holder of a Special Business License shall provide to the Chief of Police for each taxicab a State of California certificate of compliance or other writing, issued by a State of California certified examiner or examiners, dated not more than twelve months preceding the date of application or renewal of the License, whichever is applicable, and evidencing that the taxicab complies with prevailing lamp and brake equipment standards as provided in paragraph (a) of this Section. The certificate shall be maintained within the taxicab and shall be available for inspection upon request by any authorized representative of the City at any time. The Chief of Police shall accept (in lieu of a State of California certificate of compliance or other writing, issued by a State of California certified examiner or examiners), a certificate or other writing issued by the City or County of Sacramento, dated not more than twelve months preceding the date of application or renewal of the Special Business License, whichever is applicable, verifying compliance with any and all vehicle safety standards enforced by the City or County of Sacramento which are also enforced by the City of Elk Grove.

(c) It shall be unlawful for the holder of an Employee Permit to operate, and unlawful for the holder of a Special Business License to authorize, direct or otherwise allow operation of a taxicab which is not in compliance with paragraph (a) of this Section; or, which is not covered by an unexpired certificate required by paragraph (b) of this Section. When in possession and control of a taxicab, it shall be unlawful for the operator to fail to provide, upon request, to an authorized representative of the City an unexpired certificate as required by this paragraph (b) of this Section.

(d) The Chief of Police shall, in the Chief of Police's sole discretion, have the authority to require inspections of taximeters, lamps, brakes, and emission control, or other vehicle equipment, to verify compliance of the taxicab with applicable provisions of the California Vehicle Code, this Chapter, or any administrative regulation pertaining to safety issued by the Chief of Police pursuant to the provisions of Section 4.02.085. If it is found that the taxicab or equipment is in such condition that its operation is in

violation of the State Vehicle Code, the Chief of Police shall, in accordance with Section 24004 of the State Vehicle Code, prohibit the use of such taxicab, and the holder of the Special Business License Permit and the holder of the Employee Permit shall not use such taxicab, until such time as it has been brought into compliance with the State Vehicle Code. Continued use of the vehicle while in such violation of the State Vehicle Code shall be grounds for suspension and revocation of the Special Business License.

#### **4.15.035 TAXIMETER ACCURACY AND CERTIFICATE.**

(a) Each taximeter utilized in a taxicab shall at all times be of a type authorized by, comply in relation to accuracy with, and be operated and maintained in compliance with any and all statutes and administrative regulations of the State and any administrative regulations issued by the Chief of Police pursuant to the provisions of Section 4.02.085 and Section 4.15.065. The City will accept a certificate of inspection and testing of taximeters performed by the City or County of Sacramento and may demand a copy of such current inspection certificate. However, taximeters utilized in a taxicab shall, at any time, be subject to inspection and testing by the City or its delegate to determine compliance with the requirements of this Section.

(b) It shall be unlawful for any person holding an Employee Permit to operate a taxicab, and unlawful for any person holding a Special Business License to authorize, direct or otherwise allow operation of a taxicab, containing a taximeter which is not in compliance with or is utilized in violation of any and all statutes and administrative regulations of the State and any administrative regulations issued by the Chief of Police.

(c) The holder of a Special Business License shall provide to the Chief of Police for each taxicab a certificate or other written evidence issued by Sacramento County Department of Weights and Measures, or issued by a State of California registered device repairman, indicating that the taximeter has been tested not more than twelve months preceding the Special Business License application or renewal date, whichever is applicable, and certifying the accuracy of the taximeter attached to the taxicab.

**4.15.040 RATES AND CHARGES.** Each person holding a Special Business License shall file with the Chief of Police a written schedule, as prescribed by the Chief of Police, showing all rates and charges to be imposed in connection with services offered by taxicabs covered by the License. No rate or charge shown on such a filed schedule shall be increased, and no rate or charge not shown on such schedule shall be imposed, earlier than the day following the date upon which a new schedule of rates and charges showing the increase or additional rate or charge is filed with the Chief of Police. No rate or charge not shown on such schedule shall be imposed. Each change in a rate or charge shall be the subject of a new schedule which comprehensively shows all rates and charges, and the filing of supplementary schedules or amendments to schedules which do not show all rates and charges shall not constitute compliance with the requirements of this Section.

Each person holding a Special Business License or Employee Permit shall file with the Chief of Police, within ten calendar days following the receipt of written request by the Chief of Police, such written explanation of rates and charges identified in a filed schedule as is requested by the Chief of Police.

It shall be unlawful for any holder of an Employee Permit to charge or impose, and unlawful for the holder of any Special Business License to authorize, direct, or otherwise allow the charging or imposition of, a rate or charge for service in excess of those prescribed by or of a type which is not shown on a schedule which has been filed with the Chief of Police, and to charge or impose any rate from that schedule prior to the day after such schedule has been filed with the Chief of Police.

**4.15.045 DISPLAYS WITHIN TAXICABS.** It shall be unlawful for any person holding an Employee Permit to operate a taxicab, and unlawful for any person holding a Special Business License to authorize, direct, or otherwise allow operation of a taxicab, unless there is displayed within the taxicab in a location which may be viewed by any and all passengers, the following:

(a) A copy of the valid, unexpired and unrevoked Employee Permit held by the operator of the taxicab;

(b) A rate schedule identical to the rate schedule filed with the Chief of Police pursuant to Section 4.15.040 showing all rates and charges which may lawfully be levied or imposed; and

(c) The register display of any taximeter which is utilized.

**4.15.050 TAXICAB MARKINGS AND IDENTIFICATION.**

(a) Each taxicab shall be equipped with a top light containing light or lights which are affixed to the roof of the taxicab. The top light shall be illuminated in non-daylight hours when the taxicab is available for hire. The word "taxicab", "taxi", "cab", the business name of the owner, or the words identifying the vehicle as a taxicab shall be visible on the top light.

(b) Each taxicab covered by a Special Business License shall be painted with a uniform color scheme applicable to all taxicabs covered by the License and a business shall have the exclusive right to the color scheme used by its taxicabs within the jurisdiction of the County of Sacramento. The Chief of Police can review and require changes to any color scheme if he or she finds that such color scheme is too similar to that of another taxicab business and is likely to mislead or confuse the public as to the proper operator of a taxicab.

(c) There shall be displayed on each exterior side of a taxicab in full view of prospective customers the following:

(1) The business name and telephone number of the holder of the Special Business License for the taxicab, in letters not less than two inches in height and width; and

(2) A rate schedule in the following format:

FIRST MILE: (fee)\*

ADD'L MILES: (fee/mi.)\* \*Subject to time clock

All letters and numbers in the first two lines of the above format shall be not less than one-and-one-half inches in height and width. The third line of the above format shall be in letters not less than three-quarters of an inch in height and width. In letters not less than one-and-one-half inches in height and width and adjacent to the schedule required above, any additional types of fees to be charged and the amount of such fees, may be stated. The fees shall be identical to the ones filed with the Chief of Police pursuant to Section 4.15.040.

(d) It shall be unlawful for the holder of any Employee Permit to operate a taxicab, and unlawful for the holder of a Special Business License to authorize, direct, or otherwise allow the operation of a taxicab, which does not comply with the requirements of this Section.

#### **4.15.055 TAXICAB EQUIPMENT.**

(a) Each taxicab shall be equipped with an operative two-way radio dispatch system approved by the Federal Communications Commission for commercial use; and, an operative taximeter which is in compliance with the requirements of Section 4.15.035.

(b) It shall be unlawful for the holder of any Employee Permit to operate a taxicab, and unlawful for any holder of a Special Business License to authorize, direct, or otherwise allow operation of a taxicab, which does not contain an operative radio dispatch system, and a taximeter, as required above in paragraph (a) of this Section.

**4.15.060 PASSENGER SERVICES.** It shall be unlawful for any person who holds an Employee Permit to do, and unlawful for any person who holds a Special Business License to authorize, direct, or otherwise allow the operator of a taxicab to do, any of the following:

(a) Transport a greater number of passengers in a taxicab than the rated seat capacity of the taxicab;

(b) Fail to answer all calls received for taxicab services in the order of receipt of the calls;

(c) Refuse, upon request, to give a passenger of a taxicab a written receipt showing the fare due, and the miles and minutes employed;

- (d) Drive passengers of a taxicab via indirect or circuitous routes for the primary purpose of obtaining higher fares or fees;
- (e) Refuse to provide taxicab service on the basis of the short length of the prospective ride;
- (f) Pick up additional passengers without the prior consent of any passenger who is already in the taxicab;
- (g) Knowingly fail to report to the holder of the Special Business License for the taxicab all property of value left by a passenger in the taxicab within twenty-four hours of discovery of such property;
- (h) Fail to throw the flag of the taxicab's taximeter to the non-recording position at the termination of each and every service;
- (i) Fail to call attention of the passenger of a taxicab to the amount registered on a taximeter at the termination of each and every service; or,
- (j) Throw the flag of a taximeter in a recording position when the taxicab is not actually engaged.

**4.15.065 ADMINISTRATIVE REGULATION OF PRACTICES.** Pursuant to administrative regulations issued under the provisions of Section 4.02.085, the Chief of Police shall be authorized to prohibit specified types and methods of calculating fees or other business practices in connection with the provision of taxicab services, and impose specific duties, obligations or prohibitions in connection with the provision of taxicab services, when the Chief of Police determines that such regulations are necessary to protect the public against deceptive, fraudulent, misleading, discriminatory, or other similar detrimental acts or omissions associated with the delivery of taxicab services.

**4.15.070 DUTIES OF SPECIAL BUSINESS LICENSE HOLDERS.** It shall be the duty and responsibility of each person who holds a Special Business License to:

- (a) Fully advise and inform all operators of taxicabs covered by the License of the provisions of this Chapter, any and all administrative regulations issued hereunder, and any and all conditions upon which the Special Business License is issued; and,
- (b) Direct, control and supervise operators of taxicabs covered by the License for the purpose of identifying, correcting and prohibiting future or repeated violations of the provisions of this Chapter, any administrative regulations issued hereunder, or any conditions upon which the Special Business License is issued.

**4.15.075 SPECIFIC REQUIREMENTS FOR TAXICAB BUSINESS - SPECIAL BUSINESS LICENSES.** Each person who holds a Special Business License shall during the entire term of the License:

(a) Maintain or be associated with an office situated within the geographical boundaries of the City where some person in charge can be contacted in person or by telephone weekdays from 8:00 a.m. to 5:00 p.m.;

(b) Maintain a two-way radio dispatch system approved by the Federal Communications Commission for commercial use which is in contact with all taxicabs covered by the License during all times the taxicabs are in service;

(c) Maintain in full force and effect at no cost to the City a comprehensive automobile and general liability insurance policy in an amount no less than \$350,000 single limit per occurrence; issued by an insurer rated A-VII or better by the A.M. Best's Insurance Guide, or an insurer approved by the City's Risk Manager; naming the City, and in their capacities as such its officers, employees and agents as insureds; covering all losses and damages as specified in this paragraph; stipulating that the policy will operate as primary insurance and that no other insurance effected by the City or other named insured will be called on to contribute to a loss covered thereunder; and providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the License, without thirty (30) days written notice to the City's Risk Manager from the insurance company prior to the effective date of such cancellation or change in coverage. Such service shall be by registered mail.

Notwithstanding the provisions of Section 4.02.100, violation of this paragraph by the holder of a Special Business License shall constitute a misdemeanor as provided by Section 1.01.190;

(d) Assume the defense of, and indemnify and hold harmless, the City and in their capacities as such, its officers, employees and agents from and against all actions, claims, losses, damages, liability, costs and expenses of every type and description, including, but not limited to, attorney's fees, to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, in whole or in part, the acts or omissions of the Licensee or the Licensee's agents, officers or employees, directly or indirectly arising from the operation of a taxicab. The foregoing is not intended to and shall not be construed to limit any responsibility or liability to which the Licensee may be subjected to under other laws;

(e) In the event of cancellation, expiration, or change in insurance coverage resulting in non-compliance with paragraph (c) of this Section, the Licensee shall notify the City of the cancellation, expiration, or change within three (3) days after its effective date by submitting a written notice to the City's Risk Manager. The giving of notice as provided herein shall not stay the temporary suspension of the Special Business License pursuant to Section 4.15.100(b), which suspension shall remain in effect until required insurance is reinstated, or as otherwise provided in Section 4.15.100.

In addition to any other requirements of this Chapter and Chapters 4.02 or 4.10, a Special Business License shall not be issued to any person who fails to demonstrate

to the satisfaction of the City's Risk Manager fulfillment of the requirements specified in this Section.

**4.15.080 APPLICATIONS FOR SPECIAL BUSINESS LICENSES.** In addition to the matters prescribed by Section 4.10.030 or 4.10.060, as applicable, an application for a Special Business License, or an application for the renewal of a Special Business License, to engage in the Taxicab Business shall contain the following:

(a) The name, business address and telephone number of the applicant, and if the applicant is not a natural person, a copy of the articles of incorporation, by-laws, partnership agreement or other written instrument by which the entity is established;

(b) A description of the manufacturer, model and model year, the vehicle identification number, the state vehicle license number, and the name and address of each person who is a registered owner, possessor of a leasehold interest, and possessor of any other ownership or security interest in each taxicab to be covered by the License;

(c) The serial number of each taximeter to be utilized in a taxicab, as required by Section 4.15.055(a), together with the State vehicle license number of the taxicab to which the taximeter is assigned;

(d) The serial number of each radio system to be utilized in a taxicab, as required by Section 4.15.055(a);

(e) A description of the color scheme by which each taxicab will be identified, as required by Section 4.15.050(b);

(f) A copy of certificates or other writings as required by Sections 4.15.030 and 4.15.035;

(g) A copy of the policy or policies of insurance required by Section 4.15.075(c);

(h) The written schedule of all rates and charges for hire of the taxicab as required by Section 4.15.040;

(i) The address and telephone number, and name of the person responsible for operation of the business office required by Section 4.15.075(a);

(j) The address and telephone number, and name of the person responsible for operation of the radio dispatch system required by Section 4.15.075(b).

**4.15.082 ISSUANCE OR RENEWAL OF SPECIAL BUSINESS LICENSES.** Upon receipt of an application for a Special Business License, or an application for the renewal of a Special Business License, the Chief of Police shall conduct such investigation pursuant to Section 4.10.035 or 4.10.060 as applicable, and as deemed necessary. The Chief of Police shall issue a Special Business License, or renewal,

unless the Chief of Police finds pursuant to Sections 4.10.040 or 4.10.060, as applicable, or unless the Chief of Police finds in writing any of the following:

(a) The applicant or license holder has failed to comply with the requirements specified in Sections 4.15.030; 4.15.035, 4.15.040, 4.15.045, 4.15.050, or 4.15.055;

(b) The applicant or license holder has failed to comply with the requirements specified in Section 4.15.075;

(c) The license holder or applicant has authorized, directed, or otherwise allowed operation of a taxicab for which the insurance coverage required by Section 4.15.075 is not in effect;

(d) The applicant or holder of a license has submitted a false declaration regarding testing for a controlled substance, alcohol, or both, required by this Chapter;

(e) The applicant or license holder has failed to notify the Chief of Police of the termination of employment of the holder of an Employee Permit within three (3) days of such termination;

(f) The applicant or license holder has authorized, directed, or otherwise allowed a person or employee without a valid Employee Permit to operate a taxicab;

(g) The applicant or license holder has failed to comply with any condition, requirement, or prohibition of this Chapter; or that there exists any basis established by Chapters 4.02, 4.10 or this Chapter for the denial or revocation of a Special Business License application or renewal, as applicable.

#### **4.15.085 CONTENTS OF LICENSES - SUPPLEMENTARY INFORMATION.**

Each Special Business License shall consist of a certificate which identifies the name and address of the applicant, the date of issuance and the date of expiration. Each such License shall have attached thereto a listing of the state vehicle license number, manufacturer, model, model year, vehicle identification number, of each taxicab which the License covers, and the serial number of each taximeter which the License covers.

During the term of any such License, the holder thereof shall immediately provide in writing to the Chief of Police changes in vehicles and taximeters to be covered by the License.

**4.15.090 APPLICATIONS FOR EMPLOYEE PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to operate a taxicab shall contain the following:

(a) The number of a valid California driver's license issued to the applicant, and the date of license expiration;

(b) A statement of whether the applicant's California driver's license has ever been revoked or suspended, and, if so, the reason or reasons for such revocation or suspension;

(c) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;

(d) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control of a motor vehicle;

(e) A declaration by a taxicab employer that the applicant is employed by or has an offer of employment by that employer to operate a taxicab, or a declaration that the applicant is a self-employed independent driver;

(f) A declaration by a taxicab employer that the applicant who is employed by or has an offer of employment with the employer, or by the applicant if the applicant is a self-employed independent driver, that the applicant has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;

(g) If the applicant is a self-employed independent driver, test results from the controlled substance (and alcohol for permit renewal) test shall be reported to the Chief of Police in accordance with Government Code section 53075.5 and are to be made a part of the application;

(h) The name of the taxicab business which the applicant is employed by or has an offer of employment from, or if the applicant is a self-employed independent driver, the name of the taxicab business the applicant is doing business as or leases the taxicab vehicle from;

(i) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

(j) A list of all prescription medicine which the applicant takes on a regular or episodic basis;

(k) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10.

**4.15.095 ISSUANCE OR RENEWAL OF EMPLOYEE PERMIT.** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit or renewal of the Permit pursuant to Section 4.10.090 unless the Chief of Police finds in

writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.15.090, or is otherwise incomplete;

(b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;

(c) That information contained in the application is false or otherwise inaccurate;

(d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, the applicant would not operate the taxicab in a law abiding manner or in a manner which does not subject members of the traveling public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a Permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction there is a substantial risk that the applicant would not operate the taxicab in a law abiding manner or in a manner which does not subject members of the traveling public to risk of harm;

(e) That the applicant's California driver's license has been revoked or suspended;

(f) That the applicant is not employed, or has no offer of employment as a taxicab driver, or is not a self-employed independent taxicab driver;

(g) That the applicant has tested positive for controlled substances, (or for permit renewal, controlled substances and alcohol), in accordance with Government Code section 53075.5;

(h) That the applicant refuses or fails to submit to a controlled substance, alcohol test, or both, as required by Government Code section 53075.5; or,

(i) One or more of the grounds for Permit revocation or suspension exists pursuant to Section 4.15.100.

**4.15.097 EMPLOYEE PERMIT VOID UPON TERMINATION OF EMPLOYMENT.** The Employee Permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. If the holder of the Employee Permit is a self-employed independent operator, the Employee Permit shall become void on the date upon which the holder of the Permit no longer owns, or has a leasehold interest in a taxicab vehicle, or when the taxicab operated by the holder of the Permit is no longer covered by the holder of the Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after the occurrence of any of the events described in this paragraph.

The holder of the Special Business License employing the holder of the Employee Permit, if applicable, shall notify the Chief of Police within three (3) days upon termination of the holder's employment.

**4.15.099 EMPLOYEE PERMIT - CONTROLLED SUBSTANCE AND ALCOHOL TESTING, REPORTING TEST RESULTS.**

(a) (1) All initial applicants and renewal applicants for an Employee Permit shall take and pass with negative test results a controlled substance test, and an alcohol test and as otherwise required, by this Chapter or Government Code section 53075.5. The test or tests, as applicable, for an Employee Permit shall be taken no more than thirty days preceding the date the application for the Employee Permit is filed, or the date the application for renewal is filed, or the date the application for the renewal is filed if the Employee Permit was allowed to expire.

(2) When test results of a self-employed independent applicant or holder of an Employee Permit are positive for alcohol, a controlled substance, or both, the Chief of Police shall report such results to the taxicab leasing company, if any, on record with the Chief of Police. When test results of an applicant or holder of an Employee Permit, who is employed by or has an offer of employment by a taxicab employer, are positive for alcohol, a controlled substance, or both, the employer shall report such results to the Chief of Police.

(3) Any holder of an Employee Permit whose Employee Permit has been suspended or revoked for positive test results of a controlled substance, alcohol, or both, for a test required by this Chapter or Government Code section 53075.5, shall not be reinstated as a driver of a taxicab or as a Permit holder, nor shall a new Permit be issued, until the requirements for rehabilitation and return-to-duty in accordance with Government Code section 53075.5 are satisfied.

(b) The Chief of Police, upon reasonable suspicion to believe that the holder of an Employee Permit has violated the prohibitions of Government Code section 53075.5 for alcohol, a controlled substance, or both, shall require the holder of such

Permit to take a controlled substance, alcohol test, or both, in accordance with Government Code Section 53075.5. Such reasonable suspicion shall be based upon specific, contemporaneous, articulable observations concerning appearance, behavior, speech or body odors of the holder. The observations may include indications of the chronic and withdrawal effects of controlled substances. Alcohol testing may be required if such observations are made during, just preceding, or just after the period of the day that the holder is required to operate the taxicab.

Such reasonable suspicion testing as is required by the Chief of Police shall be taken by the holder of the Permit within five (5) days after the Chief of Police gives notice of the requirement. Notice shall be given to the holder of the Permit, and to the holder's employer if the holder is not self-employed. Notice shall be deemed effective upon depositing the notice in the United States mail, first class, postage pre-paid, and addressed to the holder of the Permit and the holder's employer, if applicable, at the last address on record with the Chief of Police. Notwithstanding the provision of Section 4.10.145 to the contrary, the Chief of Police shall temporarily suspend an Employee Permit effective upon the Chief of Police making a finding in writing pursuant to this Section requiring reasonable suspicion testing and the holder of the Permit fails to take the test. The prior 24 hour notice provision of Section 4.10.145, to the holder of the Employee Permit, shall not be required prior to such temporary suspension. The Chief of Police shall within 24 hours of the commencement of such temporary suspension serve the notice in the manner and as otherwise required by Section 4.10.145 and shall thereafter permit the holder of the Permit to respond to the Chief of Police as required by Section 4.10.145. The temporary suspension shall continue until the holder of the Employee Permit submits to such required testing, or pending expiration of the time for appeal or exhaustion of an appeal pursuant to the commencement of a proceeding for the suspension or revocation of the Permit, whichever occurs first.

**4.15.100 REVOCATION OR SUSPENSION OF SPECIAL BUSINESS LICENSES.** A Special Business License shall be revoked or suspended pursuant to the grounds set forth in Section 4.10.135 or upon a finding in writing of one or more of the following grounds: (a) Upon receipt by the Chief of Police of written notice from an insurer of cancellation, expiration or change in insurance coverage resulting in non compliance with Section 4.15.075(c), or, upon receipt of notice from the holder of the Special Business License pursuant to section 4.15.075(e), whichever occurs first; or, that the holder of a Special Business License has operated a taxicab for which the insurance coverage as required by Section 4.15.075(c) was not in effect.

Notwithstanding the provision of Section 4.10.145 to the contrary, the Chief of Police shall temporarily suspend a Special Business License effective upon the Chief of Police making a finding pursuant to this Section 4.15.100(a) in writing. The prior 24 hour notice provision of Section 4.10.145, to the holder of the Special Business License and the place of business thereof, shall not be required prior to such temporary suspension. The Chief of Police shall within 24 hours of the commencement of such temporary suspension serve the notice in the manner and as otherwise required by Section 4.10.145 and shall thereafter permit the holder of the License to respond to the Chief of Police as required by Section 4.10.145. Such temporary suspension shall

continue until the Chief of Police receives written notice from an insurer indicating compliance with the requirements of Section 4.15.075(c); or, pending expiration of the time for appeal or exhaustion of an appeal pursuant to a proceeding for the suspension or revocation of the License; whichever occurs first;

(b) The holder of a Special Business License has failed to notify the Chief of Police of cancellation, expiration, or change of insurance as required by Section 4.15.075(e);

(c) The holder of a Special Business License has submitted a false declaration regarding controlled substance, alcohol testing, or both, required by this Chapter;

(d) The holder of a Special Business License has allowed a person, an employee, or holder of an Employee Permit to operate a taxicab knowing that the operator tests positive, as required by Government Code section 53075.5 or this Chapter, for a controlled substance, alcohol, or both;

(e) The holder of a Special Business License has allowed a person or an employee without a valid Employee Permit to operate a taxicab;

(f) The holder of a Special Business License has failed to notify the Chief of Police of the termination of an employee holding an Employee Permit pursuant to Section 4.15.097; or,

(g) Any other failure of the holder of a Special Business License to comply with any condition, requirement, or prohibition of this Chapter or Chapters 4.02 or 4.10; or, a finding of grounds for denial of the License, or the denial of a renewal, pursuant to Section 4.10.100; or, a finding made pursuant to Section 4.15.082.

**4.15.105 REVOCATION OR SUSPENSION OF EMPLOYEE PERMITS.** An Employee Permit shall be revoked or suspended pursuant to Section 4.10.140 upon any of the following findings in writing:

(a) The holder of the Employee Permit has violated any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to Section 4.02.085 or 4.15.065;

(b) The holder of the Employee Permit has misrepresented a material fact contained in the application for the Permit, or renewal;

(c) That since issuance of the Permit, or renewal, the Chief of Police has acquired information supporting a finding prescribed by Section 4.15.095(d) in relation to the holder of the Employee Permit;

(d) That the holder of the Employee Permit operated a taxicab with an invalid, suspended or revoked California driver's license;

(e) That the holder of the Employee Permit has tested positive for any controlled substance, or alcohol, or both, pursuant to a test taken in accordance with Government Code section 53075.5;

(f) That the holder of the Employee Permit, or his or her employer, has submitted a false declaration regarding testing for a controlled substance, or alcohol, or both, pursuant to a test required by Government Code section 53705.5;

(g) The holder of the Employee Permit has operated a taxicab in an unsafe manner without regard for the safety and welfare of passengers, pedestrians, other drivers, or property. Factors to be considered in reaching this finding are that the holder of the Employee Permit has suffered a conviction of one or more moving violations of the California Vehicle Code, or, by conduct which has placed any passenger, motorist, pedestrian, or property at unreasonable or unnecessary risk for physical harm, damage to property, or deceitful or fraudulent practices.

(h) That the holder of the Employee Permit refuses or fails to submit to testing for a controlled substance, alcohol, or both, as required by Government Code section 53075.5 or this Chapter; or,

(i) Any other failure of the holder of the Employee Permit to comply with any duty, condition, requirement, or prohibition of this Chapter or Chapters 4.02 or 4.10; or, a finding made pursuant to section 4.15.095.

## **CHAPTER 4.16**

### **MEDICAL CANNABIS DISPENSARIES**

#### **Sections:**

- 4.16.000 Purpose.
- 4.16.005 Definitions.
- 4.16.010 Special Business License and Employee Permit Required.
- 4.16.015 Notice to Community of Application for Business License.
- 4.16.020 Conditional Use Permit Required.
- 4.16.025 Business Hours of Dispensaries.
- 4.16.030 Prohibited Ancillary Activities.
- 4.16.035 Prompt Removal of Solid Wastes.
- 4.16.040 License Application.
- 4.16.045 Maintenance of Certifications and Plans.
- 4.16.050 Confidentiality of Plans.
- 4.16.055 Applications for Employee Permits.
- 4.16.060 Issuance or Renewal of Employee Permit.
- 4.16.065 Employee Permit Void on Termination.
- 4.16.100 Suspension or Revocation.

**4.16.000 PURPOSE.** The People of the State of California passed Proposition 215, The Compassionate Use Act of 1996, which protects patients and physicians who prescribe marijuana for medical treatment. The Legislature of the State of California passed SB 402 which was designed to provide greater certainty regarding the medical use of marijuana and establishes use procedures and voluntary identification/registration cards to qualified patients. The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the People of the State of California by passing Proposition 215, and the Legislature of the State of California by passing SB 402, have provided for the medical use of marijuana, and with that in mind, the City Council wishes to insure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove. On March 25, 2004, the Elk Grove Planning Commission held public hearings on the proposed amendment to the City Code, and recommended that the City Council approve the proposed amendment. On April 7, 2004, the City Council held a public hearing on the proposed amendment to the City Code, at which time public testimony was taken and duly considered. The City Council finds that the revised Code is consistent with the goals, policies, implementation programs and land use designations specified in the City's General Plan, as required by Government Code Section 65860. The establishment of Medical Cannabis Dispensaries is contemplated by Health & Safety Code sections 11362.5 et seq. Medical Cannabis Dispensaries create adverse secondary effects, including but not limited to, an increase in driving under the influence of marijuana in the community in which they exist, increase illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

**4.16.005 DEFINITIONS.**

(a) "Medical Cannabis Dispensary" means a business enterprise where Qualified Patients or Primary Care Givers receive dispensation of limited doses of medical grade cannabis to use in the alleviation of pain and suffering associated with certain illness.

(b) "Qualified Patient" means a person whose primary care provider has issued a prescription to allow the person to purchase medical grade cannabis for consumption for the principal purpose of alleviating pain and suffering associated with certain serious illness.

(c) "Primary Caregiver" means family member or paid caregiver for a Qualified Patient who is authorized to receive medical cannabis for the purpose of giving doses to the Qualified Patient.

(d) "Confidentiality Plan" means an approved written plan containing policies and procedures of a Medical Cannabis Dispensary intended to assure maintenance of the privacy of Qualified Patients and Primary Caregivers.

(e) "Security Plan" means an approved written plan containing policies and procedures of a Medical Cannabis Dispensary intended to assure the secure handling and storage of cannabis.

**4.16.010 SPECIAL BUSINESS LICENSE AND EMPLOYEE PERMIT**

**REQUIRED.** No person shall operate or conduct a Medical Cannabis Dispensary unless under and by authority of a valid, unexpired, and unrevoked Special Business License authorizing such Medical Cannabis Dispensary issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.16; and, no person shall be employed by a Medical Cannabis Dispensary without a valid, unexpired, and unrevoked Employee Permit issued pursuant to the provisions of Chapters 4.02, 4.10, and 4.16.

**4.16.015 NOTICE TO COMMUNITY OF APPLICATION FOR BUSINESS**

**LICENSE.** At least thirty (30) days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. mail of the applicant's intent to open such a business.

**4.16.020 CONDITIONAL USE PERMIT REQUIRED.** In addition to the general and special business licensing requirements of this Title, each applicant for a Special Business License for a Medical Cannabis Dispensary shall be required to obtain a conditional use permit from the Elk Grove Planning Commission as provided in the City of Elk Grove Zoning Code.

**4.16.025 BUSINESS HOURS OF DISPENSARIES.** The City Council finds that it is not in the public interest for a Medical Cannabis Dispensary to operate before or after normal school hours. A Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.

**4.16.030 PROHIBITED ANCILLARY ACTIVITIES.**

(a) No licensee for a Medical Cannabis Dispensary shall allow any of the following ancillary activities to take place on-site:

- (1) The use of cannabis by any person;
- (2) The cultivation of cannabis anywhere on the property;
- (3) The sale and/or display of drug paraphernalia or any implement that may be used to administer medical cannabis. The licensee shall maintain full compliance with Health & Safety Code sections 11014.5 and 11364 et seq. and Sections 4.54.200 et seq. of this Code.
- (4) Alcohol shall not be provided, stored, kept, located, sold, dispensed or used anywhere on the property.

(b) In addition to any other conditions imposed by City Staff in the Conditional Use Permit for the Medical Cannabis Dispensary, the foregoing prohibitions in subsection (a) shall also be included in the Conditional Use Permit.

**4.16.035 PROMPT REMOVAL OF SOLID WASTES.** The City Council finds that the conduct of a Medical Cannabis Dispensary generates solid waste in which there

is a risk of the presence of cannabis in the waste stream. Every licensee of a Medical Cannabis Dispensary shall provide for removal of all solid waste from the property at least twice each day the dispensary is in operation at times at least three (3) hours apart. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.

**4.16.040 LICENSE APPLICATION.** In addition to the requirements of Section 4.10.030 for an application for a Special Business License, an application for a Medical Cannabis Dispensary shall include all of the following additional certifications and plans a copy of which shall be maintained by the City:

- (a) List of Cannabis Suppliers: The applicant shall list the names and addresses of all suppliers of cannabis products;.
- (b) Certification of No Interstate Commerce: The applicant shall certify that cannabis dispensed for medical purposes is produced within the State of California and has not crossed state lines;
- (c) Safety and Security Plan: The applicant shall submit for approval from the Chief of Police a written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system;
- (d) Confidentiality Plan: The applicant shall submit for approval from the Chief of Police a written Confidentiality Plan for preserving the confidentiality of all Qualified Patients, and Primary Care Givers to whom medical cannabis is dispensed by the licensee.

**4.16.045 MAINTENANCE OF CERTIFICATIONS AND PLANS.**

- (a) Copies of Certifications and Plans: During the term of a Special Business License for a Medical Cannabis Dispensary, the licensee shall maintain on the premises a current copy of the approved List of Cannabis Suppliers, the Certification of No Interstate Commerce, the Safety and Security Plan, and the Confidentiality Plan and they shall be made available for inspection by representatives of the City on demand during business hours.
- (b) Amendment of Certifications or Plans: At any time during the term of a Special Business License for a Medical Cannabis Dispensary, should there be a proposed change in suppliers of cannabis or a change in any element of the Safety and Security or Confidentiality Plans, the licensee shall file a request with the Chief of Police for an amendment of the license to allow the new or different cannabis supplier or change in a plan. Upon investigation by the Chief of Police pursuant to Section 4.10.035, the proposed amendments may be granted or denied by the Chief of Police stating in writing the reasons thereof. The approved amended list of suppliers or plans shall be kept on file with the Chief of Police. Appeal of the denial of any proposed amendment of the license will be pursuant to same procedure specified for the denial of an initial application or renewal of a special business license pursuant to Sections 4.10.110 to 4.10.130.

#### **4.16.050 CONFIDENTIALITY OF PLANS.**

The City Council finds that the public interest served in preserving the confidentiality of a Safety and Security Plan for a Medical Cannabis Dispensary and not disclosing the plan to the general public far outweighs the public's interest in disclosure of such Safety and Security Plan.

The City Council finds that there is an important security public interest served in preserving the confidentiality of a Confidentiality Plan for a Medical Cannabis Dispensary by not disclosing the Plan to the general public that far outweighs the public's interest in disclosure of such Confidentiality Plan. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

**4.16.055 APPLICATIONS FOR EMPLOYEE PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to work in a Medical Cannabis Dispensary, shall contain the following:

(a) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;

(b) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control regulated substances;

(c) A declaration by a Medical Cannabis Dispensary employer that the applicant is employed by or has an offer of employment by that employer to work in the Medical Cannabis Dispensary;

(d) A declaration by the Medical Cannabis Dispensary employer that the applicant, who is employed by or has an offer of employment with the employer, has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;

(e) The name of the Medical Cannabis Dispensary business which the applicant is employed by or has an offer of employment from;

(f) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

(g) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10.

**4.16.060 ISSUANCE OR RENEWAL OF EMPLOYEE PERMIT.** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct investigation pursuant to Section 4.10.085. The Chief of Police shall issue the permit or renewal of the permit pursuant to Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

- (a) That the application fails to contain information required by the Chief of Police or Section 4.10.045(a), or is otherwise incomplete;
- (b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;
- (c) That information contained in the application is false or otherwise inaccurate;
- (d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, there is a substantial risk that the applicant would not work in a Medical Cannabis Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application for a permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction the applicant would not work in the Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm; or

- (e) One or more of the grounds for permit revocation or suspension exists pursuant to this Chapter.

**14.16.065 EMPLOYEE PERMIT VOID ON TERMINATION.** The Employee permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after termination of employment.

The holder of the Special Business License employing the holder of the Employee Permit shall notify the Chief of Police within three (3) days upon termination of the holder's employment.

**4.16.100 SUSPENSION OR REVOCATION.** Failure to comply with any of the requirements of this Chapter or with any condition set forth in the conditional use permit for the property shall be grounds for the suspension or revocation of the license under Sections 4.10.145 to 4.10.155.

## CHAPTER 4.20

### CARDROOMS

#### Sections:

- 4.20.000 Statement of Purpose.
- 4.20.005 Definition - Cardroom.
- 4.20.010 Definition - Gaming or Gambling.
- 4.20.015 License Required.
- 4.20.020 Qualifications - Use.
- 4.20.025 Number of Licenses Limited.
- 4.20.030 Employee Permits.
- 4.20.035 Application for Permits.
- 4.20.040 Issuance of Permit.
- 4.20.045 Suspension and Revocation of Permits.
- 4.20.050 Bond.
- 4.20.055 Responsibility of Licensee.
- 4.20.060 Records and Audit.
- 4.20.065 Temporary Suspension.
- 4.20.070 Temporary Suspension - Notice of Suspension and Appeal.
- 4.20.075 Conducting a Cardroom or Operating as a Cardroom Manager or Dealer After Temporary Suspension.
- 4.20.085 Table Operation Fee.
- 4.20.090 Hours of Operation.
- 4.20.095 Games Permitted.
- 4.20.100 Equipment - Separation.
- 4.20.105 Minors Prohibited.
- 4.20.110 Bets Limited - Notice.
- 4.20.115 Notice of Table Rent.
- 4.20.120 Credit Prohibited.
- 4.20.125 Display of Licenses and Permits.
- 4.20.130 Protection of Patrons.
- 4.20.135 Exclusion or Ejection from a Cardroom.
- 4.20.140 Conflicts.
- 4.20.145 Severability.

**4.20.000 STATEMENT OF PURPOSE.** The regulatory provisions of Sections 4.20.020 and 4.20.025 are necessary to ensure that cardrooms are operated reasonably for the protection of public health, safety, and welfare and to conform to State mandated requirements set by The Gaming Registration Act found in the Business and Professions Code commencing with Section 19800, et seq. Although many operators are highly reputable, others are creative in avoiding the letter of the law. Gaming brings with it the elements of enjoyment and entertainment for its patrons but also undesirable elements such as compulsive gambling, cheating, dishonesty, and other possible criminal violations and peace disturbances.

If all licensees were reputable and vigilant, regulatory supervision would be almost perfunctory. Such is the case with many existing licensees. Others, however, require exhaustive monitoring and enforcement. Integrity is a difficult commodity to ascertain in advance of licensure. Thorough screening of applicants prior to licensure is desirable. Pursuant to Sections 4.10.035 and 4.10.040, the Chief of Police conducts a thorough investigation into the background of applicants and their entities in order to assure that licensure will not set the stage for fraud or deceit. Such investigation is particularly difficult when applicants have no local track record. Accordingly, two years residence or two years business operation within this City is required before an applicant is eligible to apply for a cardroom license and this requirement is found in Section 4.20.020. A two-year period for the observation of an individual's or business entity's ethical practices or lack thereof is a more realistic period of time for such assessment as opposed to a one-year residency requirement.

Section 4.20.025 would limit the number of cardroom licenses issued to one for each 75,000 residents of the City thus limiting the expansion of gambling within this community to a level where such gambling will be a source of local entertainment and recreation for local citizens while preventing this community and City from becoming a mecca for professional gamblers and gamblers from other jurisdictions. A "casino" type atmosphere where gambling becomes the major industry or attraction of a community or mecca for gamblers from all jurisdictions is detrimental to the development of this community as such increased and unrestrained gambling creates greater law enforcement problems compromising the ability of law enforcement to totally control the criminal and peace disturbance effects thereof. Limiting the number of licenses and cardrooms to one for each 75,000 residents assists in the accomplishment of these goals as opposed to permitting a greater number of licenses with a limitless number of cardrooms that may be operated per license.

The two-year residency requirement and the restriction in the number of cardroom licenses available would allow City energies to be more efficiently allocated. Pre-license screening would be supplemented with the objective track record of each applicant. The number of cardrooms would remain at a manageable level for the Chief of Police without creating a monopoly for existing cardrooms. The volume of unstable or illegally run cardroom operations would be more effectively curtailed.

Accordingly, City Council finds that a two year residence or operation prerequisite for a Special Business License and a limitation of one cardroom per 75,000

residents of the City will eliminate many of the above-mentioned problems without undue burden on stable and reputable cardrooms. The purpose therefore of Sections 4.20.020 and 4.20.025 is to protect the health, safety, and welfare of the citizens within the City, to assure that City expenditure is efficiently allocated, and to provide legitimate cardrooms where citizens of this City can safely enjoy the entertainment provided by reputable cardrooms.

**4.20.005 DEFINITION - CARDROOM.** As used in this Chapter the term “Cardroom” means any place where gaming is conducted and to which the public is invited to participate.

**4.20.010 DEFINITION - GAMING OR GAMBLING.**

(a) As used in this Chapter the term “Gaming” or “Gambling” means any game of chance played with cards, dice, or any device for currency, money, check, credit, or other thing of value which is not prohibited and made unlawful by Penal Code Chapter 9 (commencing with Section 319) or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code or by this Chapter.

(b) “Gaming” or “Gambling” for purposes of this Chapter does not mean the following:

- (1) The game of bingo conducted pursuant to and regulated by Chapters 4.21, 4.22, and 4.23;
- (2) Any lottery game conducted and regulated by the California State Lottery;
- (3) Parimutuel wagering on horseraces regulated by the California Horse Racing Board;
- (4) Games played with cards in private homes or residences in which no person makes money for operating the game, except as a player.

**4.20.015 LICENSE REQUIRED.** No person shall operate or conduct a cardroom in the City unless under and by authority of a valid, unexpired, and unrevoked Special Business License authorizing a Cardroom issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.20.020 QUALIFICATIONS - USE.**

(a) If the applicant for a Special Business License to operate a Cardroom is a sole proprietor, the proprietor shall have been a resident of the City for at least two (2) years immediately preceding the filing of an application for the License and shall have met the requirements set by the State Department of Justice pursuant to The Gaming Registration Act (commencing with Business and Professions Code Section 19800, et seq.) prior to filing the application for the license. If the applicant is a partnership, corporation, or other business entity owned by more than one individual, the business

entity shall have engaged in a business within the City continuously for at least two years immediately preceding the filing of the application and shall have met the requirements set by the State Department of Justice pursuant to The Gaming Registration Act (commencing with Business and Professions Code Section 19800, et seq.) prior to filing an application for a license.

(b) The Special Business License issued pursuant to this Chapter shall be placed in use at the designated location no later than ninety (90) days following the issuance thereof and the Special Business License shall remain in use thereafter for the term of the License. Failure to place such license in use at the designated location within the ninety (90) day period provided herein, or to maintain the License in use during the term of the License, shall be grounds for revocation of the License by the Chief of Police. For purposes of this Subdivision of this Section "in use" shall mean that at the location designated in the License the business of a Cardroom shall be in operation and that games as provided in Section 4.20.095 shall be conducted therein.

For purposes of revocation under this Subdivision of this Section, temporary closure of the Cardroom for necessary remodeling, rebuilding, repair, improvements, or other necessary and reasonable activity required to operate or improve the operation of the Cardroom when such activities are undertaken by the Licensee in a good faith effort to complete the activity within a reasonable period of time, shall not be grounds for revocation.

The Licensee shall cooperate with the Chief of Police by providing him or her the necessary information and documentation upon demand by the Chief of Police in order to allow a determination of whether the Licensee comes under the provisions of this Subdivision of this Section requiring revocation of the License. Failure of the Licensee to cooperate with the Chief of Police pursuant to the provision of this Subdivision of this Section shall be grounds for the revocation of the Special Business License to operate the Cardroom. The procedure for notice of revocation, revocation, and appeal of revocation shall be the same as is provided in Chapter 4.10 for the revocation of Special Business Licenses.

#### **4.20.025 NUMBER OF LICENSES LIMITED.**

(a) The number of licenses issued shall be limited to one for each 75,000, or fraction thereof, residents of the City, as determined by the last Federal Census or as determined by the latest population estimate of the Department of Finance of the State of California.

(b) In the event there are more applications for Special Business Licenses to operate Cardrooms than the limitation in subdivision (a) of this Section allows, the qualified applicant or applicants to whom a License is issued shall be selected by the Chief of Police in the order the applications were filed with the City Manager. Once all available number of licenses are issued, no applications will be accepted or considered until such time as an additional license becomes available. When the additional license becomes available, applications will then be taken and will be considered as provided

herein upon the timely filing of a new application therefor. For purposes of this subdivision of this Section, the unrevoked, valid, and unexpired License of a Cardroom Licensee who has filed a timely application for renewal of the License is not considered an additional license available for issuance until the license renewal application has been denied and the appeal thereof, if any, has become final.

(c) Notwithstanding the provisions of Section 4.10.010, a Licensee shall operate no more than one Cardroom in the City and shall hold no more than one Special Business License issued pursuant to this Chapter to operate that Cardroom; and no more than one Cardroom shall be located within a single structure or at a single location.

#### **4.20.030 EMPLOYEE PERMITS.**

(a) No person shall work in a Cardroom as a manager or cardroom dealer, and no person who holds a Special Business License authorizing operation of a Cardroom shall employ any person as a cardroom manager or cardroom dealer unless such person possesses a valid Employee Permit issued pursuant to the provisions of Chapter 4.10 and this Chapter.

(b) Notwithstanding the provisions of Section 4.10.095, an Employee Permit as a cardroom manager or cardroom dealer shall authorize the permittee to operate as a cardroom manager or cardroom dealer in any Cardroom possessing an unrevoked, unexpired, and valid Special Business License issued pursuant to this Chapter authorizing the operation of such Cardroom within the City. Notwithstanding the provisions of Section 4.10.095, the Employee Permit shall not include the name and address of the Card room for which the Employee Permit is issued as the Employee Permit authorizes the permittee to operate within any Cardroom as indicated above.

(c) Upon demand by the Chief of Police, the Cardroom shall provide the Chief of Police with the full name and the residence address of persons operating as cardroom managers or cardroom dealers in the Cardroom.

**4.20.035 APPLICATION FOR PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to serve as a cardroom manager or cardroom dealer shall contain a list of each criminal conviction of the applicant, pleas of guilty, or pleas of nolo contendere. The list shall, for each such conviction or pleas, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted.

**4.20.040 ISSUANCE OF PERMIT.** Upon receipt of an application for an Employee Permit to serve as a cardroom manager or cardroom dealer, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as he or she deems necessary. The Chief of Police shall issue the permit unless he or she finds pursuant to Section 4.10.090 any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.20.035, or is otherwise incomplete;

(b) That information contained in the application is false or otherwise inaccurate;

(c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would perform his or her duties as a cardroom manager or dealer in an unlawful manner or in a manner which subjects patrons of the Cardroom to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01, et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.05, or;

(d) That the applicant has violated or is in noncompliance with any of the provisions and requirements of this Chapter or other applicable law or administrative rule or regulation.

(e) That the applicant is disqualified from holding a state gambling license for any of the reasons specified in the Gambling Control Act, Business & Professions Code Sections 19850 and 19914.

(f) That the State of California objects to the issuance of the permit pursuant to the Gambling Control Act, Business and Professions Code sections 19850 and 19912.

#### **4.20.045 SUSPENSION AND REVOCATION OF PERMITS.**

(a) An Employee Permit may be revoked or suspended pursuant to Section 4.10.140 upon any of the following grounds:

(1) Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to this Chapter, Chapter 4.02 or 4.10;

(2) Misrepresentation of a material fact contained in the application for the permit;

(3) The Chief of Police has acquired information supporting a finding prescribed by Section 4.20.040(c) in relation to the holder of the permit; or

(4) The holder of the permit has violated any term, condition or requirement or prohibition established by this Chapter which is applicable to the holder of the permit.

(b) An Employee Permit may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal pursuant to Section 4.10.145, as applicable.

**4.20.050 BOND.** Before issuing a Special Business License under the provisions of this Chapter, the City Council shall require the applicant, as a condition to the issuance of the Special Business License, to post with the City a cash bond in the sum of Two Thousand Dollars (\$2,000) or a surety bond in the same amount furnished by a corporate surety authorized to do business in the State payable to the City. The bond shall guarantee that the Licensee shall redeem all chips for cash, and the bond shall be kept in full force and effect by the Licensee throughout the term of the License.

The provisions of this Section shall not be applicable to card games played or held by fraternal and veterans organizations, benefit associations, churches and other non-profit organizations operating the games for charitable purposes for participation by their members or bona fide guests.

**4.20.055 RESPONSIBILITY OF LICENSEE.** The holder of a Special Business License issued pursuant to this Chapter and Chapter 4.10 shall be financially and otherwise responsible for the operation of the Cardroom and for the conduct of any manager or other employee connected with the operation of the Cardroom. All employees of the Cardroom shall be identified by a name tag measuring no smaller than one inch by three inches and the tag shall be worn in plain view on the upper body of the employee.

**4.22.060 RECORDS AND AUDIT.**

(a) The Licensee shall keep full and accurate records of the income and expenses received and disbursed in connection with the operation, conduct, promotion, suspension, and any other phase of the Cardroom enterprise and card games which are authorized by this Chapter. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police. Upon demand, the Chief of Police or any other authorized representative of the City shall have the right to examine and audit such records at any reasonable time and the license holder shall fully cooperate by making such records available.

(b) The records described in subdivision (a) of this Section shall be subject to disclosure only pursuant to any suspension, revocation, or other proceedings conducted under this Chapter, Chapter 4.02 or 4.10; any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Counsel. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

#### **4.20.065 TEMPORARY SUSPENSION.**

(a) The Chief of Police shall have the authority to temporarily suspend the Special Business License and to order the Licensee to immediately cease and desist any further operation of the Cardroom pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the License and one of the following occurs:

(1) The Licensee is operating the Card room in a manner which is a serious and immediate threat to the health or safety of the public;

(2) The Licensee is in violation of any of the provisions of this Chapter, Chapter 4.02, Chapter 4.06, Chapter 4.10, administrative regulations adopted pursuant to those Chapters, the Penal Code of the State of California, or any applicable law, rule or regulation; or,

(3) The Chief of Police makes a finding pursuant to Section 4.10.040(c) and that by reason of the crime or act the patrons of the Cardroom and the public are subject to the immediate risk of harm or criminal, deceitful or otherwise unethical practices.

#### **4.20.070 TEMPORARY SUSPENSION - NOTICE OF SUSPENSION AND APPEAL.**

(a) The temporary suspension shall be effective no sooner than 24 hours following the time and date of delivery of the notice thereof as provided in Section 4.10.145. The procedures for notice, for service of such notice, and for response by the Licensee prior to the commencement of the temporary suspension shall be as prescribed in Section 4.10.145.

(b) The appeal by the holder of a Special Business License of the revocation or suspension of its license pursuant to Section 4.10.135, whose license has been temporarily suspended, shall be as provided in Section 4.10.150.

**4.20.075 CONDUCTING A CARDROOM OR OPERATING AS A CARDROOM MANAGER OR DEALER AFTER TEMPORARY SUSPENSION.** It shall be unlawful for the holder of a Special Business License to operate a Cardroom after temporary suspension of the Special Business License pursuant to Sections 4.20.065 and 4.20.070, and it shall be unlawful for the holder of a Cardroom Employee Permit to operate as a cardroom manager or dealer in a Cardroom after temporary suspension pursuant to Section 4.20.045 and Section 4.10.145 and such violation shall be punishable as a misdemeanor.

#### **4.20.085 TABLE OPERATION FEE.**

(a) In addition to any application or renewal license fees imposed by the City pursuant to Chapters 4.06 and 4.10 upon the business of a Cardroom, such Cardroom shall be charged a quarterly table operation fee for each card table operated by the Licensee or to be operated by the applicant. The amount of this quarterly fee shall be as prescribed from time to time by resolution of the City Council and shall be based upon the cost to the City of enforcement and administration of this Chapter as provided by Section 4.02.060.

Exempted from this quarterly fee are additional tables used for promotional or tournament play except that pursuant to Section 4.20.100(a) the total number of regular tables and promotional or tournament tables in use shall not exceed seven (7) tables. Such promotional or tournament play and the use of such additional tables for such promotions and tournaments shall not exceed four days in any calendar month. The Chief of Police shall be notified seven days in advance of the promotional or tournament events and shall be notified of the duration and dates of such events.

(b) The quarterly table operation fee shall be paid quarterly by the applicant or Licensee to the City Manager. The first quarterly fee shall be due at the filing of the initial application for a Special Business License to conduct a Cardroom. Thereafter, the quarterly due dates for payment of the quarterly table operation fee shall be on January 1, April 1, June 1, and September 1; except, if any of these days falls on a Sunday or a City holiday, the quarterly due date for payment shall be the day after such Sunday or City holiday. The quarterly table operation fee shall be delinquent if not received or postmarked on or before the quarterly due date for payment as such quarterly due date is defined above. Prior to the beginning of each quarter, the Licensee shall notify the Chief of Police as to the number of tables to be operated for that new quarter and shall pay to the City Manager the table operation fee accordingly. In the event that the Licensee reduces the number of tables in operation during a quarter, the City shall not rebate any of the previously paid table operation fee for that quarter. In the event that the Licensee desires to increase the number of tables in operation during a quarter, the Licensee shall pay to the City Manager the appropriate table operation fee for that entire quarter regardless of when the additional table(s) are added.

(c) On the denial by the Chief of Police of an application or a renewal of a Special Business License to conduct a Cardroom the quarterly table operation fee paid by the applicant or Licensee at the time of filing the initial application or the renewal shall be rebated to the applicant or Licensee by the City Manager. The rebate shall not be made by the City Manager until the appeal period on the denial has elapsed or, if an appeal is filed, until a final decision upholding the denial has been made and the appeal has become final in the administrative or judicial process, whichever is applicable.

If the applicant's or Licensee's appeal of the denial is granted, the applicant or Licensee shall owe and pay the appropriate table operation fee to the City Manager prior to the issuance of the Special Business License.

#### **4.20.090 HOURS OF OPERATION.**

(a) Except as otherwise provided hereinafter in subdivision (b) of this section, the Licensee may operate a Cardroom twenty-four (24) hours a day and seven (7) days a week.

(b) Applicants for a Cardroom license to operate a Cardroom after the effective date of this ordinance, shall be required to secure a use permit as approved by the appropriate authority in accordance with the requirements of the Zoning Code of the City of Elk Grove. Operation of the Cardroom shall thereafter be in accordance with the hours set by the use permit.

#### **4.20.095 GAMES PERMITTED.**

(a) The only gambling permitted in a Cardroom in the City is Draw Poker, Lowball, Panguingue, Hold'em, and Seven Card Stud. The permitted games shall be played only in the following manner:

(1) "Draw Poker" and "Lowball" are played with a standard 52 card deck, with joker options. Each player is dealt five cards face down, prior to any betting. After receiving their cards, players determine whether to stop playing that hand (fold) or to place their bets. Following the first round of betting, players have the option of keeping their originally dealt cards or discarding non-desired cards and replacing them with a like number of cards drawn from the deck (the "draw"). Following the "draw," there is a second round of betting. The goal in "Draw Poker" is to garner the betting pool or common pot with the highest ranking poker hand. The goal in "Lowball" is to garner the betting pool or common pot with the lowest ranking poker hand. Acceptable variations of "Draw Poker" include the dealing of seven cards instead of five and the splitting of the pot between the player holding the highest ranking hand and the player holding the lowest ranking hand.

(2) "Panguingue" is played with 6 to 12 decks of cards with the eights, nines, tens, and jokers removed. Each player is dealt 10 cards and the purpose of the game is to meld sets and sequences of cards with certain cards having special values. Each player, in turn, draws either a card from the top of the remaining deck or from the top of an adjacent discard pile. This sequence of play continues until one player goes out with a total meld of eleven cards, including the card just drawn.

(3) "Hold'em" is played with one standard deck of cards. Each player is dealt a pre-determined number of "hole" cards face down. After the initial deal, there is a round of betting. Then three "community" cards are dealt face up in the center of the table. There is another round of betting. A fourth card is dealt face up in the center of the table. There is a third round of betting. Then a fifth card is dealt face up in the center of the table. There is a final round of betting. Players use any of the five "community" cards and a pre-determined minimum number of their "hole" cards to make the best five card poker hand. Acceptable variations of "Hold'em" include the low and high/low versions.

(4) "Seven Card Stud" is played with one standard deck of cards. Each player is dealt two cards face down and one card face up. There is a round of betting. Players are dealt one up card followed by a round of betting. Players are again dealt one up card followed by a third round of betting. Those players electing to remain in the game are dealt another up card followed by a fourth round of betting. Finally, the remaining players are dealt one down card for a total of seven cards-three down and four up. A fifth and final round of betting occurs. Each remaining player selects five of his seven cards to form the best five card hand. Acceptable variations of "Seven Card Stud" include the low and high/low versions.

(b) Written rules for each card game offered by a Cardroom pursuant to subdivision (a) of this Section shall be provided to any patron upon request. The Licensee shall file with the Chief of Police a written copy of the rules to each card game played in the Cardroom. Any deviation or change in the rules of any card game or any new card game from that on file with the Chief of Police shall require the approval of the Chief of Police prior to offering the card game to patrons. The Chief of Police shall review the new card game or any deviation or change in the rules and shall within ninety (90) days approve the game provided it conforms with the requirements of subdivision (a) of this Section and this Chapter; and, if the game is patented, the Licensee shall obtain written permission from the patent-owner prior to offering the game to patrons and prior to acquiring the approval of the Chief of Police to conduct the game.

(c) Except as provided in subdivision (a) of this Section, all other gaming (including, but not limited to, gaming played with cards, dice, or any device for money) not otherwise prohibited by the California Penal Code is prohibited. Nothing herein contained in this Chapter shall be construed to permit the licensing of any gambling declared illegal by the Penal Code.

#### **4.20.100 EQUIPMENT- SEPARATION.**

(a) No Cardroom shall maintain more than seven card tables. Chairs shall be provided for all card players. No more than twelve players shall be permitted to play at any time at any one table. Authorized games shall not utilize dominoes, tiles, dice, spinning wheels, electronic player-controlled machines or any other device other than the standard decks of playing cards traditionally used for playing such games, poker chips, and the optional dealer shoes.

(b) Each licensed Cardroom shall be maintained separate and apart from any other room or business operated in the building, but may be connected by a door.

**4.20.105 MINORS PROHIBITED.** No person under the age of twenty-one (21) years shall be permitted to frequent a Cardroom or to engage in any card game conducted therein.

**4.20.110 BETS LIMITED - NOTICE.** No player shall be permitted to wager or raise a wager more than Forty Dollars (\$40). Other than seated players actively participating in the game, no person shall be permitted to place a wager on any card

game, and a player shall only place a wager on his or her own card hand. Back-line betting or side-betting is prohibited. No player shall be permitted to bet with cash money, markers, or anything other than poker chips. Notice of all the provisions and restrictions provided in this Section shall be posted in a conspicuous place in the Cardroom.

**4.20.115 NOTICE OF TABLE RENT.** The Licensee shall post in a conspicuous place in the Cardroom notice of the amount of table rent to be charged for each table and notice of the total number of tables permitted to be in operation during the particular quarter.

**4.20.120 CREDIT PROHIBITED.** No Cardroom shall extend credit to any patron in order for the patron to participate in a card game.

**4.20.125 DISPLAY OF LICENSES AND PERMITS.** A copy of the Special Business License applicable to the Cardroom premises and the Employee Permit of any person employed as a manager or dealer shall be posted and exhibited while in force in some conspicuous place on the Cardroom premises.

**4.20.130 PROTECTION OF PATRONS.**

(a) Whenever it appears to the Chief of Police that security personnel are necessary to protect the health and safety of the public, the Chief of Police shall have the authority to require that a Cardroom provide uniformed security personnel on the premises and the parking lot used by the Cardroom for its patrons and employees. The Chief of Police shall determine the necessity for the requirement for security personnel based on the propensity for peace disturbances or criminal activity in the geographic area in which the Cardroom is located, based upon criminal activity or peace disturbances on Cardroom premises, based upon the particular time of day, or any other factors which affect the health and safety of the public and Cardroom patrons. The Chief of Police shall notify the Licensee, in writing, as to time periods, days of the week during which security is required, the number of security officers, and the location where such officers are to be provided (whether in the parking lot or on the premises). Upon receiving the written notice of security requirements, the Licensee shall conform to those requirements within forty-eight (48) hours of service thereof and shall maintain those requirements in full force and effect until such time as the Chief of Police deems they are no longer necessary.

(b) Between the hours of 2:00 a.m. and 6:00 a.m., the Licensee shall not knowingly permit the consumption of alcoholic beverages on the premises or in the parking lot which the Cardroom uses for its patrons.

(c) The Licensee shall not knowingly permit any obviously intoxicated person to participate in any card game.

(d) The Licensee shall not knowingly permit any illegal activity to occur on the premises or in the parking lot used by the Cardroom for its patrons or employees.

Illegal activity includes, but is not limited to, narcotics violations, bookmaking, illegal gambling, loansharking, receiving stolen property, or prostitution.

(e) The Licensee shall permit the Chief of Police, the City Manager, Fire Department or any other authorized public official to inspect the premises at any time during the hours of operation.

#### **4.20.135 EXCLUSION OR EJECTION FROM A CARDROOM.**

(a) Pursuant to Business and Professions Code Section 19845, the Licensee shall be permitted to exclude or eject from the Licensee's Cardroom, any individual who has engaged in or been convicted of bookmaking, sale of controlled substances, or illegal gambling activities, or whose presence in or about the Cardroom would be inimical to the interests of legitimate gaming. The Licensee shall not exclude or eject any person on the grounds of any protected class under state law including, but not limited to, race, color, creed or sex. Any individual who is excluded or ejected from any Cardroom and who refuses to leave the premises is subject to arrest for trespassing under Section 9.80.010.

(b) Pursuant to Section 19844 of the Business and Professions Code, any individual who is excluded or ejected from any Cardroom may apply to the Chief of Police for a hearing on the question of whether subdivision (a) of this Section is applicable. The hearing shall be held within 30 days after filing of the request for hearing with the Chief of Police or at such time as the applicant and Chief of Police may agree. If, upon the hearing, the Chief of Police determines that the rule of exclusion or ejection as provided in subdivision (a) of this Section does not or should not apply to the applicant, the Chief of Police shall notify all Cardrooms licensed by the City pursuant to this Chapter of such determination. If the Chief of Police determines that such exclusion or ejection was proper, the Chief of Police shall make an order to that effect which shall be a final administrative order. Such order shall be subject to review by any court of competent jurisdiction in accordance with law.

(c) Pursuant to Section 19846 of the Business and Professions Code, notwithstanding any other provision of law, no Cardroom which ejects or excludes any individual based upon the provisions of subdivision (a) of this Section shall be subject to civil liability if such ejection or exclusion was based upon a reasonable and good faith belief that subdivision (a) of this Section applied to the individual in question.

#### **4.20.140 CONFLICTS.**

(a) If any section, subdivision, clause, phrase or portion of this Chapter conflicts with any section, subdivision, clause, phrase or portion of an express provision of the City of Elk Grove Zoning Code, or conditions of a use permit of the Zoning Code, or other administrative approvals issued under the Zoning Code, then the City of Elk Grove Zoning Code, conditions of the use permit under the Zoning Code, or the administrative approvals issued under the Zoning Code shall prevail.

(b) If any section, subdivision, clause, phrase or portion of this Chapter conflicts with any section, subdivision, clause, phrase or portion of The Gaming Registration Act (Business and Professions Code commencing with Section 19800, et seq.) as required by the State of California, then The Gaming Registration Act shall prevail.

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

## **CHAPTER 4.21**

### **BINGO GAMES**

#### **Sections:**

- 4.21.000 Statement of Purpose.
- 4.21.005 Bingo Prohibition.
- 4.21.010 Definition of "Bingo."
- 4.21.015 Definition of "Bingo Game."
- 4.21.017 Definition of a "Bingo Session."
- 4.21.020 Definition of "Security."
- 4.21.025 Definition of "Member."
- 4.21.027 Prohibition of Member Participation in Staffing Bingo Games.
- 4.21.030 Chief of Police.
- 4.21.035 Organizations Eligible For License.
- 4.21.040 Contents of the Application.
- 4.21.045 Bingo Manager.
- 4.21.050 License Fee.
- 4.21.055 Issuance of License.
- 4.21.060 Posting of License.
- 4.21.065 Profits - 23701(d) Organizations.
- 4.21.070 Proceeds - Other Organizations.
- 4.21.075 Records - Compliance Examination and Inspection.
- 4.21.080 Retention of Records.
- 4.21.083 Limitation of Involvement in Bingo.
- 4.21.085 Prohibition of Financial Interest in Bingo.
- 4.21.090 Exclusive Operation By Licensee.
- 4.21.095 Staff Member Identification.
- 4.21.100 Attendance Limited to Occupancy Capacity.
- 4.21.105 Licensing of Premises.
- 4.21.110 Operating Rules.
- 4.21.115 Location of Games.
- 4.21.120 Limitation of Bingo Hours and Sessions.
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- 4.21.130 Temporary Suspension of Licensee Pending Opportunity for Hearing.
- 4.21.135 Notice of Temporary Suspension and Appeal - Appeal of Underlying Suspension or Revocation.
- 4.21.140 Conducting Bingo Games After Temporary Suspension or Suspension.
- 4.21.150 Receiving Bingo Proceeds During Suspension or Revocation
- 4.21.155 Purchases from Bingo Suppliers.
- 4.21.160 Injunction.
- 4.21.165 Regulation of Games and Equipment.
- 4.21.167 Computerized Equipment.
- 4.21.170 False or Misleading Advertising.
- 4.21.175 Receipt of Profit by a Person and Penalty for Violation of This Chapter.
- 4.21.180 Discontinuance of Bingo Games.

**4.21.000 STATEMENT OF PURPOSE.** Past enforcement experience in other jurisdictions has demonstrated the following:

(a) City time, effort and expense to regulate and monitor bingo are increasing significantly. State and City laws demand a technical accounting of proceeds. As volume increases, the City's ability to audit, and enforce state and local law is compromised. Although many operators are highly efficient and reputable, others are inefficient and creative in avoiding the letter of the law.

(b) If all licensees were efficient and reputable, regulatory supervision would be almost perfunctory. Such is the case with many existing licensees. Others, however, require exhaustive monitoring and enforcement. Integrity is a difficult commodity to ascertain in advance of licensure. Thorough screening of applicants prior to licensure is desirable. Pursuant to Sections 4.10.035 and 4.10.040, the Chief of Police conducts a thorough investigation into the background of applicants, and their organizations, in order to assure that licensure would not set the stage for fraud and deceit. Such investigation is particularly difficult when applicants have no local track record.

(c) Both newly chartered and out of the jurisdiction charities have proven to be problematic. Several have folded within months of licensure due to financial collapse. While some financial failure may be innocently explained, others are clearly bankrupted by the misappropriation of charitable proceeds. Whether innocent or criminal causes underlie these failures, short-lived charities monopolize an inordinate amount of City expense, which never ripens to benefit any charity.

A one year operational prerequisite would allow City energies to be more efficiently allocated. Pre-license screening would be supplemented with the objective track record of each applicant. The number of unstable or pretextual organizations would be reduced.

Accordingly, it is the finding of the City Council that a twelve month operational prerequisite would eliminate many of the above problems, without undue burden to stable and reputable charities. The purposes of this Chapter are to protect the health, safety and welfare of the citizens within the City, to assure that City expenditure is efficiently allocated, and to safeguard legitimate charitable purposes.

The purpose for allowing an eligible organization to conduct bingo games in the City is to provide that organization an additional source of revenue to further the purpose for which that organization was created. A licensee organization conducting bingo games without generating a profit from those games does not fulfill the purpose for which bingo is permitted.

Organizations with a proven track record demonstrating that the game can produce a certain level of profits for charitable purposes, as opposed to proceeds going largely to overhead expenses of the game, should be allowed to conduct further games on various days of the week.

The purpose of requiring a separate license for separate functions of bingo operations, such as a bingo parlor license, a bingo supplier license, and a license for the actual conduct of the games, is to ensure that each function is conducted by a separate and independent person or entity. Such regulation aids in assuring the integrity of the game and in minimizing the problems of undue influence being used against an organization that is licensed to conduct bingo. Recent history has shown that nonprofit organizations are not beyond exercising undue influence against smaller organizations and channeling some of the monies meant for charitable purposes into the private accounts of dishonest members. Further, requiring separation of functions lessens the opportunity for fraud, collusion, and self-dealing.

The purpose of requiring those organizations licensed to conduct bingo games to pay amounts owed to the bingo parlor before the next day of bingo operation and to pay the bingo supplier within thirty days of the invoice date or ten days of the statement date, whichever occurs later, is a direct effort to preclude the parlor or the supplier from acquiring a financial interest in the games. The existence of a debtor-creditor relationship is inimical to the integrity of the bingo games. In the realm of gaming, and bingo is gaming, debts owed to the parlor or supplier by the organization licensed to conduct bingo can be used by the parlor or supplier to exert undue influence on the conduct of the games, and to increase the overhead expenses charged to these organizations. Organizations indebted to the parlor or supplier are thus placed in a position of sharing profits with the parlor or supplier to the detriment of the charitable purpose.

**4.21.005 BINGO PROHIBITION.** No person shall operate a bingo game in the City without possessing a valid, unrevoked and unexpired Special Business License issued pursuant to the provisions of this Chapter and City Regulations adopted pursuant to this Chapter, and except in conformance with Section 326.5 of the California Penal Code, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.21.010 DEFINITION OF "BINGO."** As used in this Chapter, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. The game of bingo shall include cards having numbers or symbols that are concealed and preprinted in a manner providing for the distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend as follows: "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." Although "cards" colloquially may refer to a cardboard card, it is permissible for a "card" to be a sheet of paper with multiple card faces preprinted on it and is included herein within the definition of "card."

The game of bingo includes the use of an electronic bingo aid in conjunction with bingo cards to assist a bingo player participating in bingo games to identify a winning card, when used under the conditions set forth in Section 4.21.167(b). The term "electronic bingo aid" is defined as any mechanical, electronic, or computerized aid,

(including related hardware and software), that is interfaced with or connected to equipment that allows a player to store, display, and mark bingo card faces programmed into the device. This definition of electronic bingo aid includes the individual hand held or table top unit or component used by a player, the related equipment and system with which the hand held or table top unit is interfaced with, and all other related systems, equipment, software, hardware, and circuitry, that together comprise the electronic bingo aid.

Definitions, powers, conditions and restrictions set forth in this Chapter are intended to comply with and implement applicable California Constitution and Penal Code provisions. To the extent that any provision of this Chapter is substantially the same as that contained in Section 326.5 of the Penal Code, and violation thereof is a violation of that Penal Code section and punishable thereunder, such provision of this Chapter is explanatory only.

#### **4.21.015 DEFINITION OF “BINGO GAME.”**

(a) The total value of prizes awarded during the conduct of any bingo game shall not exceed \$250 in cash or kind, or both, for each separate game which is held. A bingo game starts when the first ball or number symbol is called and ends when the first ball and all succeeding balls or number symbols are returned to the cage or blower. Each progressive play in a series which continues to utilize and count any number symbols called and utilized in a previous part of this progression shall be deemed part of the same bingo game, even if a separate prize is awarded for each part of the progression. The cumulative prizes awarded for a “progressive” or other similar bingo game shall not exceed \$250 in cash or kind or both.

(b) It shall be unlawful for any person to establish, provide or authorize the establishment or provision of a prize or prizes in violation of the provisions of this Section, and a violation of the provisions of this Section shall constitute grounds for revocation of a Special Business License authorizing the operation of bingo games issued pursuant to the provisions of this Chapter and Chapter 4.10.

**4.21.017 DEFINITION OF A “BINGO SESSION.”** A bingo session shall not exceed six (6) hours in duration. A session begins when the first game starts.

**4.21.020 DEFINITION OF “SECURITY.”** Security shall mean the person(s) who protects bingo players, bingo licensees, and volunteers from exposure to danger. The security person(s) shall be prohibited from the sale or the distribution of bingo materials or otherwise participating in non-security activities before, during, and after the bingo session. However, this provision does not preclude security from accompanying the licensee with the session's net proceeds to a night depository immediately after the session.

#### **4.21.025 DEFINITION OF “MEMBER.”**

(a) Each licensee shall have written policies incorporated in its constitution, articles, by-laws, or other regulations setting forth the manner in which a person may

become a bona fide member of the organization. Absent any such written policies, it shall be presumed that the organization has no members who may operate or staff bingo games within the meaning of Section 326.5 of the Penal Code.

(b) The licensee shall keep a full and accurate list of its members. The Chief of Police or any other authorized representative of the City is entitled to examine and investigate such list at any reasonable time, and the licensee shall cooperate in making such records available upon demand of the Chief of Police.

**4.21.027 PROHIBITION OF MEMBER PARTICIPATION IN STAFFING BINGO GAMES.** A volunteer or member shall not participate in the staffing of bingo games if the Chief of Police makes a finding that such volunteer or member:

(a) Has violated any applicable prohibition or requirement of this Chapter or Title or applicable administrative regulations adopted pursuant to this Chapter or Title; or has been convicted of a crime, and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or,

(b) Has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or her or another, or substantially injure another;

(c) And, that by reason of the violation, crime, or act, there is a substantial risk the member may perform his or her duties of staffing the bingo game in an unlawful manner or in a manner which subjects patrons of the bingo game to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, a member shall not be prohibited from staffing a bingo game solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Section 4852.05.

**4.21.030 CHIEF OF POLICE.** The Chief of Police is charged with the responsibility of administering the regulations imposed by this Chapter and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing bingo games, promulgate and enforce administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

**4.21.035 ORGANIZATIONS ELIGIBLE FOR LICENSE.** Organizations which are exempted from the payment of the bank and corporation tax by Section 23701(a), 23701(b), 2370(d), 23701(e), 23701(f), 23701(g), and 237011 of the Revenue and Taxation Code, mobile home park associations and senior citizens organizations shall be eligible to apply for and receive a Special Business License to conduct bingo games in the City pursuant to the provisions of the California Constitution, Section 326.5 of the Penal Code, and the provisions of this Chapter only if the proceeds of such games are

used for charitable purposes and only if the applicant has owned or leased property or occupied donated property within the City that has been used by the applicant for the performance of the charitable purposes for which the applicant is organized for at least twelve (12) consecutive months immediately preceding the filing of such application. The required consecutive twelve month period need not be as an organization that is exempt from the payment of bank and corporation tax. With the foregoing exceptions, no other person shall be qualified or eligible to receive such a license.

**4.21.040 CONTENTS OF THE APPLICATION.** In addition to the matters prescribed by Section 4.10.030, an application for a Special Business License to conduct bingo games shall contain the following:

(a) The names and signatures of at least two officers, including the presiding officer of the organization who will be primarily responsible for conducting bingo games. In the event of any change in persons holding such offices, the licensee shall within ten (10) days of change notify the Chief of Police, in writing, of such change, specifying the name, address, date of birth, and telephone number of such officer(s);

(b) A description of the property on which bingo games will be conducted, including the street number, whether owned or leased, applicant's current use of the premises, and the occupancy capacity of the property;

(c) A copy of the deed, lease or other written instrument by which the applicant will acquire entitlement to occupy the premises where the bingo games will be conducted, and a description of all uses which the applicant will make of the premises;

(d) A statement of the specific charitable purpose(s) for which the applicant is organized;

(e) Proposed day(s) of the week and hours for conduct of bingo games;

(f) Such proof as may be required by the Chief of Police that the applicant is eligible and qualified to receive a Special Business License under Section 4.21.035. If eligibility is based on an exemption from payment of the bank and corporation tax, the application shall be accompanied by a certificate of determination of exemption under the applicable Section of the Revenue and Taxation Code, or a letter of good standing from the Exemption Division of the Franchise Tax Board showing such exemption;

(g) A statement that the applicant agrees to conduct bingo games in strict accordance with the provisions of Section 326.5 of the Penal Code, this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation and agrees that the license may be revoked by the Chief of Police upon violation of any such provisions; and

(h) The application shall be signed by the applicant under penalty of perjury.

**4.21.045 BINGO MANAGER.** Concurrently, with the filing of an application, each applicant shall file a statement specifying the name, address, e-mail address, if any, telephone number and birth date of one or more persons who shall manage, supervise and be responsible for the conduct of all bingo games by the applicant. Such person(s) shall be known as the bingo manager(s), shall sign the statement accepting such responsibility and shall be present on the premises at all times during which bingo games are conducted. In the event any other person is designated as the bingo manager by any licensee, the licensee shall within ten (10) days of such designation file a new statement containing all of the data specified in this Section.

**4.21.050 LICENSE FEE.** Each holder of a Special Business License to conduct bingo games shall, pursuant to the authority conferred by Section 326.5 of the California Penal Code, pay to the Chief of Police a fee prescribed by City Council paid upon application for a Special Business License or the application for renewal thereof. A bingo monitoring fee, prescribed by a Resolution of the City Council, for law enforcement and public safety costs incurred by the City that are directly related to bingo activities shall be imposed and shall be collected monthly by the City and such additional fee shall not exceed the actual costs incurred in providing the service.

**4.21.055 ISSUANCE OF LICENSE.** The Chief of Police shall issue a Special Business License for bingo games unless one or more of the findings prescribed by Section 4.10.040 are made, or the Chief of Police makes one or more of the following findings in writing:

- (a) The bingo games will be a fraud on the public;
- (b) The bingo games will be conducted at a location or in a manner or the proceeds thereof will be accounted for or expended in a manner which violates, or the applicant has violated, Section 326.5 of the Penal Code, this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;
- (c) The identity of the applicant or proposed method or methods of conducting bingo games are contrary to the provisions of Section 326.5 of the California Penal Code, this Chapter, City Regulations adopted under this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;
- (d) The applicant will be maintaining an inadequate system of record keeping and accounting relating to the conduct of the games and disposition of the proceeds therefrom;
- (e) The application does not conform to the requirements, terms, and conditions of this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,
- (f) The applicant holds a current license under Chapters 4.22 or 4.23.

**4.21.060 POSTING OF LICENSE.** The Special Business License shall be conspicuously posted at the location of the bingo games.

**4.21.065 PROFITS - 23701(d) ORGANIZATIONS.** With respect to organizations exempt from payment of the bank and corporation tax by Section 23701(d) of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account, and shall not be commingled with any other fund or account. Such profits shall be expended only for the charitable purposes stated in the application for bingo license or in the Articles of Incorporation of such organization. These profits shall not be used for the private gain of any individual.

**4.21.070 PROCEEDS -OTHER ORGANIZATIONS.**

(a) With respect to organizations licensed under this Chapter which are not exempt from payment of the bank and corporation tax by Section 23701(d) of the Revenue and Taxation Code, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. These proceeds shall not be used for the private gain of any individual. The proceeds shall be expended only for the charitable purposes stated in the application for bingo license or in the Articles of Incorporation of such organization, except as follows:

- (1) Such proceeds may be used for prizes;
- (2) A portion of such proceeds, not to exceed twenty percent (20%) of the proceeds before the deduction for prizes, or two thousand dollars (\$2,000) per month, whichever is less, may be used for rental of property, overhead, the purchase of bingo equipment, administrative expenses, security equipment and security personnel; and,
- (3) Such proceeds may be used to pay license fees.

(b) A licensee shall be deemed to violate Section 326.5(k)(2) of the California Penal Code and Subdivision (a)(2) of this Section if expenses during any particular month exceed two thousand dollars (\$2,000). If expenses do not exceed two thousand dollars (\$2,000) per month, the twenty percent (20%) limitation shall be applied annually at the conclusion of each twelve (12) months of operation.

**4.21.075 RECORDS - COMPLIANCE EXAMINATION AND INSPECTION.**

(a) The licensee shall keep full and accurate records of the income received and expenses disbursed in connection with its operation, conduct, promotion, supervision, and any other phase of bingo games. Such records are to include but are not limited to: ledgers and accounts relating to inventory, proceeds, expenditures, and the distribution of all profits derived from bingo games, and any other records as are necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or

regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police; and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

(b) The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy, bingo licensee records as described in subdivision (a) of this Section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

(c) Compliance examinations shall be conducted by the Chief of Police of bingo licensee records described in subdivision (a) of this Section not less frequently than annually, for each twelve (12) months of each licensee's operation.

(d) If the organizational structure of the licensee is such that an umbrella organization disburses bingo proceeds to member organizations, the records described in subdivision (a) of this Section which are subject to examination, review, audit, inspection, or photocopy shall include both the bingo records of the umbrella organization and its member organizations. For purposes of this Section, an umbrella organization is defined as a nonprofit, income tax exempt, charitable organization which is organized for the purpose of providing financial support to other nonprofit, income tax exempt, charitable organizations.

**4.21.080 RETENTION OF RECORDS.** The licensee shall keep and preserve the records described in Section 4.21.075(a) for the following period of time, whichever occurs later:

(a) Three (3) years;

(b) Until completion of a compliance examination; or

(c) Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.21.083 LIMITATION OF INVOLVEMENT IN BINGO.** The bingo licensee shall not allow another person, sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture or other individual or entity to organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of its bingo game or the promotion thereof.

**4.21.085 PROHIBITION OF FINANCIAL INTEREST IN BINGO.**

(a) No individual, corporation, partnership, or other entity except the bingo licensee shall hold a financial interest in the conduct of any bingo game. A financial

interest includes, but is not limited to, situations in which a bingo licensee maintains accounts payable to a parlor licensee for parlor rents and other costs beyond the next day of bingo operation; or, maintains accounts payable to a bingo supplier beyond thirty (30) days of the invoice date or ten (10) days of the statement date, whichever occurs later. For purposes of this subdivision of this Section "invoice date" is defined as the date of delivery of such supplies and "statement date" is defined as the date within thirty (30) days of the delivery of supplies.

(b) A licensee that has not paid its supplier account(s) or parlor account(s) within the period provided in subdivision (a) of this Section shall not purchase additional supplies from any supplier or rent or incur other costs from any parlor until all accounts are brought into compliance with the required payment periods provided in subdivision (a) of this Section.

**4.21.090 EXCLUSIVE OPERATION BY LICENSEE.** Only the bingo licensee shall operate bingo games or participate in the promotion, supervision, or any other phase of the games. Bingo games shall be operated and staffed solely by members of the licensee; except that the licensee may retain or employ an off-duty law enforcement officer or security personnel at such bingo games. Such members shall not receive a profit, wage, salary, or compensation from bingo proceeds or bingo profits for services rendered from any bingo game. The term "compensation" as used in this Section includes, but is not limited to, cash, bingo paper, pull tabs, coupons, redeemable vouchers, discounts, or payment in kind. Neither the provisions of Section 326.5(b) & (h) of the Penal Code nor those of this Section shall be deemed violated if a bingo licensee reimburses members staffing the games for the actual and necessary costs which they incur in providing services associated with the conduct of the games.

**4.21.095 STAFF MEMBER IDENTIFICATION.** Any person participating in the operation, conduct or staffing of any bingo game shall wear on his or her outside clothing, in plain view, an identification insignia or badge measuring not less than 2 1/2 inches by 3 1/2 inches in size and specifying the name and title of such person and the name of the licensee organization.

**4.21.100 ATTENDANCE LIMITED TO OCCUPANCY CAPACITY.**

(a) Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which the game is conducted as determined by the fire department or district having jurisdiction in accordance with applicable laws and regulations.

(b) It is unlawful for a licensee to knowingly authorize or permit, and unlawful for any person to, reserve seats or space where bingo games are conducted.

**4.21.105 LICENSING OF PREMISES.** The license issued under this Chapter shall authorize the holder thereof to conduct bingo games only on such property the address of which is stated in the application. In the event the described property ceases to be used for the conduct of bingo games by the licensee, the license shall

have no further force or effect. The bingo licensee shall file a new application, and such application shall be processed pursuant to the provisions of this Chapter, in order for the eligible organization to conduct bingo games at a new location or address.

**4.21.110 OPERATING RULES.** Each licensee shall formulate, publish and post in a conspicuous place at the location of the bingo games written rules by which the bingo games are conducted and which recite the prohibitions described below. It is unlawful for a licensee to knowingly authorize, permit, and unlawful for any person to do any of the following:

- (a) Provide or award total prizes for each separate bingo game which exceeds two hundred fifty dollars (\$250) in cash or kind, or both;
- (b) Limit attendance or participation in such games to members of the licensee or otherwise deny attendance or participation to any member of the general public who complies with the rules of the game and conducts himself or herself in an orderly and law abiding manner;
- (c) Participate in a bingo game, if the participant is under the age of eighteen (18) years old;
- (d) Participate in a bingo game where alcoholic beverages are consumed in the room where the bingo games are conducted or if the participant is under the influence of alcohol;
- (e) Participate in bingo games, unless personally present at the location of the games at the time the games are being conducted.

In this Section "participate" is defined as including, but not limited to, the handling of bingo supplies or receipts during any bingo session.

**4.21.115 LOCATION OF GAMES.** A licensee shall conduct bingo games only on property owned or leased by it, or property whose use is donated to the licensee, and which property is used by the licensee for performance of the charitable purposes for which the organization is organized. Nothing in this Section shall be construed to require that the property be owned or leased exclusively by or donated exclusively to such organization. The requirements of the provisions of Section 326.5(f) of the Penal Code and those of this Section shall be deemed satisfied if the licensee conducts regular business meetings or other activities consistent with its charitable purposes, in addition to bingo games, upon the property which it owns, leases, or uses as a donee. A licensee need not use the property exclusively for activities which fulfill its charitable purposes or objectives.

**4.21.120 LIMITATION OF BINGO HOURS AND SESSIONS.**

- (a) No bingo licensee shall conduct bingo games between the hours of 2:00 a.m. and 10:00 a.m. of the same day.

(b) Except as provided in this subdivision, no bingo licensee shall conduct more than one bingo session per week. To conduct more than one bingo session per week a licensee shall secure the permission of the Chief of Police. The licensee shall have a valid, unrevoked, and unexpired license to conduct such bingo games and shall submit a written application with information therein as required by the Chief of Police. The Chief of Police shall authorize the bingo licensee to conduct more than one session per week unless the Chief of Police makes one or more of the following findings in writing:

- (1) The bingo licensee is not an organization exempt from the payment of the bank and corporation tax as provided by Sections 23701(a), 23701(b), 238701(d), 23701(e), 23701(f), 23701(g), and 237011 of the Revenue and Taxation Code, or is not a mobile home park association, or a senior citizens organization; and, for at least two continuous years immediately preceding filing of the application for additional sessions has not existed and operated within the City. The two year consecutive period of existence and operation provided for herein, need not include exemption from payment of the bank and corporation tax;
- (2) The bingo licensee has failed, during the immediately preceding two (2) year period, to raise at least twenty-five thousand dollars (\$25,000) each year through public and private solicitations (including publicly funded grants and recreational and other fund raising activities, but exclusive of any revenue from the sponsorship of bingo games), and has failed to expend at least sixteen thousand dollars (\$16,000) during each of the preceding two (2) years on charitable causes; or, the bingo licensee has not conducted bingo games in the City for the preceding 12 months;
- (3) The bingo licensee has failed to equal or exceed, and has failed to maintain for at least 6 consecutive months, at least 75% of the average percentage Net Profit Available from bingo in the City as determined and defined by the Chief of Police from, but not limited to, bingo records of the licensee community during the previous City fiscal year;
- (4) The bingo licensee does not have enough volunteers to staff the extra sessions;
- (5) The bingo licensee's accounting records have never undergone a compliance examination by the Chief of Police or there exist uncorrected deficiencies from a compliance examination conducted by the Chief of Police;
- (6) The additional sessions will be detrimental to public safety, health or welfare; or

- (7) The licensee has failed to comply with other provisions of this Chapter, the City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

(c) The Chief of Police shall notify the bingo licensee in writing of the denial of a licensee's application to conduct more than one bingo session per week and shall in such notice state the reason(s) for the denial and that the licensee has fifteen (15) calendar days from the date of service of such written notice of denial to file an appeal of such denial. Upon timely request by the licensee, the appeal hearing process and related procedures shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.130.

#### **4.21.125 LOCATION RESTRICTION.**

(a) Notwithstanding the permission contained in a Special Business License pursuant to Section 4.21.105, and notwithstanding any provision of this Chapter or Chapter 4.10 to the contrary, it shall be unlawful for any person who holds a Special Business License authorizing the operation of bingo games to conduct bingo games at a place which is or would by virtue of the conduct of such games be or become a bingo parlor, as defined by Section 4.22.010, unless the bingo parlor has been authorized by a valid unexpired, unrevoked Special Business License issued pursuant to the provisions of Sections 4.22.030 and Chapter 4.22.

(b) Notwithstanding any other provision of this Chapter or Chapter 4.10 to the contrary, violation of the provisions of subdivision (a) of this Section shall constitute grounds for revocation of a Special Business License authorizing the operation of bingo games issued pursuant to the provisions of this Chapter and Chapter 4.10.

**4.21.130 TEMPORARY SUSPENSION OF LICENSE PENDING OPPORTUNITY FOR HEARING.** The Chief of Police shall have the authority to temporarily suspend the bingo license by ordering in writing that the licensee immediately cease and desist any further operations of any bingo game pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

(a) The bingo licensee is conducting a bingo game in violation of any of the provisions of this Chapter, Penal Code Section 326.5, the City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) The bingo licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any

reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The bingo licensee has not kept records as required by the Chief of Police, this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove or federal law, administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulations.

**4.21.135 NOTICE OF TEMPORARY SUSPENSION AND APPEAL - APPEAL OF UNDERLYING SUSPENSION OR REVOCATION.**

(a) The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in Section 4.10.145.

(b) Upon timely request by the licensee, the appeal hearing process and related procedures of a revocation or suspension of its license pursuant to Section 4.10.135 shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.155.

**4.21.140 CONDUCTING BINGO GAMES AFTER TEMPORARY SUSPENSION OR REVOCATION.** Any person who continues to conduct a bingo game after temporary suspension pursuant to Section 4.21.130, or suspension pursuant to Section 4.10.135, is guilty of a misdemeanor.

**4.21.150 RECEIVING BINGO PROCEEDS DURING SUSPENSION OR REVOCATION.** Notwithstanding the provisions of Section 4.10.145, an organization whose license has been temporarily suspended, suspended, or revoked cannot receive bingo proceeds from any source during the period of temporary suspension, suspension, or revocation. A violation of this Section shall result in a permanent license revocation to the organization involved.

**4.21.155 PURCHASES FROM BINGO SUPPLIERS.** It is prohibited for bingo licensees to use bingo paper and pull tabs purchased from suppliers that are not licensed to conduct a bingo supply business by the City pursuant to Chapter 4.23.

**4.21.160 INJUNCTION.** The City may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the Penal Code, of this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.21.165 REGULATION OF GAMES AND EQUIPMENT.** The Chief of Police may prescribe such regulations with respect to the conduct of the games and the equipment used by the licensee as deemed necessary to ensure the fairness and integrity of the games, and the accountability of the funds collected. Violation of such regulations shall constitute grounds for revocation of the Special Business License, as set forth in this Chapter and Chapter 4.10.

**4.21.167 COMPUTERIZED EQUIPMENT.**

(a) Except as provided in Subsection (b) of this Section, it shall be unlawful for organizations licensed under this Chapter to:

- (1) Permit the use of machines, devices, or equipment that is computerized, electronic, or mechanical, in a bingo game;
- (2) Operate, or allow to be played, any form of bingo in which the numbers to be called are selected by electronic means rather than by random selection of numbered balls from a pool of game balls.

(b) Electronic Bingo Aid.

(1) Purpose. The purpose of this Subsection (b) is not to permit the use of all electronic bingo aids in bingo. The purpose is to permit the bingo licensee to use an electronic bingo aid on the conditions and specifications set forth in this Subsection (b). It is contemplated that an electronic bingo aid will include individual units or components to be used by players and that these units or components will be activated by the organization licensed to conduct bingo for a player's operation. These individual player units or components are hand held or desktop devices used in conjunction with bingo cards. It is contemplated that an electronic bingo aid will permit a bingo player to input into an activated individual player unit or component randomly selected numbers called by the bingo licensee in order to match such numbers against programmed information to identify a winning card. The programmed information reflects the exact configurations of the bingo cards sold to and played by the player. The electronic bingo aid is not to alter the bingo cards. The electronic bingo aid is to be used in conjunction with bingo cards in order to assist the player identify a winning card. The electronic bingo aid is not to be used as an electronic or computerized game of bingo, or as a substitute for required bingo cards, or as a substitute for any other requirements of bingo as provided in this Chapter or Penal Code section 326.5.

(2) An electronic bingo aid may be used by bingo players in conjunction with bingo cards to assist in the identification of a winning card if the bingo licensee complies with the conditions set forth in this Section, and if the organization complies with all other required provisions of Chapter 4.21 herein and Penal Code section 326.5. Violation of any or all of such provisions and conditions shall constitute grounds for revocation, suspension, or denial of the Special Business License to conduct bingo games, pursuant to the procedures set forth in this Chapter and Chapters 4.02 and 4.10.

(3) An electronic bingo aid is permitted only as a means of assisting a player to mark, otherwise register, or record, numbers selected at random in order to identify a winning bingo card. An electronic bingo aid shall not replace or alter the bingo cards. An electronic bingo aid shall not interfere or interact with the element of chance in the game. The player shall have in his or her possession at all times during the game, bingo cards with configurations that were sold to the player by the bingo licensee for use with the electronic bingo aid that correspond exactly to such bingo card configurations programmed into the electronic bingo aid. The bingo cards and the individual unit or component of the electronic bingo aid used by the player shall be kept separate and apart and in public view on the tabletop, during the game.

(4) Players shall manually input numbers called by the bingo licensee into the individual player operated units or components of the electronic bingo aid; and, automatic daubing shall not be permitted. The portion of the electronic bingo aid system in the immediate physical possession and operation of the bingo licensee, and the individual player operated units or components of the electronic bingo aid used by a player, shall be able to identify a winning card during the game. Verification by the bingo licensee of a winning combination shall be made based on the bingo card and not solely on the electronic bingo aid. Players shall notify the game operator or caller of a winning pattern of bingo.

(5) The electronic bingo aid, including the individual player operated units or components of the electronic bingo aid, shall be enabled for play solely by the bingo licensee; and, only on the premises where the games are conducted. The electronic bingo aid shall be programmed either by the bingo licensee, or by a bingo supplier licensed pursuant to Chapter 4.23 at the direction and as specified by the bingo licensee. A copy of any change in the program of a programmed electronic bingo aid shall be submitted to the Chief of Police. The same card configurations shall be programmed into the electronic bingo aid as are sold to the player. All individual player operated units or components of the electronic bingo aid shall be rented or otherwise provided to a player solely by the bingo licensee.

(6) Prior to giving physical possession of the individual player operated unit or component of the electronic bingo aid to the player, the bingo licensee shall receive payment from the player for the number of games requested by the player that are programmed into the electronic bingo aid. The bingo licensee shall at the time of payment issue to the player: an individual player operated unit or component of the electronic bingo aid; the bingo cards sold to the player corresponding exactly to the bingo number pattern for each card face thereon that is programmed into the electronic bingo aid; and a receipt indicating, the amount paid, the number of faces and games sold to the player and activated in the electronic bingo aid, and the serial number of each card face sold to the player and activated by game.

(7) The Chief of Police shall by administrative regulation determine the maximum number of bingo card faces that may be programmed into a player operated unit or component of an electronic bingo aid during a bingo game, but such number shall in no event exceed 72 bingo card faces.

(8) Only one player operated unit or component of an electronic bingo aid may be used by a bingo player during a bingo game.

(9) A particular type of electronic bingo aid shall not be used by a bingo licensee until the bingo licensee has demonstrated the electronic bingo aid to the Chief of Police, and such electronic bingo aid has been inspected and approved by the Chief of Police.

(10) Each player electing to use the electronic bingo aid shall have an equal opportunity to do so. The bingo licensee shall distribute each player operated unit or component of the electronic bingo aid for play on a random basis; first come, first served. No particular player operated unit or component of the electronic bingo aid shall be reserved for any player. The bingo player is prohibited from selecting the player operated unit or component of the electronic bingo aid.

(11) Only a bingo supplier licensed by Chapter 4.23 may remove the electronic bingo aid from the premises where the games are conducted. Removal may be for repair or for use by another organization licensed by this Chapter to conduct bingo. A record shall be maintained by the bingo licensee of: all electronic bingo aids removed from such premises; the name of the person, and business if any, who has taken the device from such premises; the site address where taken; the return date if any; and, disposition of the electronic bingo aid.

(12) Accounting records pertaining to electronic bingo aids, including the internal accounting system of the electronic bingo aid, shall be retained as prescribed by Section 4.21.080. The electronic bingo aid system must have a dial-up capability so the Chief of Police may remotely monitor the operation and the internal accounting system of the electronic bingo aid at any time. The electronic bingo aid shall contain a point of sale accounting system that allows it to track all financial activity for the bingo session. The electronic bingo aid shall at a minimum contain and keep an accounting system that records the serial number of each bingo card or bingo face sold, the price of each card sold, and the total amount of the electronic bingo aid proceeds from each session. The accounting information must be secure and shall not be accessible for alteration. The electronic bingo aid's capabilities and information must not be lost through power failure or other disruption during the session.

(13) The bingo licensee shall not conduct bingo games where a player is required to use an electronic bingo aid. During all games, the use of an electronic bingo aid shall be at the option of the bingo player. The bingo licensee shall permit all players to play in all bingo games without the use of an electronic bingo aid.

(14) The bingo licensee shall require a player electing to use an electronic bingo aid to purchase no less than the licensee's minimum number buy-in of bingo cards for use without an electronic bingo aid.

(15) The portion of the electronic bingo aid system in the immediate physical possession and operation of the bingo licensee shall have the capability during

the game to print and may print the configurations of the bingo cards that are programmed into the electronic bingo aid. The player operated units or components of the electronic bingo aid shall not have such capability and shall not print configurations of the bingo cards.

(16) The electronic bingo aid including related circuitry shall be sealed and secured in order to prevent unauthorized removal, additions, changes, or other alterations to the data within such electronic bingo aid.

(17) The Chief of Police may, upon demand, examine and inspect the electronic bingo aid, or any player operated unit or component of the electronic bingo aid, during the conduct of the games if the Chief of Police detects or discovers any problem with such equipment that affects the integrity of the bingo game or such equipment. The bingo licensee shall immediately cooperate and comply upon the Chief of Police's demand for such examination and inspection. Such examination and inspection shall include immediate access to the electronic bingo aid, player operated units or components of the electronic bingo aid, and inspection of all associated parts and systems, as applicable; and, may involve the immediate removal of the electronic bingo aid, player operated units or components of the electronic bingo aid, or related system or parts, as applicable, from the game premises for further testing.

(18) If, at any time, the Chief of Police detects or discovers any malfunction with an electronic bingo aid, or any player operated unit or component of the electronic bingo aid, that affects the integrity of such equipment or the bingo game, the Chief of Police may order the bingo licensee to cease the use of the electronic bingo aid or a player operated unit or component of the electronic bingo aid, as applicable, immediately. The bingo licensee shall comply immediately with such Chief of Police's order.

(19) If the bingo licensee detects or discovers any malfunction or any problem or occurrence with the electronic bingo aid, or the player operated unit or component of the electronic bingo aid, that affects the security or the integrity of the bingo game or such equipment, the bingo licensee shall cease immediately the use of the electronic bingo aid or affected player operated unit or component of the electronic bingo aid, as applicable.

**4.21.170 FALSE OR MISLEADING ADVERTISING.** It shall be unlawful for any licensee to make or disseminate or cause to be made or disseminated before the public in this City, in any newspaper or other publication, or any advertising device, or any other manner or means whatsoever, any statement concerning any such bingo game including, but not limited to, the amount of prizes to be awarded or distributed in any game, which is untrue or misleading, and which is known or which, by the exercise of reasonable care, should be known to be untrue or misleading.

**4.21.175 RECEIPT OF PROFIT BY A PERSON AND PENALTY FOR VIOLATION OF THIS CHAPTER.**

(a) It is a misdemeanor under Section 326.5(b) of the Penal Code of the State of California for any person to receive or pay a profit, wage, or salary from any bingo game authorized under this Chapter for activities related to bingo or the bingo operation. The expenditure of any revenues or proceeds derived from bingo to pay employees, members, or contractors of licensed organizations for services associated with the planning, organization, management, operation or staffing of bingo games, or related to bookkeeping, accounting, auditing or technical advice concerning the handling or disposition of such revenues or proceeds is prohibited. A violation of this prohibition is punishable by a fine not to exceed ten thousand dollars (\$10,000) payable to the general fund of the City of Elk Grove.

(b) In addition to other applicable provisions of this Title, a violation of any of the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a Special Business License to conduct bingo games issued pursuant to the provisions of this Chapter and Chapter 4.10.

**4.21.180 DISCONTINUANCE OF BINGO GAMES.** Bingo licensees who discontinue conducting bingo games shall follow the accounting requirements prescribed by the Chief of Police in the City Regulations adopted pursuant to this Chapter. Their failure to do so shall result in denial of a subsequent license to conduct bingo games for two (2) years from the last day a bingo game was conducted.

## **CHAPTER 4.22**

### **BINGO PARLORS**

#### **Sections:**

- 4.22.000 Purpose.
- 4.22.005 Definitions.
- 4.22.010 Same - Bingo Parlor.
- 4.22.015 Same - Bingo.
- 4.22.017 Same - Bingo Session.
- 4.22.020 License Required.
- 4.22.025 Contents of the Application.
- 4.22.030 Issuance.
- 4.22.035 Employee Permits.
- 4.22.040 Application for Permits.
- 4.22.045 Issuance of Permit.
- 4.22.050 Suspension or Revocation of Permits.
- 4.22.055 Records - Compliance Examination and Inspection.
- 4.22.057 Retention of Records.
- 4.22.060 Hours of Operation.
- 4.22.065 Limitation on Parlor Owner Involvement in Bingo.
- 4.22.070 Prohibition of Financial Interest in Bingo.
- 4.22.080 Temporary Suspension of License Pending  
Opportunity for Hearing.
- 4.22.085 Notice of Temporary Suspension and Appeal -  
Appeal of Underlying Suspension or Revocation.
- 4.22.090 Operating and Conducting Business at the Bingo  
Parlor after Temporary Suspension or Suspension.
- 4.22.100 Receipt of Profit by a Person and Penalty for Violation of this Chapter.

**4.22.000 PURPOSE.** In recent years, there has been a proliferation of bingo parlors in the region, resulting in multiple organizations licensed to conduct bingo in accordance with Chapter 4.21 and conducting bingo games at a single commercial location. Competition for the bingo player and the bingo dollar has increased between charitable organizations conducting bingo games. High rents and overhead and increased promotional expenditures have reduced the charitable organizations' profits derived from bingo games, thereby resulting in a substantial decrease in the profits available for charitable purposes.

The regulatory provisions of this Chapter are necessary to ensure that bingo parlors are operated subject to reasonable conditions for the protection of the public health, safety and welfare. A system of regulating bingo parlors, in conjunction with the existing regulations of organizations licensed to conduct bingo in accordance with Chapter 4.21, encourages the maximum use of bingo proceeds and profits for charitable purposes, but also limits the commercialization of bingo, particularly by criminal or otherwise undesirable elements.

The licensing regulations for bingo parlors further clarify and define the relationship between the bingo parlor and the licensed charitable organizations with respect to the operation and management of bingo games in the City.

**4.22.005 DEFINITIONS.** As used in this Chapter, the terms identified by Sections 4.22.010 through 4.22.017 shall be ascribed the meanings indicated.

**4.22.010 SAME - BINGO PARLOR.** A "bingo parlor" means a building, facility, or other improvement upon which space is leased, rented or otherwise allocated for monetary consideration to two or more organizations possessing a Special Business License pursuant to Chapter 4.21, within or upon which bingo games sponsored by the licensed organizations are conducted. A bingo parlor shall not be deemed to mean or include a building, facility, or other improvement which is owned by a public agency, within or upon which space is rented, leased or otherwise allocated for the operation of bingo games by two or more licensed organizations.

**4.22.015 SAME - BINGO.** As used in this Chapter, the term "bingo" shall be deemed to mean a game of chance as specifically defined in Section 4.21.010.

**4.22.017 SAME - BINGO SESSION.** As used in this Chapter, the term "bingo session" shall be deemed to mean the same as specifically defined in Section 4.21.017.

**4.22.020 LICENSE REQUIRED.** No person shall, unless under and by authority of a valid, unrevoked and unexpired Special Business License issued pursuant to the provisions of this Chapter, operate a bingo parlor in the City, whether singularly or in connection with another type of enterprise. A person shall be deemed to operate or conduct a bingo parlor and violate this Section if the person, without a Special Business License supervises, directs, organizes, controls or is in any way responsible for or in charge of a bingo parlor for which a Special Business License is required.

**4.22.025 CONTENTS OF THE APPLICATION.** In addition to the matters prescribed by Section 4.10.030, an application for a Special Business License to operate a bingo parlor shall contain the following:

(a) A copy of all leases, contracts or other agreements regarding the use or occupancy of the bingo parlor by and between the licensee and any organization licensed to conduct bingo games pursuant to Chapter 4.21;

(b) A description of all uses which any organization licensed pursuant to Chapter 4.21 shall make of the bingo parlor premises; and,

(c) A detailed description of the facility, services, resources and security personnel which the licensee shall provide to each organization licensed pursuant to Chapter 4.21 which shall operate or conduct a bingo game at the bingo parlor.

**4.22.030 ISSUANCE.** The Chief of Police shall issue a Special Business License unless:

(a) One or more of the findings set forth in Section 4.10.040 is made;

(b) The bingo parlor has violated, or will be conducted, operated or managed in a manner which violates, Penal Code Section 326.5, this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The applicant holds a current license under Chapters 4.21 or 4.23.

**4.22.035 EMPLOYEE PERMITS.** No person shall work in a bingo parlor as a bingo parlor manager and no person who holds a Special Business License authorizing operation of a bingo parlor shall employ any person as a bingo parlor manager unless such person possesses a valid Employee Permit or a Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.22.040 APPLICATION FOR PERMITS.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to serve as a bingo parlor manager shall contain a list of each arrest resulting in either a conviction, a plea of guilty or a plea of nolo contendere. This list shall, for each such conviction, plea of guilty or plea of nolo contendere, set forth the date of arrest, the offense charged and the offense for which the applicant was convicted, or entered a plea of guilty or plea of nolo contendere.

**4.22.045 ISSUANCE OF PERMIT.** Upon receipt of an application for an employee permit to serve as a bingo parlor manager, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the permit pursuant to Section 4.10.090 unless he or she finds any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.22.040, or is otherwise incomplete;

(b) That information contained in the application is false or otherwise inaccurate;

(c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or, has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant may not perform his or her duties as a bingo parlor manager in a law-abiding manner or in a manner which does not subject patrons of the bingo parlor to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 4852.05; or,

(d) That the applicant has violated or is in noncompliance with any of the provisions of this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.22.050 SUSPENSION OR REVOCATION OF PERMITS.** An employee permit may be revoked or suspended pursuant to Section 4.10.140 upon any of the following grounds:

(a) Violation of any of the duties, terms, conditions, requirements or prohibitions contained in this Chapter, in the City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) Violation of any duties, terms, conditions requirements or prohibitions imposed by Chapter 4.02 or Chapter 4.10;

(c) Misrepresentation of a material fact contained in the application for the permit; or,

(d) The Chief of Police has acquired information supporting a finding as described by Section 4.22.045(c) in relation to the holder of the permit.

#### **4.22.055 RECORDS - COMPLIANCE EXAMINATION AND INSPECTION.**

(a) The parlor licensee shall keep full and accurate records of the income received and expenses disbursed in connection with its operation and conduct of a bingo parlor, and as necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

(b) The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy, parlor licensee records as described in subdivision (a) of this Section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

(c) Compliance examinations shall be conducted by the Chief of Police of parlor licensee records described in subdivision (a) of this Section not less frequently than annually, for each twelve (12) months of each licensee's operation.

(d) Records described in subdivision (a) of this Section shall be subject to disclosure only pursuant to:

(1) Any suspension, revocation or other proceeding conducted under this Chapter or the City Regulations adopted pursuant to this Chapter; or,

(2) Any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Counsel. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

**4.22.057 RETENTION OF RECORDS.** The parlor licensee shall keep and preserve the records described in Section 4.22.055(a), for the following period of time, whichever occurs later:

(a) Three (3) years;

(b) Until completion of a compliance examination; or

(c) Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.22.060 HOURS OF OPERATION.** It shall be unlawful for any bingo parlor to operate or remain open for purposes of conducting bingo games between the hours of 2:00 a.m. and 10:00 a.m. of the same day.

**4.22.065 LIMITATION ON PARLOR OWNER INVOLVEMENT IN BINGO.** The licensee shall not organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of any bingo game conducted at the bingo parlor or the promotion thereof.

**4.22.070 PROHIBITION OF FINANCIAL INTEREST IN BINGO.** With the exception of revenue generated by any business or enterprise for which a Special Business License is required pursuant to this Chapter no licensee shall have a financial interest in the conduct of a bingo game operated in the City. A licensee shall be deemed to have a financial interest in the conduct of a bingo game including, but not limited to, the following situations:

(a) Rent or other costs for the bingo parlor is adjusted based on the profits, losses or tax exempt status of any organization licensed under Chapter 4.21;

(b) The licensee absorbs, assumes, shares or otherwise participates in the losses or profits of any bingo game conducted by any organization licensed under Chapter 4.21; or,

(c) The licensee maintains an accounts receivable for an organization licensed under Chapter 4.21 for rent amounts or other costs owed to the bingo parlor; except, for amounts owed by such organization from a previous day of bingo operation which are paid before the next day of bingo operation.

**4.22.080 TEMPORARY SUSPENSION OF LICENSE PENDING OPPORTUNITY FOR HEARING.** The Chief of Police shall have the authority to temporarily suspend the parlor's license by ordering in writing that the licensee immediately cease and desist any further operations of the parlor pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

(a) The parlor licensee is conducting its operation in violation of any of the provisions of this Chapter, Penal Code Section 326.5, the City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) The parlor licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this Chapter, City Regulations

adopted pursuant to this Chapter, Penal Code Section 326.5, any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The parlor licensee has not kept records as prescribed by the Chief of Police, this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

#### **4.22.085 NOTICE OF TEMPORARY SUSPENSION AND APPEAL - APPEAL OF UNDERLYING SUSPENSION OR REVOCATION.**

(a) The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in Section 4.10.145.

(b) Upon timely request by the licensee, the appeal hearing process and related procedures of the revocation or suspension of its license pursuant to Section 4.10.135 shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.155.

**4.22.090 OPERATING AND CONDUCTING BUSINESS AT THE BINGO PARLOR AFTER TEMPORARY SUSPENSION OR REVOCATION.** Any person(s) who continues to operate and conduct the business of a bingo parlor after temporary suspension pursuant to Section 4.22.080, or suspension pursuant to Section 4.10.135, is guilty of a misdemeanor.

#### **4.22.100 RECEIPT OF PROFIT BY A PERSON AND PENALTY FOR VIOLATION OF THIS CHAPTER.**

(a) It is a misdemeanor under Section 326.5(b) of the Penal Code for any person to receive or pay a profit, wage or salary from any bingo game authorized under this Chapter. Payment received by a parlor licensee for rent or lease of a parlor facility or other costs of the parlor related to bingo from a bingo licensee licensed pursuant to Chapter 4.21 and 4.10 shall not be deemed a violation of this Section. A violation of this prohibition is punishable by a fine not to exceed ten thousand dollars (\$10,000) payable to the general fund of the City of Elk Grove.

(b) A violation of any of the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a Special Business License to conduct a bingo parlor issued pursuant to the provisions of this Chapter.

## **CHAPTER 4.23**

### **BINGO SUPPLIERS**

#### **Sections:**

- 4.23.000 Purpose.
- 4.23.010 Definitions.
- 4.23.015 Same - Bingo Supplier.
- 4.23.020 Same - Bingo.
- 4.23.025 License Required.
- 4.23.030 Issuance.
- 4.23.035 Records - Compliance Examination and Inspection.
- 4.23.037 Retention of Records.
- 4.23.040 Limitation on Involvement in Bingo.
- 4.23.045 Prohibition of Financial Interest in Bingo.
- 4.23.050 Required Records.
- 4.23.055 Computerized Equipment.
- 4.23.060 Temporary Suspension of License Pending  
Opportunity for Hearing.
- 4.23.065 Notice of Temporary Suspension and Appeal -  
Appeal of Underlying Suspension and Revocation.
- 4.23.075 Operating and Conducting Business after Temporary  
Suspension or Suspension.
- 4.23.080 Receipt of Profit by a Person and Penalty for  
Violation of this Chapter.

**4.23.000 PURPOSE.** A system of regulating bingo suppliers in conjunction with the regulation of organizations authorized to conduct bingo games pursuant to Penal Code Section 326.5 and of bingo parlors is necessary to ensure the maximum use of bingo proceeds and profits for charitable purposes and to limit the abuses stemming from increased commercialization of bingo in the City.

**4.23.010 DEFINITIONS.** As used in this Chapter, the terms identified by Sections 4.23.015 through 4.23.020 shall be ascribed the meanings indicated.

**4.23.015 SAME - BINGO SUPPLIER.** A "bingo supplier" means any person or enterprise which, for a consideration, sells, rents, supplies, provides or furnishes equipment, products, goods, paper or other items for use in the conduct of bingo games.

**4.23.020 SAME - BINGO.** As used in this Chapter, the term "bingo" shall be deemed to mean a game of chance as specifically defined in Section 4.21.010.

**4.23.025 LICENSE REQUIRED.** No person shall, unless under and by authority of a valid, unrevoked and unexpired Special Business License, sell, rent, supply, provide or furnish for a consideration, any equipment, products, goods, paper or other items for use in the conduct of bingo games. A bingo supplier shall be deemed to operate or conduct business within the City if the bingo supplier or representatives thereof sell, rent, supply, provide or furnish for a consideration, within the City, any equipment, products, goods, paper or other items for use in the conduct of bingo games, whether or not the bingo supplier operates from a fixed location within another jurisdiction.

**4.23.030 ISSUANCE.** The Chief of Police shall issue a Special Business License unless:

- (a) One or more of the findings set forth in Section 4.10.040 is made;
- (b) The bingo supplier sells, rents, supplies, provides or furnishes any equipment, products, goods, paper or other items for use in conjunction with or in the conduct of bingo games in a manner which violates Penal Code Section 326.5, this Chapter, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;
- (c) The applicant has a current license under Chapter 4.21 or 4.22; or,
- (d) The applicant has violated or is not in compliance with this Chapter, Section 326.5 of the Penal Code, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.23.035 RECORDS - COMPLIANCE EXAMINATION AND INSPECTION.**

- (a) The bingo supplier licensee shall keep full and accurate records of all inventory, income received and expenses disbursed in connection with the sale, rental,

supply, provision or furnishing of any equipment, products, goods, paper or other items for use in the conduct of bingo games, and as necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or rule or administrative regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police; and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

(b) The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy, supplier licensee records as described in subdivision (a) of this Section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

(c) Compliance examinations shall be conducted by the Chief of Police of supplier licensee records described in subdivision (a) of this Section not less frequently than annually, for each twelve (12) months of each licensee's operation.

(d) Such records shall be subject to disclosure only pursuant to:

(1) Any suspension, revocation or other proceeding conducted under this Chapter or the City Regulations adopted pursuant to this Chapter; or,

(2) Any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Attorney. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

**4.23.037 RETENTION OF RECORDS.** The supplier licensee shall keep and preserve the records described in Section 4.23.035(a), for the following period of time, whichever occurs later:

(a) Three (3) years;

(b) Until completion of a compliance examination; or

(c) Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.23.040 LIMITATION ON INVOLVEMENT IN BINGO.** The licensee shall not organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of any bingo game conducted in the City or the promotion thereof.

#### **4.23.045 PROHIBITION OF FINANCIAL INTEREST IN BINGO.**

(a) With the exception of revenue generated by any business or enterprise for which a Special Business License is required pursuant to this Chapter, no bingo supplier shall have a financial interest in the conduct of a bingo game operated in the City. A licensee shall be deemed to have a financial interest in the conduct of a bingo game including, but not limited, to the following situations:

(1) The price or cost of bingo supplies is adjusted by the licensee based on the profits, losses or tax exempt status of any organization licensed under Chapter 4.21;

(2) The licensee absorbs, assumes, shares or otherwise participates in the losses, or profits of any bingo game conducted by any organization licensed under Chapter 4.21; or,

(3) The licensee maintains an accounts receivable for an organization licensed to conduct bingo games pursuant to Chapter 4.21 for amounts owed to the bingo supplier for a period that exceeds thirty (30) days from the invoice date or ten (10) days from the statement date, whichever occurs later. For purposes of this subdivision of this Section "invoice date" is defined as the date of delivery of such supplies and "statement date" is defined as the date within thirty (30) days of the delivery of supplies.

(b) The licensee with knowledge that a bingo licensee licensed pursuant to Chapter 4.21 has not paid its supplier account(s) to any supplier within the required period as provided in subdivision (a) (3) of this Section shall not sell or rent supplies to such a bingo licensee until all the bingo licensee's account(s) are brought within the time period provided for within subdivision (a) (3) of this Section.

**4.23.050 REQUIRED RECORDS.** Licensed bingo suppliers shall maintain a complete set of records which includes detail of all activities. These records shall include, but are not be limited to the following:

(a) Pre-printed sales invoices which reflect the following information:

- (1) Date of sale;
- (2) The customer name, and complete business address;
- (3) A description and stock number of each line item sold; and,
- (4) Quantity and sales price of each line item.

(b) The original and two (2) copies of the pre-printed sales invoice shall be prepared and maintained as follows:

- (1) Original issued to the customer;

- (2) A copy retained in a file by customer name; and,
- (3) A copy file in (invoice number) numerical sequence.

(c) Credit memos for returned items shall be prepared in the same detail as items described in subdivision (a) of this Section.

#### **4.23.055 COMPUTERIZED EQUIPMENT.**

(a) Except as provided in Subsection (b) of this Section, it shall be unlawful for bingo suppliers licensed under this Chapter to:

(1) Sell, rent, supply, provide or furnish machines, devices, or equipment that is computerized, electronic, or mechanical to an organization licensed to conduct bingo pursuant to Chapter 4.21, for use in a bingo game; or,

(2) Sell, rent, supply, provide, or furnish equipment for use in a bingo game in which the numbers to be called are selected by electronic means rather than by random selection of numbered balls from a pool of game balls.

(b) Electronic Bingo Aid.

(1) Purpose. The purpose of this Subsection is not to permit a licensed bingo supplier to sell, rent, supply, provide or furnish to organizations licensed to conduct bingo pursuant to Chapter 4.21 all electronic aids for use in bingo. The purpose is to permit the licensed supplier to sell, rent, supply, provide or furnish to such organizations the use of electronic bingo aids on the conditions set forth herein. It is contemplated that an electronic bingo aid will include individual units or components to be used by players and that these units or components will be activated by the organizations licensed to conduct bingo for a player's operation. These individual player units or components are hand held devices or desktop devices to be used in conjunction with bingo cards. It is contemplated that an electronic bingo aid will permit a bingo player to input into an activated individual player unit or component randomly selected numbers called by an organization licensed to conduct bingo pursuant to Chapter 4.21 in order to match such numbers against programmed information to identify a winning card. The programmed information reflects the exact configurations of the bingo cards sold to and played by the player. The electronic bingo aid is not to alter the bingo cards. The electronic bingo aid is to be used in conjunction with bingo cards in order to assist the player identify a winning card. The electronic bingo aid is not to be used as an electronic or computerized game of bingo, or as a substitute for required bingo cards, or as a substitute for any other requirements of bingo as provided in Chapter 4.21 or in Penal Code section 326.5.

(2) An electronic bingo aid to assist in the identification of a winning card or paper may be sold, rented, supplied, provided or furnished to an organization licensed pursuant to Chapter 4.21 to conduct bingo by a licensed bingo supplier if the licensed bingo supplier complies with the conditions set forth in Subsections (b)(3) through (b)(12) of this Section, and if the supplier complies with all other required

provisions of this Chapter and Penal Code section 326.5. Violation of any or all of such provisions and conditions shall constitute grounds for revocation, suspension, or denial of the Special Business License to conduct the business of a bingo supplier, pursuant to the procedures set forth in this Chapter and Chapters 4.02, and 4.10.

(3) An electronic bingo aid shall assist a player to mark, otherwise register, or record, numbers selected at random in order to identify a winning bingo card. An electronic bingo aid shall not replace or alter bingo cards. The electronic bingo aid shall be programmed either by the supplier licensee at the direction and as specified by an organization licensed to conduct bingo pursuant to Chapter 4.21, or by the organization licensed to conduct bingo. The electronic bingo aid shall be programmed only with bingo card configurations corresponding exactly to bingo card configurations used by such licensed organization. A copy of any change made by the supplier licensee in the program of a programmed electronic bingo aid shall be submitted to the Chief of Police. The electronic bingo aid shall permit licensed organizations to enable the electronic bingo aid, including the individual player operated units or components, for play on the premises where the games are conducted. The electronic bingo aid shall not interfere or interact with the element of chance in the game.

(4) The electronic bingo aid shall permit a player to use a player operated unit or component of the electronic bingo aid to manually input numbers called in a bingo game into the electronic bingo aid. Automatic daubing shall not be a feature of the electronic bingo aid. The portion of the electronic bingo aid system in the immediate physical possession and operation of the organization licensed by Chapter 4.21 to conduct the games, and the individual player operated units or components of the electronic bingo aid used by a player, shall identify winning cards during a game. The portion of the electronic bingo aid system in the immediate physical possession and operation of the organization licensed to conduct bingo shall be capable of printing a winning card for verification during the game; the individual player operated units or components shall not have this feature.

(5) A particular type of electronic bingo aid shall not be sold, rented, supplied, provided or furnished to an organization licensed to conduct bingo pursuant to Chapter 4.21 by a licensed bingo supplier until the licensed supplier has demonstrated the electronic bingo aid to the Chief of Police, and such electronic bingo aid has been inspected by, and approved by the Chief of Police.

(6) An electronic bingo aid may be removed from the place where the games are conducted solely by the supplier licensee for repair or to transfer to another organization licensed to conduct bingo pursuant to Chapter 4.21 for the conduct of bingo. The supplier licensee shall keep a record of the bingo electronic aid received; the date received; the repairs made, if any; the particular malfunction, if any; the name of the licensed organization that the electronic bingo aid or part thereof was removed; and, the date the aid or part thereof is returned to an organization if returned, or notation of what action taken if not returned.

(7) The electronic bingo aid shall have a dial-up capability so that the Chief of Police may remotely monitor the operation and internal accounting system of the electronic bingo aid at any time. The electronic bingo aid shall contain a point of sale accounting system that allows it to track all financial activity for a bingo session. The bingo supplier licensee's accounting records pertaining to electronic bingo aids shall be retained as prescribed by Section 4.23.050. An electronic bingo aid shall work with an accounting system that records, and retains for a retention period of not less than that found in Section 4.21.080, the serial number of each bingo card or face sold, the price of each card sold, and the total amount of the electronic bingo aid proceeds from each session. An electronic bingo aid's capabilities and information must not be lost through power failure or other disruption during the session.

(8) An electronic bingo aid shall have the capability to permit organizations licensed to conduct bingo to print the configurations of the bingo cards or papers that are programmed into the device; but, the individual player operated units or components shall not have this feature.

(9) The electronic bingo aid including related circuitry shall be sealed and secured in order to prevent unauthorized removal, additions, changes, or other alterations or tampering with the data within such electronic bingo aid.

(10) If the Chief of Police detects or discovers any problem with an electronic bingo aid, including the player operated electronic bingo aid unit or component, or any related system or parts, that affects the integrity of the bingo game, or such equipment, the Chief of Police may, upon demand, examine and inspect such equipment, as applicable, if it is in possession of the supplier licensee after removal from the place where the game of bingo is conducted. The Chief of Police may upon demand examine and inspect any electronic bingo aid, player operated unit or component of an electronic bingo aid, or related system or parts, for sale, rent, supply, or to be provided or furnished by the supplier licensee to an organization licensed to conduct bingo. Such examinations and inspections shall include immediate access to the electronic bingo aid, including the player operated unit or component of an electronic bingo aid, and unlimited inspection of all parts and associated systems, as applicable; and, may involve the removal of such equipment, as applicable, from the supplier licensee's premises or possession for further testing. Upon the Chief of Police's demand, the supplier licensee shall immediately comply and cooperate with the Chief of Police for such examinations, inspections, or removals.

(11) If at any time the Chief of Police detects or discovers any problem with an electronic bingo aid, or with a player operated bingo unit or component of the electronic bingo aid, or with any related system or parts, that affects the security or the integrity of a bingo game or such equipment, the Chief of Police may order the supplier licensee to cease the sale, rental, supply, or provision or furnishing of such electronic bingo aid or player operated unit or component, as applicable, to an organization licensed to conduct bingo, and the supplier licensee shall comply immediately with such Chief of Police's order.

(12) If at any time the supplier licensee detects or discovers any problem with a electronic bingo aid, or with a player operated unit or component of the electronic bingo aid, or any related system or parts, that affects the security or the integrity of a bingo game or such equipment, the supplier licensee shall cease immediately to sell, rent, supply, provide, or furnish the electronic bingo aid or player operated unit or component, as applicable, to an organization licensed to conduct bingo, and shall notify the Chief of Police, and organizations licensed to conduct bingo who have secured possession of such electronic bingo aid from such bingo supplier, of such malfunction, problem or occurrence.

**4.23.060 TEMPORARY SUSPENSION OF LICENSE PENDING OPPORTUNITY FOR HEARING.** The Chief of Police shall have the authority to temporarily suspend the supplier's license by ordering in writing that the licensee immediately cease and desist any further operations of the bingo supply business pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

(a) The supplier licensee is conducting its operation in violation of any of the provisions of this Chapter, Penal Code Section 326.5, the City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation;

(b) The supplier licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or,

(c) The supplier licensee has not kept records as prescribed by the Chief of Police, this Chapter, Penal Code Section 326.5, City Regulations adopted pursuant to this Chapter, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.23.065 NOTICE OF TEMPORARY SUSPENSION AND APPEAL - APPEAL OF UNDERLYING SUSPENSION AND REVOCATION.**

(a) The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in

Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in Section 4.10.145.

(b) Upon timely request by the licensee, the appeal hearing process and related procedures of the revocation or suspension of its license pursuant to Section 4.10.135 shall proceed pursuant to the provisions of Section 4.10.115 through 4.10.155.

**4.23.075 OPERATING AND CONDUCTING BUSINESS AFTER TEMPORARY SUSPENSION OR SUSPENSION.** Any person(s) who continues to operate and conduct the business of a bingo supplier after temporary suspension pursuant to Section 4.23.065, or suspension pursuant to Section 4.10.135, is guilty of a misdemeanor.

**4.23.080 RECEIPT OF PROFIT BY A PERSON AND PENALTY FOR VIOLATION OF THIS CHAPTER.**

(a) It is a misdemeanor under Section 326.5(b) of the Penal Code for any person to receive or pay a profit, wage or salary from any bingo game authorized under this Chapter. Payment received by a bingo supplier for supplies purchased by a bingo licensee licensed pursuant to Chapter 4.21 shall not be deemed a violation of this Section. A violation of this prohibition is punishable by a fine not to exceed ten thousand dollars (\$10,000) payable to the general fund of the City of Elk Grove.

(b) A violation of any of the provisions of this Chapter, City Regulations adopted pursuant to this Chapter, Penal Code Section 326.5, or any other applicable State of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a Special Business License for a bingo supplier issued pursuant to the provisions of this Chapter.

**CHAPTER 4.25**  
**PAWNBROKERS, SECONDHAND DEALERS**  
**AND JUNK DEALERS**

**Sections:**

- 4.25.000 Purposes.
- 4.25.005 License Required.
- 4.25.010 Definitions.
- 4.25.015 Display of License.
- 4.25.020 Daily Report.
- 4.25.025 Contents of Reports.
- 4.25.030 Records.
- 4.25.040 Use of English Language Required.
- 4.25.045 Time Limit for Sale.
- 4.25.050 Junk Dealer Not to Accept Pledges or Pawns.
- 4.25.055 Receipt of Goods - Prohibited Persons.
- 4.25.060 Nonapplicability of Sections.
- 4.25.065 Hours.
- 4.25.070 Construction Requirements.
- 4.25.075 Sanitation of Premises.
- 4.25.080 Separate Businesses.
- 4.25.085 Bond.
- 4.25.090 Reporting Stolen Goods.
- 4.25.095 Inspection.

**4.25.000 PURPOSES.** Pawnbrokers, secondhand dealers and junk dealers and collectors constitute prime vehicles for the disposal and sale of stolen property within the City. The purposes of the Chapter are to regulate the activities of such enterprises for the purpose of facilitating law enforcement's apprehension of criminals and recovery of stolen property and to curtail the trafficking of stolen property.

This Chapter is enacted pursuant to the provisions of Section 21638 of the Business and Professions Code. The provisions of this Chapter shall not be construed to require any act or omission which is expressly prohibited or prohibit any act or omission which is expressly required by the provisions of Sections 21625 through 21647 of the Business and Professions Code.

**4.25.005 LICENSE REQUIRED.** It is unlawful for any person to operate or conduct the business of pawnbroker, secondhand dealer, junk dealer or junk collector, unless under and by authority of a valid, unexpired and unrevoked Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

Notwithstanding the provisions of Section 4.10.040(c) and Section 4.10.100, the Chief of Police shall not deny a Special Business License for the business of pawnbroker, secondhand dealer, junk collector or junk dealer on grounds enumerated by Section 4.10.040(c) unless one or more of the persons identified in Section 4.10.040(c) has been convicted of an offense described by Section 21641 of the Business and Professions Code. A License shall not be revoked on grounds prescribed by Section 4.10.135(b) unless one or more of the persons identified by Section 4.10.040(c) has been convicted of an offense described by Section 21641 of the Business and Professions Code.

**4.25.010 DEFINITIONS.** As used in this Chapter the following terms shall be ascribed the following meanings:

(a) "Pawnbroker" -- shall mean a person engaged in conducting, managing or carrying on the business of pawnbroking, or the business of lending money for himself or any other person upon personal property, pawns or pledges; or the business of purchasing articles from the vendors or their assignees at prices agreed upon at or before the time of such purchase.

(b) "Pawnshop" -- shall mean any room, store, building or other place in which any pawn brokering business is engaged in, carried on or conducted.

(c) "Secondhand Dealer"- shall mean a person engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, furniture, wares, coins or merchandise.

(d) "Junk Dealer" -- shall mean a person having a fixed place of business in the City, and engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail, any old rags, sacks, bottles, cans, papers, metal, or other articles commonly known as junk.

(e) "Junk Collector" -- shall mean a person not having a fixed place of business in the City, who goes from house to house, or from place to place, gathering, collecting, buying, selling, or otherwise dealing in any old rags, sacks, bottles, cans, papers, metal or other articles commonly known as junk.

**4.25.015 DISPLAY OF LICENSE.** Every person issued a Special Business License under the provisions of this Chapter, and conducting, managing or carrying on a business or occupation at a fixed place of business, shall keep such License posted and exhibited while in force in some conspicuous part of the place of business. Every person having such License and not having a fixed place of business shall carry such License with him at all times while carrying on the business or occupation for which the same was granted. Every person having a License under the provisions of this Chapter shall produce and exhibit the same when applying for a renewal thereof and whenever requested to do so by any officer authorized to issue, inspect or collect licenses.

**4.25.020 DAILY REPORT.** Every pawnbroker and secondhand dealer shall send to the Chief of Police the daily electronic report in the format required by Business and Professions Code section 21628(j)(2). The report shall be sent electronically to the Chief of Police by a method and format acceptable to him or her.

Every junk dealer and junk collector shall send to the Chief of Police in an electronic format approved by the Chief of Police a daily report of all information required to be gathered by Business and Professions Code section 21606. The report shall be sent electronically by a method determined by the Chief of Police.

**4.25.025 CONTENTS OF REPORTS.** The contents of the reports to be sent at the close of each business day to the Chief of Police shall be as provided in Business and Professions Code section 21628 for pawnbrokers and second hand dealers and in section 21606 for junk dealers and junk collectors

**4.25.030 RECORDS.** Every pawnbroker and secondhand dealer shall keep a complete record of all goods, wares, merchandise or things pledged to or purchased or received by him, sold or otherwise disposed of, which shall contain all the matters required to be shown in the reports required to be made by such pawnbroker or secondhand dealer and referred to and described in Sections 4.25.020 and 4.25.025.

Every junk dealer and junk collector shall keep a record of all goods, wares, merchandise or things purchased or received by him, sold or otherwise disposed of, which record shall contain all the matters required to be shown in the reports referred to and described in Sections 4.25.020 and 4.25.025.

Every such record and all goods, wares, merchandise and things pledged to or pledged or received by any such pawnbroker, secondhand dealer, junk dealer or junk collector shall be immediately produced for inspection by any officer required to inspect such records or personal property in the performance of his official duties.

**4.25.040 USE OF ENGLISH LANGUAGE REQUIRED.** Every report and record required by the terms of this Chapter to be filed or kept, shall be written or printed entirely in the English language, in a clear and legible manner.

**4.25.045 TIME LIMIT FOR SALE.** It is unlawful for any pawnbroker, secondhand dealer, or junk dealer to sell or otherwise dispose of any article or thing, the report of which is required to be made under the provisions of Sections 4.25.020 and 4.25.025 within one week after making a report to the Chief of Police as required in Section 4.25.020. The provisions of this section shall not apply to motor vehicles duly and regularly cleared for transfer by the Department of Motor Vehicles of the state.

**4.25.050 JUNK DEALER NOT TO ACCEPT PLEDGES OR PAWNS.** No junk dealer or junk collector shall receive any personal property by way of pledge or pawn, nor shall the business of junk dealer and the business of pawnbroker be conducted upon the same premises.

**4.25.055 RECEIPT OF GOODS - PROHIBITED PERSONS.** It is unlawful for any pawnbroker, secondhand dealer, junk dealer or junk collector, to receive or purchase any property, article or thing, from any person who shall appear to be, or who is known to be, intoxicated, or from any minor, unless the minor presents the written consent of his parent or guardian, duly signed, authorizing the particular transaction, which written consent must be kept, and exhibited, upon demand, by any officer requesting the same in the performance of his official duties.

In any criminal prosecution, or proceeding for the suspension or revocation of any license for a violation of this section, proof that the defendant licensee, or his agent or employee, demanded and was shown, before receiving or purchasing any property, article or thing, a motor vehicle operator's license or a registration certificate issued under the Federal Selective Service Act, or other bona fide documentary evidence of majority and identity of the person, is a defense to the prosecution or proceeding for the suspension or revocation of any license.

**4.25.060 NONAPPLICABILITY OF SECTIONS.** The provisions of Sections 4.25.020 through 4.25.045 shall not apply to the receipt of, or sale of secondhand personal property which has been received as part payment for a new article if the person receiving or selling the secondhand personal property is the authorized dealer or agent of the manufacturer of the new article sold.

**4.25.065 HOURS.** It is unlawful for any person engaged in, conducting, managing or carrying on the business of pawnbroker, secondhand dealer, junk dealer or junk collector, or for any agent, or employee of any such person, to accept any pledge, or to loan any money upon personal property or to receive or purchase any goods, wares or merchandise, or any article or thing between midnight on Saturday and seven a.m. the following Monday, or between seven p.m. of any day other than Saturday and Sunday, and seven a.m. the following day.

**4.25.070 CONSTRUCTION REQUIREMENTS.** If any business or establishment required by Section 4.25.005 to possess a Special Business License is located in whole or in part in any yard, enclosure, lot, or open area, such premises as are open to public view shall be completely surrounded and enclosed by a wall, fence or barrier constructed of wood or other solid, impervious material, and so constructed as to be a continuous barrier, except for necessary openings, sufficient to prevent the ingress or egress of rats, mice, or other rodents so far as is possible. Should any part of such yard, enclosure, lot or open area abut upon any earthen embankment, the height of which shall not be less than the minimum height of the wall, fence or barrier herein provided for, such part so abutting upon the earthen embankment need not be enclosed by a wall, fence or barrier. The wall, fence or barrier shall be continuously kept and maintained in the condition required by this section. The wall, fence or barrier shall extend above the ground for at least six feet. Any and all necessary openings in such fence, wall or barrier shall be provided with suitable gates or doors. No such openings shall in any single instance be greater than is reasonably necessary.

Such gate or door shall be kept closed at all times except during the normal business hours of the business or establishment.

It is unlawful for any person to permit any such business or establishment referred to and described in this Chapter to be established, conducted, carried on or maintained unless the premises shall have been rendered rodentproof as far as reasonably possible, and continuously maintained in such condition. Each day's violation of the requirements declared and established by this Chapter shall be and constitute a separate and distinct violation and offense.

**4.25.075 SANITATION OF PREMISES.** If any business or establishment required by Section 4.25.005 to possess a Special Business License is located in whole or in part in a yard, enclosure, lot or open area, such premises and area shall, so far as reasonably possible, be kept clean and free from rubbish and similar loose material that might serve as a harborage for rats, mice or other rodents, and all loose metal, or parts or accessories of automobiles, and all other material kept, stored or accumulated on the premises, shall, so far as reasonably possible, be neatly and carefully piled, in such manner as to minimize and prevent as far as possible the harborage of rodents, and shall be suitably protected from water and the elements so that there can be, so far as is practicable, no accumulation of water in any article or thing stored on the premises.

**4.25.080 SEPARATE BUSINESSES.** If any person shall engage in, conduct, manage or carry on, at the same time, more than one of the businesses defined by Section 4.25.010, such person shall be deemed to be engaging in, conducting, managing and carrying on each such business separately and apart from the other such business, and such person shall comply in all respects with the provisions of this chapter relating to each such business, and it is unlawful for any such person to fail, refuse or neglect so to do.

**4.25.085 BOND.** Every junk dealer, as defined herein, shall furnish to the City a bond in the principal amount of five thousand (\$5,000) dollars guaranteeing faithful performance by the junk dealer of the terms and conditions of this Chapter.

**4.25.090 REPORTING STOLEN GOODS.** Every pawnbroker, secondhand dealer, junk dealer and junk collector shall immediately notify the Chief of Police by telephone when any property is offered to him for pledge or for sale under such circumstances that the pawnbroker, secondhand dealer, junk dealer or junk collector knows or should have known the property so offered for pledge or sale to have been stolen.

**4.25.095 INSPECTION.** The Chief of Police or the City Manager or their designees may conduct an inspection of the premises of a pawnbroker, second hand dealer, or junk dealer at any time during regular business hours for the purpose of determining that the business is being operated in compliance with all requirements under state law and the Municipal Code.

## **CHAPTER 4.26**

### **JUNK TIRE STORAGE**

#### **Article I**

#### **Special Business License Required**

##### **Sections:**

- 4.26.000 Purposes.
- 4.26.005 City Manager.
- 4.26.010 Definitions.
- 4.26.015 License Required.
- 4.26.020 Number of Licenses Required.
- 4.26.025 Display of License.
- 4.26.030 Application.
- 4.26.035 Issuance.
- 4.26.040 Change of Information.

#### **Article 2**

#### **Requirements - Services**

- 4.26.045 Inspections.
- 4.26.050 Indemnification.
- 4.26.055 Fire Protection.
- 4.26.060 Existing Junk Tire Storage Compliance Schedule.
- 4.26.065 Employee Permits Not Required.

#### **Article 3**

#### **Penalties**

- 4.26.070 Fine, Imprisonment and Expenses for Compliance.
- 4.26.075 Injunctive Relief.
- 4.26.080 Revocation.
- 4.26.085 Temporary Suspension.
- 4.26.090 Abatement.
- 4.26.095 Nature of Enforcement Actions.
- 4.26.100 Appeals.

**Article 1**  
**Special Business License Required**

**4.26.000 PURPOSES.** The improper storage and the careless disposal of junk tires jeopardize the public health, safety and welfare of City residents and visitors. Large numbers of these junk tires randomly placed in buildings or fields are breeding grounds for disease-carrying insects and animals. If large numbers of these junk tires are ignited by fire, those fires are extremely difficult and expensive to extinguish and the smoke from those fires presents a serious hazard to the environment. Furthermore, large numbers of junk tires carelessly strewn about offend the aesthetic sensibilities of the residents of the City.

The regulatory provisions of this Chapter are necessary to insure reasonable storage of these junk tires and thereby minimize the jeopardy to the public health, safety and welfare.

This enactment will provide criminal penalties to those who violate its requirements. It will also provide a means of enforcing abatement of the nuisance caused by the unreasonable storage of large numbers of junk tires.

This enactment does not apply to tires that do not meet the definition of "junk tires" as set forth herein. Tires that are not junk tires have economic value and are therefore not indiscriminately discarded in large quantities as are junk tires. Further, while tires other than junk tires present the same fire extinguishment problems and environmental hazards as junk tires, the City Council finds they are usually stored in a manner that minimizes these problems and hazards.

**4.26.005 CITY MANAGER.** The City Manager is charged with the responsibility of administering this Chapter and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing junk tire storage, promulgation and enforcement of administrative regulations and the performance and exercise of the duties and authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to junk tire storage and the issuance and administration of Special Business Licenses therefor as are vested in the Chief of Police under Chapter 4.02 and Chapter 4.10 of this Code. Any reference to the "Chief of Police" in these sections as that reference relates to the issuance, renewal or denial of a Special Business License or as that reference relates to the appeal of a denial, revocation or suspension of a Special Business License shall be deemed a reference to the City Manager in relation to this junk tire storage ordinance.

Also, the City Manager shall be vested with the same powers and authorities in relation to abatement of violations of this junk tire storage ordinance as are vested in the Director of Public Works under Chapter 6.58 of this Code. Any reference in that Chapter to the "Director of the Department of Public Works" shall be deemed a

reference to the City Manager in relation to abatement of violations of this junk tire storage ordinance.

**4.26.010 DEFINITIONS.** As used in this Chapter, the following terms shall be ascribed the following meanings:

(a) "Premises" means a unit of improved or unimproved land, or any portion thereof, shown on the latest equalized City assessment roll as a parcel or as contiguous parcels. Property shall be considered as contiguous parcels even if separated by a utility easement or railroad right of way.

(b) "To store" means to leave, deposit, accumulate, abandon or discard.

(c) "Storage" means the act of storing.

(d) "Junk tire" means a not new automobile, truck or any other type of motorized vehicle tire that is not directly attached to an operational vehicle and does not meet the federal or State of California requirements for used tires or recappable casings

**4.26.015 LICENSE REQUIRED.** It is unlawful for any person to store five hundred (500) or more junk tires either inside or outside a building for any length of time on or about any one particular premises within the City which is owned, leased or in any manner utilized by that person unless the storage is under and by authority of a valid, unexpired, unrevoked and unsuspended Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.26.020 NUMBER OF LICENSES REQUIRED.** Notwithstanding Section 4.10.010, a person who stores five hundred (500) or more junk tires either inside or outside a building for any length of time at one or several premises throughout the City shall be required to obtain a Special Business License for each particular premises where five hundred (500) or more junk tires are stored.

**4.26.025 DISPLAY OF LICENSE.** Every person issued a Special Business License under the provisions of this Chapter shall keep the License posted and exhibited in a conspicuous part of the particular premises where the five hundred (500) or more junk tires are stored.

**4.26.030 APPLICATION.** In addition to the information required by Section 4.10.030, an application shall contain the following:

(a) All names under which the applicant has engaged, does or proposes to engage in junk tire storage;

(b) An accurate legal description, including assessment number, of the particular premises where the junk tires are to be stored;

(c) The name and street address of any person with a legal ownership interest in the particular premises where the junk tires are to be stored;

(d) The written consent of any person with a legal ownership interest in the anticipated junk tire storage premises to the storage of junk tires on those premises and to the requirements and obligations imposed on these owners by this Chapter. The written consent form shall be furnished by the City Manager and all signatures on this form shall be notarized in accordance with California law;

(e) Factual information, as specific as possible, as to the maximum number of junk tires expected to be stored on the particular premises at any one time and the number of junk tires expected to be transferred onto or off of the particular premises on a daily, weekly and monthly basis;

(f) A written statement from the Chief of the Fire Protection District with jurisdiction over the proposed junk tire storage premises discussing in detail any fire hazard that would be created by the storage of junk tires on or about the particular premises; and

(g) The name and street address within the City of an individual authorized to accept service of legal process or any notices issued pursuant to this Chapter.

**4.26.035 ISSUANCE.** The City Manager shall issue a Special Business License to allow storage of junk tires unless:

(a) One or more of the findings prescribed by Section 4.10.040(a) (b) and (d) are made; or

(b) The City Manager finds in writing that the use of the particular premises for junk tire storage would not be in compliance with the City of Elk Grove Zoning Ordinance and has not been approved by the City Council through any required use permit hearing process; or

(c) The City Manager finds in writing that based upon detailed information provided by the Chief of the appropriate Fire Protection District or other appropriate fire prevention experts and officials, the proposed storage of junk tires on the particular premises would constitute a dangerous fire hazard.

The requirements of Section 4.10.035 and Section 4.10.040(c) shall not be applicable to this Chapter for issuance of a Special Business License.

**4.26.040 CHANGE OF INFORMATION.** The applicant shall report to the City Manager any change in the information required by Section 4.26.030 within ten (10) days of the effective date of the change except that the information required by Section 4.26.030(c) shall be reported immediately. An updated written consent form pursuant to Section 4.26.030(d) shall be required immediately upon a change in the information required by Section 4.26.030(c).

## **Article 2 Requirements - Services**

**4.26.045 INSPECTIONS.** Premises on which junk tires are stored pursuant to a Special Business License shall be open during regular working hours for inspection by the City Manager or his or her designated representative. Inspections shall occur as frequently as determined necessary by the City Manager but in no event shall there be less than six inspections per year of each particular premises where junk tires are stored pursuant to a Special Business License.

The refusal by a Licensee, or an officer, employee or agent thereof, to permit inspection by the City Manager, or his or her designated representative, pursuant to the authority conferred by this Section shall constitute grounds for suspension or revocation of the Special Business License.

The refusal by a Licensee, or an officer, employee or agent thereof, to permit such inspections by the Chief of the appropriate Fire District, or his designated representative, as may be reasonably necessary to insure compliance with Section 4.26.055 shall also constitute grounds for suspension or revocation of a Special Business License issued pursuant to this Chapter.

**4.26.050 INDEMNIFICATION.** The licensee and the legal owners of the premises where junk tires are stored pursuant to this Chapter shall indemnify, hold harmless and, upon written request, assume any and all costs of the legal defense of the City, its officers, employees and agents from all claims, losses, damages, injuries and liabilities of every kind, nature and description directly or indirectly arising from the performance of activities and operations permitted by a Special Business License issued pursuant to this Chapter.

**4.26.055 FIRE PROTECTION.** The licensee shall provide such fire protection measures and equipment as may be required by all applicable laws, and as the Chief of the Fire Protection District with jurisdiction over the premises where the junk tires are stored finds reasonably necessary to provide adequate fire protection to the immediate and adjacent premises. No junk tires may be stored on a particular premises pursuant to this Chapter unless and until the written statement required by Section 4.26.030(f) is obtained from the Chief of the appropriate Fire Protection District.

**4.26.060 EXISTING JUNK TIRE STORAGE COMPLIANCE SCHEDULE.** Any person who presently stores junk tires and who will be required to obtain a Special Business License pursuant to this Chapter upon its adoption may be granted by the City Manager a maximum of three (3) months to comply with all of the requirements of this Chapter provided that public health, safety and welfare of the City residents and visitors will not be unreasonably jeopardized thereby.

**4.26.065 EMPLOYEE PERMITS NOT REQUIRED.** Section 4.10.070 and related sections of Chapter 4.10 requiring employee permits for personnel of Special Business Licenses shall not be applicable to this Chapter.

### **Article 3 Penalties**

#### **4.26.070 FINE, IMPRISONMENT AND EXPENSES FOR COMPLIANCE.**

Notwithstanding the provisions of Section 4.02.100, any person who violates any of the provisions of this Chapter, or fails to comply with any of the regulatory requirements adopted by the City Manager pursuant to this Chapter, is guilty of a misdemeanor, and upon conviction may be punished by a fine not to exceed five hundred dollars or by imprisonment not to exceed six months, or by both. In addition, each such person shall be required to pay any and all expenses necessary to bring the subject premises into compliance with this Chapter and any regulatory requirements adopted by the City Manager pursuant to this Chapter. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter, or regulatory requirements adopted by the City Manager pursuant to this Chapter, is committed, continued, or permitted by any such person, and he shall be punished accordingly.

**4.26.075 INJUNCTIVE RELIEF.** In addition to the penalties set forth in Section 4.26.070 and consistent with the provisions of Section 4.26.090, any storage of junk tires contrary to the provisions of this Chapter, or any regulations adopted by the City Manager pursuant to this Chapter, shall be and the same is hereby declared to be unlawful and a public nuisance. The City Manager may commence action for the abatement and removal and enjoinder of this public nuisance in the manner provided by law. The City Manager may take such other steps and may apply to such court or courts as may have jurisdiction to grant relief as will abate and remove such junk tires and restrain and enjoin any person, firm or corporation from using any premises contrary to the provisions of this Chapter.

**4.26.080 REVOCATION.** In addition to the grounds set forth in Section 4.10.135 and in addition to the penalties prescribed in Section 4.26.070 and Section 4.26.075, a Special Business License may be revoked during its term if the City Manager finds in writing that one or more of the following grounds exist:

- (a) Violation by the licensee of any of the terms, conditions or requirements of this Chapter;
- (b) Violation by the licensee of any administrative regulation or rule promulgated pursuant to the provisions of this Chapter;
- (c) Failure of the licensee to comply with any applicable City, State or federal law; and
- (d) Refusal of the licensee to permit an inspection pursuant to Section 4.26.045.

Except for the junk tires on the subject premises at the time of the revocation, no other junk tires shall be stored on the subject premises pending final determination of

the revocation proceedings. Nothing in this Section shall be construed as precluding the removal of any junk tires from the subject premises.

**4.26.085 TEMPORARY SUSPENSION.** In addition to the matters prescribed by Section 4.10.145 and in addition to the penalties prescribed in Section 4.26.070 and Section 4.26.075, a Special Business License issued pursuant to this Chapter may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal if the City Manager finds that such temporary suspension is necessary to protect against a serious and immediate threat to public health, safety or welfare caused by the exercise of the license. In the event the City Manager orders a temporary suspension, the notice of the suspension shall be delivered to the address of the agent designated in the application as authorized to accept service of legal process for each junk tire storage premises to which the suspension pertains. The notice shall contain the following:

- (a) The finding justifying the temporary suspension;
- (b) The time, date and place at which the Licensee may appear in advance of the commencement of the temporary suspension for the purpose of responding to the charges contained in the notice; and
- (c) The time and date on which the temporary suspension commences, which shall not be earlier than 24 hours following the time and date of delivery of the notice.

Restoration of Special Business License privileges following a temporary suspension may be granted by the City Manager upon the establishment of such terms, conditions and requirements as are reasonably necessary to protect the public health, safety and welfare of the City residents and visitors.

Except for the junk tires on the subject premises at the time of the temporary suspension, no other junk tires shall be stored on the subject premises pending final determination of the temporary suspension proceedings. Nothing in this section shall be construed as precluding the removal of any junk tires from the subject premises.

**4.26.090 ABATEMENT.** Junk tires stored in violation of this Chapter are within the meaning of the term "rubbish" as that term is used in Chapter 6.58 of this Code. The provisions of Chapter 6.58 shall be applicable to abatement of violations of this Chapter relating to junk tire storage. In the event that a particular premises is rented or leased or otherwise utilized by a person other than the property owner, that person, in addition to the property owner, shall be held responsible and liable for any costs of abatement that result from the implementation of this section. For the purposes of this Chapter, nothing in Chapter 6.58 or in this Chapter shall be interpreted as imposing a requirement that the City, its officers, agents or employees remove or cause to be removed any junk tires stored contrary to this Chapter.

**4.26.095 NATURE OF ENFORCEMENT ACTIONS.** Any action or proceeding commenced or continued by the City Manager or the City against a person for violations of this Chapter, or any regulations or rules adopted by the City Manager pursuant to this

Chapter, shall be deemed actions or proceedings to enforce the police or regulatory power of the City.

**4.26.100 APPEALS.** The appeals procedure set forth in Chapter 4.10, Sections 4.10.115 through 4.10.155 as those Sections relate to Special Business Licenses, shall be applicable to this Chapter relating to junk tire storage.

## **Chapter 4.27**

### **TOBACCO RETAILERS**

#### **Sections:**

- 4.27.010 Legislative Findings.
- 4.27.020 Purpose.
- 4.27.030 Definitions.
- 4.27.040 Requirement for Tobacco Retailers License.
- 4.27.050 Application Procedure.
- 4.27.060 Issuance and Renewal of License.
- 4.27.070 Display of License.
- 4.27.080 License Fee.
- 4.27.090 License Nontransferable.
- 4.27.100 License Violation.
- 4.27.110 Suspension or Revocation of License.
- 4.27.120 Denial, Suspension, and Revocation - Appeals.
- 4.27.130 Enforcement.

**4.27.010 Legislative Findings.** The City Council finds and determines that:

(a) State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Penal Code § 308).

(b) State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business & Professions Code § 22956) and provide procedures for using persons under 18 years of age to conduct onsite compliance checks of tobacco retailers (Business & Professions Code § 22952).

(c) State law requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under 18 years of age is illegal (Business & Professions Code § 22952, Penal Code § 308).

(d) State law prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk (Business & Professions Code § 22962).

(e) State law prohibits the sale of "bidis" (hand-rolled filterless cigarettes imported primarily from India and Southeast Asian countries) except at those businesses that prohibit the presence of minors. (Penal Code § 308.1).

(f) State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco (Penal Code § 308.3).

(g) State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees (Education Code § 48901(a)).

(h) Elk Grove Municipal Code Section 6.86.070 prohibits the sale or distribution of tobacco products from vending machines.

(i) In May of 2004, the Sacramento County Department of Health and Human Services Tobacco Education Program found that 17.0% of tobacco retailers sampled in the County unlawfully sold tobacco products to minors, clerks in several types of outlets, including supermarket, convenience mart/gas stations, drug stores, and small markets, sold tobacco to minors and less than 45% of the stores surveyed displayed the STAKE Act signs required by State Law.

(j) Eighty-eight percent of adults who have ever smoked tried their first cigarette by the age of 18, and the average age at which smokers try their first cigarette is 14 1/2.

(k) The City of Elk Grove has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults.

(l) California courts in *Cohen v. City Council*, 40 Cal.3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App. 4th 383 (1993), have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law.

(m) State law authorizes local tobacco retailer licensing laws to provide for the suspension or revocation of the local tobacco retailer license for any violation of a state tobacco control law (Business & Professions Code § 22971.3).

(n) A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.

**4.27.020 Purpose.** The purpose of this Chapter is to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided for violations.

**4.27.030 Definitions.** As used in this Chapter, the following words and phrases shall have the meaning given them in this Section, unless the context clearly requires otherwise:

(a) "City" means the City of Elk Grove.

(b) "City Manager" means the City Manager of the City of Elk Grove or his or her designee.

(c) "Itinerant tobacco retailing" means engaging in tobacco retailing at other than a fixed location.

(d) "License" means a Tobacco Retailer Special Business License issued by the City pursuant to this Chapter.

(e) "Licensee" means any proprietor holding a license issued by the City pursuant to this Chapter.

(f) "Person" means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust,

business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(g) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day-to-day operations of a business.

(h) "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(i) "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed or used for the smoking or ingestion of tobacco products.

(j) "Tobacco retailer" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

(k) "Tobacco retailing" shall mean selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

#### **4.27.040 Requirement for Tobacco Retailers License.**

(a) It shall be unlawful for any person to act as a tobacco retailer without first obtaining a license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.

(b) Nothing in this Chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the City identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this Chapter shall be construed to render inapplicable, supercede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by Labor Code section 6404.5.

#### **4.27.050 Application Procedure.**

All applications for a license shall be submitted to the City Manager in the name of each proprietor proposing to conduct tobacco retailing and shall be signed by each proprietor or an authorized agent thereof. A proprietor proposing to conduct tobacco

retailing at more than one location shall submit a separate application for each location. Every application shall be submitted on a form supplied by the City Manager and shall contain the following information:

(a) The name, address, e-mail address, if any, and telephone number of each proprietor.

(b) The business name, address, and telephone number of the fixed location for which a license is sought.

(c) Whether or not any proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

(d) Such other information as the City Manager deems necessary for the administration or enforcement of this Chapter.

#### **4.27.060 Issuance and Renewal of License.**

(a) Upon the receipt of an application for a license and the applicable license fee, the City Manager shall issue a license or its renewal unless:

(1) The application is incomplete or inaccurate;

(2) The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this Chapter except this subparagraph shall not constitute a basis for denial of a license if either or both of the following apply:

(A) The applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subparagraph, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Chapter that occurred at the location, is presumed not to be an "arm's length transaction";

(B) It has been more than five (5) years since the most recent license for that location was revoked;

(3) The application seeks authorization for tobacco retailing that is unlawful pursuant to this Code, or that is unlawful pursuant to any other local, state, or federal law; or,

(4) The City Manager has information that the applicant or his or her agents or employees has violated any local, state or federal tobacco control law at the location for which the license or renewal of the license is sought within the preceding thirty-day (30) period.

(b) Unless revoked on an earlier date, all licenses shall expire one year after the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding License, the City Manager shall transmit to the licensee by mail an application for renewal. The application submitted for renewal shall be in such form and include such information as is prescribed and required by the City Manager, but shall include a renewal form provided by the City, the required fee, and a copy of the license to be renewed. A license that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed. An application for renewal and license fee shall be submitted at least thirty (30) days, but not more than sixty (60) days, prior to the expiration of the current valid license. The renewal applicant shall follow all of the procedures and provide all of the information required Section 4.27.050. The City Manager shall process the application according to the provisions of this Section.

(c) Where the City Manager does not approve a license or renewal of a license, the City Manager shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by mail not later than five (5) calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**4.27.070 Display of License.** Each license shall be prominently displayed in a publicly visible location at the licensed premises.

**4.27.080 License Fee.** The fee for issuance or renewal of a license shall be established by resolution of the City Council and shall be in addition to the fees associated with any other license or permit fee imposed by this Code upon the applicant. The license fee shall be paid to the City at the time the license application is submitted.

**4.27.090 License Nontransferable.** A license is nontransferable. If a licensee changes business location, that licensee must obtain a new license prior to acting as a tobacco retailer at the new location. If a business licensed to conduct tobacco retailing is sold, the new owner must obtain a license for that location before acting as a tobacco retailer.

**4.27.100 License Violation.** It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, state, or federal tobacco-related law.

**4.27.110 Suspension or Revocation of License.**

(a) In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this Section, if the City Manager finds that the licensee or his or her agents or employees has or have violated any of the provisions of this Chapter except violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location.

(1) Upon a finding by the City Manager of a first license violation within any five-year (5) period, the license shall be suspended for thirty (30) days.

(2) Upon a finding by the City Manager of a second license violation within any five-year (5) period, the license shall be suspended for ninety (90) days.

(3) Upon a finding by the City Manager of a third license violation within any five-year (5) period, the license shall be suspended for one (1) year.

(4) Upon a finding by the City Manager of a fourth license violation within any five-year (5) period, the license shall be revoked.

(b) Notwithstanding subsection (a), a license shall be revoked if the City Manager finds that either one or both of the following conditions exist:

(1) One or more of the bases for denial of a license under Section 4.27.060(a) existed at the time application was made or at any time before the license issued.

(2) The information contained in the license application, including supplemental information, if any, is found to be false in any material respect.

(c) In the event the City Manager suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five (5) days of the suspension or revocation in the manner prescribed in Section 4.27.060(c). The notice shall contain:

(1) A brief statement of the specific grounds for such suspension or revocation;

(2) A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of Section 4.27.120, to the City Manager, within ten (10) calendar days of the date of service of the notice; and,

(3) A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.

(d) A licensee for whom a license suspension is in effect must remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended license.

#### **4.27.120 Denial, Suspension, and Revocation - Appeals.**

(a) Any applicant or licensee aggrieved by the decision of the City Manager in denying, suspending, or revoking a license, may appeal the decision by submitting a written appeal to the City Manager within ten (10) calendar days from the date of service of the notice of denial, suspension, or revocation. The written appeal shall contain:

(1) A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

(2) A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

(3) The signatures of all parties named as appellants and their official mailing addresses; and,

(4) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

(b) The appeal hearing shall be conducted in accordance with Chapter 1.11 of the Municipal Code.

(c) Any suspension or revocation of a license shall be stayed during the pendency of an appeal that is properly and timely filed pursuant to this Section.

#### **4.27.130 Enforcement.**

(a) In addition to any other remedy, any person violating any provision of this Chapter shall be guilty of a misdemeanor for each day such violation continues.

(b) Any violation of this Chapter may be remedied by a civil action brought by the City Attorney. The City may recover reasonable attorneys' fees and costs of suit in any civil action brought by the City Attorney to remedy any violation of this Chapter.

(c) Any person violating the provisions of this Chapter shall also be liable for civil penalties of not less than two hundred fifty dollars (\$250.00) or more than twenty-five thousand dollars (\$25,000.00) for each day the violation continues.

(d) Violations of this Chapter are hereby declared to be public nuisances subject to abatement by the City.

(e) In addition to criminal sanctions, civil penalties as provided in this Section, and other remedies set forth in this Chapter, administrative penalties of up to \$5,000 for each violation of this Chapter may be imposed against any person violating any provision of this Chapter pursuant to the procedures specified in Section 16.18.205(f) of the Municipal Code or pursuant to any generally applicable provisions of the Municipal Code concerning administrative fines and penalties.

**CHAPTER 4.30**  
**ADULT-RELATED ESTABLISHMENTS**

**Article I**  
**General Provisions**

Sections:

- 4.30.000 Purposes.
- 4.30.005 Definitions.
- 4.30.010 Same - Adult-Related Establishment.
- 4.30.015 Same - Bathhouse.
- 4.30.020 Same - Introductory Service.
- 4.30.025 Same - Massage Services.
- 4.30.030 Same - Escort Services.
- 4.30.035 Same - Employed or Retained By.
- 4.30.050 Exemptions.
- 4.30.060 Hours of Operation.
- 4.30.065 List of Services.
- 4.30.070 Personnel Registers.
- 4.30.075 Employment of Minors.
- 4.30.080 Schools of Massage.
- 4.30.085 Sanitation requirements - Massage Establishments.
- 4.30.090 Sanitation requirements - Bathhouses.
- 4.30.095 Sanitation requirements - Massage Technicians.
- 4.30.100 Minimum qualifications - Massage Managers.
- 4.30.105 Minimum qualifications - Massage Technicians.

**Article 2**  
**Licenses and Permits**

- 4.30.200 License Required.
- 4.30.205 Display of License.
- 4.30.210 Employee Permits Required.
- 4.30.215 Application.
- 4.30.220 Issuance.
- 4.30.225 Revocation of Permits.

## **Article 1 General Provisions**

**4.30.000 PURPOSES.** There has been a proliferation throughout the region of adult-related establishments, such as escort bureaus, introductory services, public bathhouses, and similar businesses which offer patrons services or entertainment of an adult character. There has been a demonstrable relationship between high incidence of unlawful prostitution and drug-related crime, and the adult-related establishments regulated by this Chapter. Such businesses have been known to operate as fronts for houses of prostitution, and for illegal drug-related transactions. Past regulation by the regional governments of some of these establishments, such as massage parlors, has been unsuccessful because the establishments evade the regulations by changing their names to indicate different objects or purposes from the types of businesses regulated.

A system of requiring regulatory licenses for adult-related establishments and for those persons rendering services to customers will assist in assuring illegal activities do not occur on the premises or otherwise in connection with the business within the City. If criminal activity occurs on the premises, or if other provisions of this Chapter are violated, the licenses are subject to revocation. Criminal liability also exists for a violation of this Chapter. These provisions will provide the Chief of Police with both preventative and investigatory tools to control illegal activity in such businesses, and will promote and protect the public health, safety and welfare.

By the definition of "adult-related establishment" contained in Section 4.30.010, it is the intent of the City Council to prevent evasion of the provisions of this Chapter through the device of calling the business by a new or different name.

This Chapter is enacted pursuant to the provisions of Section 51034 of the Government Code.

**4.30.005 DEFINITIONS.** As used in this Chapter, the terms identified by Sections 4.30.010 through 4.30.035 shall be ascribed the meanings indicated.

**4.30.010 SAME - ADULT RELATED ESTABLISHMENT.** "Adult-related establishment" means a bathhouse, escort bureau, introductory service, massage establishment, or out-call massage service as defined by this Chapter. "Adult-related establishment" does not include an "Adult-Oriented Business" as defined and regulated in Chapter 4.31.

**4.30.015 SAME - BATHHOUSE.** "Bathhouse" means an establishment whose primary business is to provide, for pecuniary compensation, consideration, hire or reward, access to any kind of bath facility, including but not limited to, showers, saunas and hottubs.

**4.30.020 SAME - INTRODUCTORY SERVICE.** "Introductory service" means a business which, for pecuniary compensation, consideration, hire or reward will help persons to meet or become acquainted with others for social purposes. For purposes of this Section, "others" include personnel of the introductory service.

**4.30.025 SAME - MASSAGE SERVICES.** In relation to massage services, the following terms shall be ascribed the following meanings:

(a) "Massage" -- means any method of pressure or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external surfaces of the body with hands or with any object or appliance;

(b) "Massage Establishment" -- means an establishment whose primary business is the offering of massage in exchange for pecuniary compensation, consideration, hire or reward;

(c) "Out-Call Massage Service" -- means any business, not licensed as a massage establishment under the provisions of this Chapter, wherein the primary function of such business is to engage in or carry on massage for pecuniary compensation, consideration, hire or reward not at a fixed location, but at a location designated by the customer or client;

(d) "Massage Technician" -- means any person who for pecuniary compensation, consideration, hire or reward, engages in the practice of massage.

**4.30.030 SAME - ESCORT SERVICES.** In relation to escort services, the following terms shall be ascribed the following meanings:

(a) "Escort Bureau" -- means a business which, for pecuniary compensation, consideration, hire or reward, furnishes or offers to furnish escorts;

(b) "Escort" -- means a person who, for pecuniary compensation, consideration, hire or reward, either escorts or accompanies others to or about social affairs, entertainment or places of amusement, or keeps company with others about any place of public resort or within any private quarters.

**4.30.035 SAME - EMPLOYED OR RETAINED BY.** "Employed or retained by" shall include:

(a) any person who is a directly paid employee of an adult-related business;

(b) any person whose association with an adult-related business is that of an independent contractor who receives payments of anything of value in exchange for any service rendered to the adult-related business or any of its customers;

(c) any person who receives a referral of customers from an adult-related business and who at any time before the referral or thereafter arranges in any way for money or any thing of value to flow to the adult-related business or any of its owners (regardless of whether the parties involved acknowledge that consideration is flowing in exchange for the referral or record such consideration in their financial records).

**4.30.050 EXEMPTIONS.** This Chapter shall not be applicable to or include the following:

- (a) Hospitals, nursing homes, sanitariums, or persons working in any such establishments;
- (b) Persons holding an unrevoked certificate to practice the healing arts under the laws of the State of California or persons working under the direction of any such persons;
- (c) Barbers or cosmetologists lawfully carrying out their particular occupation or business, and holding a valid, unrevoked license or certificate of registration issued by the State of California;
- (d) Modeling schools maintained pursuant to standards established by the State Board of Education of the State of California; or
- (e) Any recognized school of massage which: (1) teaches the theory, ethics, practice, profession and work of massage requiring a minimum of 250 hours of instruction for which not more than 125 hours of credit can be given to a student for previous experience; and (2) requires a residence course of study to be given before the student is furnished with a diploma or certificate of learning or completion; and (3) has been registered pursuant to Section 94931 of the Education Code, or, if such school is not located in California, has complied with the standards commensurate with those specified in Section 94931. A "recognized school of massage" as those terms are used above, shall not include a school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class.

**4.30.060 HOURS OF OPERATION.** It shall be unlawful for any adult-related establishment to be operated or remain open for business between the hours of 10:00 p.m. and 8:00 a.m. of the following day.

**4.30.065 LIST OF SERVICES.** A list of the services available and the price of such services shall be posted in a clearly visible place at or near the entrance of each adult-related establishment. The services available shall be described in readily understandable language. No adult-related establishment shall render or provide, or offer to render or provide, any service not listed in compliance with this Section.

**4.30.070 PERSONNEL REGISTERS.** Operators of adult-related establishments shall maintain personnel registers, which shall be available for inspection by the Chief of Police at all times during regular business hours, as follows:

- (a) With respect to a massage establishment and an out-call massage service, a personnel register shall be maintained containing the names and employee permit numbers of each person employed or retained to perform service as a massage technician.
- (b) With respect to an escort or introductory service, a personnel register shall be maintained which includes the names and employee permit number of each person employed or retained as an escort or person employed or retained by the introductory service.

(c) With respect to any other adult-related establishment, a personnel register shall be maintained which includes the names of all persons employed or retained on the premises to provide services, the title of the position of each such person, and as to those persons required to possess employee permits by this Chapter, their employee permit numbers.

**4.30.075 EMPLOYMENT OF MINORS.** It shall be unlawful for the operator or any other person in charge of an adult-related establishment to employ or retain any person who is under the age of eighteen (18) years to perform any service on the premises of the establishment.

**4.30.080 SCHOOLS OF MASSAGE.** No massage establishment shall operate as a school of massage, as the terms "school of massage" are defined by Section 4.30.050(e), or shall use the facilities or premises of such a school of massage in connection with the operations of the massage establishment.

No person shall perform a massage on a member of the general public while on the premises of a school of massage, as defined by Section 4.30.050(e).

**4.30.085 SANITATION REQUIREMENTS - MASSAGE ESTABLISHMENTS.** Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Towels, coverings and linens shall not be used on more than one patron unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one patron. Soiled linens and paper towels shall be deposited in approved receptacles.

Within massage establishments wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Chief of Police. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Chief of Police. All walls, ceilings, floors and other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Instruments for massage shall not be used on more than one patron unless they are sterilized before each use by sterilization methods approved by the Chief of Police.

**4.30.090 SANITATION REQUIREMENTS -BATHHOUSES.** Within bathhouses, towels shall not be supplied to more than one patron unless such towels have first been laundered and disinfected. Wet and dry heat rooms, steam or vapor rooms and cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once a day the premises are open, with a disinfectant approved by the Chief of Police. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Chief of Police. All walls, ceilings, floors and other physical facilities shall be in good repair and maintained in a clean and sanitary condition.

**4.30.095 SANITATION REQUIREMENTS - MASSAGE TECHNICIANS.** While performing services in any adult-related establishment, massage technicians shall wear garments which cover the entire body, exclusive of the head, neck, arms, legs, hands and feet, while giving a massage. Such garments shall not be transparent.

**4.30.100 MINIMUM QUALIFICATIONS - MASSAGE MANAGERS.** Each massage establishment and out-call massage service offering any services involving physical contact with patrons shall be managed by a person who possesses a diploma or certificate of graduation from a recognized school of massage, as the terms "recognized school of massage" are defined by Section 4.30.050(e). It shall be unlawful for any massage establishment or out-call massage service offering such services to operate unless managed by a person possessing a diploma or certificate.

Such an establishment and service shall not be deemed "managed" as required by this Section unless a person possessing the required certificate or diploma having the authority and responsibility to supervise personnel employed or retained to perform services and to supervise the delivery of services is on the premises of the establishment not less than seventy-five percent of the time the business is open for the delivery of services.

**4.30.105 MINIMUM QUALIFICATIONS - MASSAGE TECHNICIANS.** It shall be unlawful for any massage establishment and out-call massage service to employ or retain a person to provide services as a massage technician, and unlawful for any person to work at or for such an establishment or service, unless the person possesses a diploma or certificate of graduation from a recognized school of massage, as the terms "recognized school of massage" are defined by Section 4.30.050(e).

## **Article 2 Licenses and Permits**

**4.30.200 LICENSE REQUIRED.** It shall be unlawful for any person to operate or conduct an adult-related establishment unless under and by authority of a valid, unexpired and unrevoked Special Business License issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.30.205 DISPLAY OF LICENSE.** Each adult-related establishment, except an out-call massage service, shall display the Special Business License in a conspicuous place within the establishment so that the same may be readily seen by persons entering the premises.

A person engaged in an out-call massage service who is the Licensee for such service shall have the License available for inspection at all times while providing out-call massage services.

**4.30.210 EMPLOYEE PERMITS REQUIRED.** It shall be unlawful for any person to provide any of the following services without possessing a valid, unexpired and unrevoked Employee Permit issued pursuant to the provisions of Chapter 4.10 and this Chapter:

- (a) Act as a manager of an adult-related establishment by supervising or controlling the personnel of such an establishment or the services rendered therein;
- (b) Give a massage for a fee or any other form of consideration;
- (c) Act as an escort or a person employed or retained by an Introductory Service.

It shall be unlawful for the operator of any adult-related establishment to employ or retain a person to perform any of the above services unless such person possesses such an Employee Permit.

**4.30.215 APPLICATION.** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit to provide services identified by Section 4.30.210 shall contain the following:

- (a) A list of each conviction of the applicant, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged and the offense of which the applicant was convicted.
- (b) Proof of the age of the applicant; and
- (c) With respect to a permit to perform services as a manager of a massage establishment or out-call massage service or as a massage technician, the name and address of each school of massage attended or provider of instructional services in massage which has been received, the name and address and current telephone number of the school or provider, the dates of attendance or receipt of instruction, and a copy of any certificate or diploma or other evidence of completion which the applicant has received.

**4.30.220 ISSUANCE.** Upon receipt of an application for an Employee Permit to act as a manager of an adult-related establishment, a massage technician, or an escort, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit unless he or she finds pursuant to Section 4.10.090 any of the following:

- (a) That the application fails to contain information required by the Chief of Police or Section 4.30.215, or is otherwise incomplete;
- (b) That information contained in the application is false or otherwise inaccurate;
- (c) That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk

that the applicant would not perform his or her duties as a manager, massage technician, or escort in a law-abiding manner or in a manner which does not subject patrons to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq., or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under California Penal Code Section 482(a).

(d) That the applicant is under eighteen (18) years of age; or

(e) That with respect to an application for an Employee Permit to act as a manager of a massage establishment or out-call massage service offering services involving physical contact with patrons, or massage technician, the applicant has not graduated from a recognized school of massage, as defined by Section 4.30.050(e).

Notwithstanding any other provision in this Chapter to the contrary, the Chief of Police may deem the requirements of the immediately preceding subparagraph and Sections 4.30.100 and 4.30.105 satisfied if he or she finds in writing that the applicant for the Permit has attended not less than two hundred and fifty (250) hours of instruction in massage at a school within or outside this State or in any foreign country that provides education substantially equal to or in excess of that received as a result of graduating from a recognized school of massage. Not more than one hundred and twenty-five (125) hours of such 250 hour instructional requirement can be waived based upon prior education or training experience.

**4.30.225 REVOCATION OF PERMITS.** An Employee Permit may be revoked or suspended pursuant to Section 4.10.140 upon any of the following grounds:

(a) Violation of any of the duties, requirements or prohibitions contained in this Chapter;

(b) Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to Section 4.02.085;

(c) Misrepresentation of a material fact contained in the application for the Permit; or

(d) That since issuance or renewal of the Permit the Chief of Police has acquired information supporting a finding prescribed by Section 4.30.220(c) in relation to the holder of the Permit.

**CHAPTER 4.31**  
**ADULT-ORIENTED BUSINESSES**

**Article 1**  
**General Provisions**

Sections:

- 4.31.000 Purpose and Intent.
- 4.31.005 Licenses and Registration Required.
- 4.31.010 Classification.

**Article 2**  
**Definitions**

- 4.31.050 Definitions.

**Article 3**  
**Adult-Oriented Business Licenses**

- 4.31.100 Adult-Oriented Business License Required.
- 4.31.105 Investigation and Action on Application.
- 4.31.110 Transfer of Adult-Oriented Business Licenses.

**Article 4**  
**Adult-Oriented Business Employee Permits**

- 4.31.200 Employee Permit Required.
- 4.31.205 Investigation and Action on Application.
- 4.31.210 Transfer of Employee Permit.

**Article 5**  
**Denial, Suspension and Revocation of License or Permit**

- 4.31.300 Denial of License or Permit.
- 4.31.305 Suspension or Revocation of License or Permit.
- 4.31.306 Suspension or Revocation Hearing.
- 4.31.310 Appeal.
- 4.31.315 Confidentiality.

**Article 6**  
**Development and Performance Standards**

- 4.31.400 Prohibition Against Minors.
- 4.31.405 Concealing Specified Activities and Anatomical Areas From Public View.
- 4.31.410 Posting Notices Related to Minors.
- 4.31.415 Indoor Areas Open to View by Management.

- 4.31.420 Building Requirements.
- 4.31.425 Hours of Operation.
- 4.31.430 Security Guards.
- 4.31.435 Register and Permit Number of Employees.
- 4.31.440 Inspection.
- 4.31.445 Restroom Facilities.
- 4.31.450 Special Regulations - Live Entertainment.
- 4.31.455 Special Regulations - Adult Motels.
- 4.31.460 Special Regulations - Films, Video, or Viewing Booths.
- 4.31.465 Special Regulations - Nude Model Studios.
- 4.31.470 Special Regulations - Public Nudity.
- 4.31.475 Prohibition - Sexual Encounter Centers.

**Article 7**  
**Enforcement**

- 4.31.500 Each Day Separate Offense.
- 4.31.505 Public Nuisance.
- 4.31.510 Infractions.
- 4.31.515 Civil Injunction.
- 4.31.520 Administrative Remedies.
- 4.31.525 Revocation of License.

**Article 1**  
**GENERAL PROVISIONS**

**4.31.000 PURPOSE AND INTENT.**

It is the intent of this Chapter to regulate Adult-Oriented Businesses in order to promote the health, safety, and general welfare of the residents of the City. The provisions of this Chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials and paraphernalia protected by the First Amendment, or denying access by the distributors, exhibitors, and Performers of adult-oriented entertainment to their intended market. In addition, the provisions of this Chapter have neither the purpose nor effect of condoning or legitimizing the distribution of obscene material.

**4.31.005 LICENSES AND REGISTRATION REQUIRED.**

(a) It is a violation of this Chapter for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises in the City, the operation of an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Special Business License issued by the Chief of Police pursuant to this Chapter.

(b) It is a violation of this Chapter for any person who operates an Adult-Oriented Business to employ or permit a person to work for or at the Adult-Oriented Business who does not possess a valid Adult-Oriented Business Employee Permit issued by the Chief of Police pursuant to this Chapter.

(c) It is a violation of this Chapter for any person to obtain employment with or perform, work for or at an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business Employee Permit issued by the Chief of Police pursuant to this Chapter. These provisions shall not apply to persons exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not Nude, Semi-Nude, in a State of Nudity, or in a Semi-Nude Condition.

(d) It is a violation of this Chapter for any person to engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business Employee Permit issued by the Chief of Police pursuant to this Chapter.

**4.31.010 CLASSIFICATION.**

Adult-Oriented Businesses are classified as follows:

(a) Adult Arcades;

- (b) Adult Bookstores (including Adult Novelty Stores or Adult Video Stores);
- (c) Adult Cabarets;
- (d) Adult Motels (including Adult Hotels);
- (e) Adult Motion Picture Theaters;
- (f) Adult Theaters;
- (g) Nude Model Studios; and
- (h) Sexual Encounter Centers.

## **Article 2 DEFINITIONS**

### **4.31.050 DEFINITIONS.**

The definitions contained in this Section shall govern the construction of this Chapter.

(a) **Adult Arcade** means any commercial establishment to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, computer, or other image-producing devices are maintained to show images to four (4) or fewer persons per machine at any one time, and where, as a regular and substantial course of conduct, the images so displayed are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas. The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the business' displays that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(2) The proportion of the business' revenue that is attributable to displays that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(b) **Adult Bookstore (including Adult Novelty Store or Adult Video Store)** means a commercial establishment which, as a regular and substantial course of conduct, offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides, or other visual representations which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; or,

(2) Instruments, devices, or paraphernalia, except for clothing, which are designed for use in connection with Specified Sexual Activities.

(3) The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(A) The business devotes more than twenty-five percent (25%) of its retail inventory (not measured by the number of items but rather by the cost to the business owner of the inventory) to merchandise distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.

(B) The business devotes more than twenty-five percent (25%) of the retail floor area to merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.

(C) The retail value of merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas exceeds twenty-five (25%) of the total retail value of inventory offered in each of the following categories:

- (i) books,
- (ii) magazines,
- (iii) video tapes or any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), for sale or rental,
- (iv) novelties and devices, and
- (v) on-premises viewing of images, films, and or videos.

(D) Gross revenue derived from merchandise in any category set forth in Paragraph C above exceeds (25%) of the total gross revenue for the category.

There is a rebuttable presumption that a business constitutes an adult bookstore, adult novelty store or adult video store where the business offers or advertises merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas as set forth in Paragraph C above and fails to make revenue and inventory related business records available to the City upon twenty-four (24) hours advance notice.

(c) **Adult Cabaret** means a nightclub, bar, restaurant, or similar commercial establishment which, as a regular and substantial course or conduct, features:

- (1) Persons who appear in a State of Nudity or Semi-Nude Condition;
- or

(2) Live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or

(3) Films, motion pictures, video cassettes, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(4) The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(A) The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(B) The proportion of the business' revenue that is attributable to performances or services that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(d) **Adult Motels (including Adult Hotels)** means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or other photographic reproductions which, as a regular and substantial course of conduct, are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; and has any of the following characteristics:

(1) a sign visible from the public right of way which advertises the availability of the above-described photographic reproductions; or

(2) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(3) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

(e) **Adult Motion Picture Theater** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, for observation by five (5) or more patrons at any one time.

The phrase "regularly shown" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the theater's photographic reproductions that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(2) The number of photographic reproductions shown at the theater each month that are distinguished or characterized by an emphasis upon depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(3) The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the display or depiction of Specified Sexual Activities or Specified Anatomical Areas.

(f) **Adult-Oriented Businesses** means any of the following commercial establishments where patrons are permitted or invited: an Adult Arcade, Adult Bookstore, Adult Novelty Store, Adult Video Store, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Nude Model Studio, or Sexual Encounter Center. An Adult-Oriented Business does not include those businesses defined and regulated as "Adult-Related Businesses" under Chapter 4.30.

(g) **Adult Theater** means a theater, concert hall, auditorium, or similar commercial establishment which as a regular and substantial course of conduct features persons who appear in a State of Nudity or Semi-Nude Condition and/or features live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(2) The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(h) **Distinguished or Characterized by An Emphasis Upon** means the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas," the films so described are those whose dominant or predominant character and theme are the depiction, description, showing, or simulation of the enumerated sexual activities or anatomical areas.

(i) **Employee** means a person who performs any service on the premises of an Adult-Oriented Business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not such person is paid a salary, wage or other compensation by the operator of the business. Employee does not include a person exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not in a State of Nudity or in a Semi-Nude Condition.

(j) **Establishment of an Adult-Oriented Business** means and includes any of the following:

(1) The opening or commencement of any Adult-Oriented Business as a new business;

(2) The conversion of an existing business, whether or not an Adult-Oriented Business, to any other Adult-Oriented Business;

(3) The addition of any Adult-Oriented Business to any other existing Adult-Oriented Business; or

(4) The relocation of any Adult-Oriented Business.

(k) **Fabric** means cloth made by weaving or knitting natural or synthetic fibers and filaments, and for the purposes of this definition, includes paper, metallic or plastic materials but excludes any material directly painted on a body.

(l) **Hotel** means a building or group of buildings containing guestrooms offering transient lodging accommodations to the general public and incidental services that are customarily provided by a hotel, for the convenience of hotel guests, such as food service, recreational facilities, retail services, and banquet, reception and meeting rooms.

(m) **Licensee** means: a person in whose name a license to operate an Adult-Oriented Business has been issued, as well as the person listed as an applicant on the application for a license.

(n) **Motel** means an establishment otherwise defined as a hotel with at least twenty-five (25) percent of all rooms having direct access to the parking areas without the necessity of persons passing through a main lobby of the building.

(o) **Nude Model Studio** means any place where a person: appears Semi-Nude, in a State of Nudity, or displays Specified Anatomical Areas; and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of California or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which

credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(1) That has no sign visible from the exterior of the structure and no other advertising that indicates a person in a State of Nudity or a Semi-Nude Condition is available for viewing;

(2) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

(3) Where no more than one (1) Nude or Semi-Nude model is on the premises at any one time.

(p) **Nudity or a State of Nudity** means the showing of the human male or female genitals, pubic area, anus, or buttocks with less than a fully opaque fabric covering, the showing of the female breast with less than a fully opaque fabric covering of any part of the areola, or the showing of completely or opaquely covered (by Fabric) male genitals in a discernibly turgid state.

(q) **Permit** means a authorization issued by the City to a person in whose name a permit has been issued allowing employment in an Adult-Oriented Business.

(r) **Person** means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(s) **Police Chief or Chief of Police** means the Chief of Police of the City of Elk Grove or the authorized representatives thereof.

(t) **Semi-Nude or in a Semi-Nude Condition** means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks and areola of the female breast as well as portions of the body covered by supporting straps or devices.

(u) **Sexual Encounter Center** means a business or commercial enterprise that, as one of its principal purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, when one or more of the persons is in a State of Nudity or Semi-Nude Condition. The definition of sexual encounter center does not include an establishment where a medical practitioner, physiologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(v) **Specified Anatomical Areas** means and includes the following:

(1) Less than completely and opaquely covered by fabric: human genitals or pubic region; human buttocks; human anus; or the female breast below a point immediately above the top of the areola;

(2) Human male genitals in a discernibly turgid state, even if completely or opaquely covered by Fabric; and

(3) Any device, costume, or covering that simulates any of the body parts included in subdivisions (1) or (2) above.

(w) **Specified Criminal Activity** means the following offenses within the State of California, or an offense without the State of California that would have constituted any of the following offenses if committed within the State of California: Sections 243.4, 261, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 288, 314.1, 314.2, 315, 316, 318, 653.22 or subdivisions (a), (b) and (d) of Section 647 of the California Penal Code; any offense requiring registration under provisions of either Section 290 of the California Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or as those sections may thereafter be amended or renumbered

(x) **Specified Sexual Activities** means and includes any of the following, whether performed directly or indirectly through clothing or other covering:

(1) The fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breast;

(2) Sex acts, actual or simulated, including but not limited to, intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated;

(4) Excretory functions as part of or in connection with any of the other activities described in subdivision (1) through (2) above.

(y) **Transfer of Ownership or Control of Adult-Oriented Business** means and includes any of the following:

(1) The sale, lease, or sublease of the Adult-Oriented Business;

(2) The transfer of securities which constitute a controlling interest in the Adult-Oriented Business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the Adult-Oriented Business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**Article 3**  
**ADULT-ORIENTED BUSINESS LICENSES**

**4.31.100 ADULT-ORIENTED BUSINESS LICENSE REQUIRED.** Every person who proposes to maintain, operate, conduct, or establish an Adult-Oriented Business in the City shall file an application with the Chief of Police on a form provided by the City and shall pay a non-refundable application, investigation, and licensing fee set forth in the schedule of fees established from time to time by the City Council.

(a) All applicants must be qualified according to the provisions of this Chapter. The application may request and the applicant shall provide such information including fingerprints as to enable the Chief of Police to determine whether each applicant meets the qualifications established in this Chapter.

(b) If a person who wishes to operate an Adult-Oriented Business is an individual, the person must sign the application. If a person who wishes to operate an Adult-Oriented Business is other than an individual, each individual who has a twenty percent (20%) or greater ownership interest in the Adult-Oriented Business must sign the application. Each applicant must be qualified under this Chapter and each applicant shall be considered a Licensee if a license is granted.

(c) The completed application for an Adult-Oriented Business License shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(A) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least eighteen (18) years of age;

(B) a partnership, the partnership shall state its complete name, address, e-mail address, if any, and the names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any;

(C) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacity of all officers and directors, and the name of the registered corporate agent and the address of the registered office for service of process.

If the applicant is a partnership or corporation, each partner of the partnership or each shareholder of the corporation with twenty (20%) percent or more share of the corporation shall be deemed an individual applicant and must each be qualified under this Chapter.

(2) If the applicant intends to operate the Adult-Oriented Business under a name other than that of the applicant, the applicant shall register the fictitious name of the Adult-Oriented Business with the appropriate governmental entity and show written proof of registration of the fictitious name.

(3) Whether the applicant has been convicted of a Specified Criminal Activity and, if so, the particular California statute section listed in the definition of Specified Criminal Activity, the date, place, and jurisdiction of each.

(4) Whether the applicant has ever had a license previously issued under this Chapter or its predecessor, or other similar Adult-Oriented Business ordinances from another city or county, denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or majority stockholder of a corporation that is licensed under this Chapter, or its predecessor, whose license has previously been denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) Whether the applicant holds any other licenses under this Chapter, or its predecessor, or other similar Adult-Oriented Business ordinance from another city or county, and, if so, the names and locations of such other licensed businesses.

(6) The particular Adult-Oriented Business for which the applicant is applying. An applicant must apply separately for each Adult-Oriented Business to be operated, owned, managed, or controlled by the applicant.

(7) The address to which notice of action on the application is to be mailed.

(8) The location of the Adult-Oriented Business, including a legal description of the property, street address, and telephone number(s), if any.

(9) The applicant's mailing address, residential address, and e-mail address, if any.

(10) A recent photograph of the individual applicant.

(11) The applicant's driver's license number, Social Security number, and, for partnerships or corporation applicants, the applicant's state or federally issued tax identification number to the extent the applicant has been issued these items.

(12) The names of all Employees, independent contractors, and other persons who will work, be employed or perform at the Adult-Oriented Business, who are required by this Chapter to obtain an Adult-Oriented Business Employee Permit.

(13) A sketch or diagram showing interior configuration of the premises, including a statement of the total floor area occupied by the Adult-Oriented Business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(14) A certificate and straight-line drawing, prepared within 30 days prior to application, depicting, without regard to intervening structures or objects, the distance from the closest exterior wall of the building or structure, in which the Adult-Oriented Business is located, to the boundary of the property on which is located a building, structure or use, or portion of the building, structure or use, described in, and within the distance specified in, section 23.70.040 of the City's Zoning Code.

(15) A diagram of the off-street parking areas and premises entries of the Adult-Oriented Business and showing the location of the lighting system.

(d) Every application for a license under this Chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

(e) The fact that an applicant possesses other types of state, city or county permits or licenses does not exempt the applicant for the requirement of obtaining an Adult-Oriented Business License.

#### **4.31.105 INVESTIGATION AND ACTION ON APPLICATION.**

(a) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within ten (10) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have thirty (30) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with Chief of Police as set forth herein.

(b) Within three (3) business days after the Chief of Police determines that the application is complete and the required non-refundable application fee has been submitted, the Chief of Police shall issue a temporary license to the applicant, which shall be valid for the time period during which the license application is being processed, which time period shall not exceed thirty (30) business days from the date the application has been deemed complete. A temporary license issued pursuant to this subsection shall not grant any vested rights on the holder of the temporary license.

(c) Within five (5) business days after receipt of a completed application and the required filing fee, the Chief of Police shall transmit copies of the application and its attachments to appropriate City departments.

(d) Within thirty (30) business days after receipt of a completed application and the required filing fee, the Chief of Police shall complete the investigation, grant or deny the application in accordance with the provisions of this Chapter, and shall notify the applicant as follows:

(1) If the application is approved, the Chief of Police will write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an Adult-Oriented Business License.

(2) If the application is denied, the Chief of Police will write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(3) The documents specified in paragraphs (1) and (2) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application for receipt of the determination under this Chapter. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(e) The Chief of Police shall approve the issuance of a license to an applicant, unless it is determined by a preponderance of the evidence that any of the following findings is true:

(1) That the operation as proposed by the applicant, if permitted, will not comply with all applicable laws, including, but not limited to the locational requirement set forth in the City's Zoning Code, the provisions of this Chapter, and the building, health, housing and fire codes of the City.

(2) That the applicant has been convicted of a Specified Criminal Activity except the Chief of Police shall issue a permit to any person convicted of any of the crimes described above if the person is otherwise qualified for a permit; and the longer of the following time periods has passed:

- (A) Five years from date of the conviction; or
- (B) Five years from release from confinement; or
- (C) Five years from formal release from probation period; or
- (D) Five years from formal release from parole.

(3) That the applicant has knowingly made a material misrepresentation in the application;

(4) That the applicant or any operator has had a license for an Adult-Oriented Business revoked for cause by this City or any other city or county within the last five years except as provided in this Chapter;

- (5) That the applicant is not at least eighteen (18) years of age;
- (6) That the applicant has not paid the required fee.

(f) The license, if granted shall expire one (1) year from the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding License, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the Chief of Police, but shall include a renewal form provided by the City, the required fee, and a copy of the license to be renewed. The sole purpose of the renewal application is to update the information provided by the applicant on the initial application.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding License. Notwithstanding Section 4.10.60, the Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate to determine whether the standards for renewal are satisfied. In considering such renewal, the Chief of Police shall use the same standards as used for issuance of an initial license. The Chief of Police shall extend the term of the immediately preceding License during the period of any investigation or examination required in order to determine whether the License should be renewed. The Chief of Police shall act upon applications for license renewal as provided herein for applications for initial licenses.

(g) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the Adult-Oriented Business and the single classification of Adult-Oriented Business as set forth herein, for which the license is issued.

(h) All licenses shall be posted in a conspicuous place at or near the entrance to the Adult-Oriented Business so that they may be easily read at any time by all persons entering the Adult-Oriented Business.

(i) Within thirty (30) calendar days of any change in the information originally submitted with the license application, all Licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this Chapter. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(j) Within thirty (30) calendar days of any change in Employee hiring or status, all Licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this Chapter. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(k) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within thirty (30) business days after its receipt, the applicant may begin operating the Adult-Oriented Business for the single classification of Adult-Oriented Business as set forth herein, for which the license was sought, subject

to strict compliance with the provisions of this Chapter for a period of 12 months subject to the renewal provisions as set forth in this Chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police from either granting or denying a completed application pursuant the terms of this Chapter even if more than thirty days has elapsed since the receipt of a completed application.

#### **4.31.110 TRANSFER OF ADULT-ORIENTED BUSINESS LICENSES.**

(a) It is a violation of this Chapter for a Licensee to operate an Adult-Oriented Business under the authority of an Adult-Oriented Business License at any place other than the address of the Adult-Oriented Business stated in the application upon which the license was issued.

(b) It is a violation of this Chapter for a Licensee to transfer ownership or control of an Adult-Oriented Business License to another person unless and until the transferee first obtains a written amendment to the license from the Chief of Police in accordance with and subject to the application and fee requirements set forth in this Chapter.

(c) It is a violation of this Chapter for a Licensee to transfer an Adult-Oriented Business License when the Chief of Police has notified the Licensee that the license has been suspended or revoked or that such action is pending.

(d) Any attempt to transfer a license either directly or indirectly in violation of this Chapter is void, and the license shall be deemed revoked.

### **Article 4 ADULT-ORIENTED BUSINESS EMPLOYEE PERMITS**

#### **4.31.200 EMPLOYEE PERMIT REQUIRED.**

(a) No person shall engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business, without a valid Adult-Oriented Business Employee Permit issued by the Chief of Police.

(b) All Employees of an Adult-Oriented Business shall have a valid Adult-Oriented Business Employee Permit issued by the Chief of Police.

(c) Before any applicant may be issued an Adult-Oriented Business Employee Permit, the applicant shall submit to the Chief of Police on a form to be provided by the City the following information:

(1) The applicant's legal name and any other name including "stage" names or aliases used by the applicant;

(2) Age, date, and place of birth;

- (3) Height, weight, hair and eye color;
- (4) Present residence address and telephone number;
- (5) Present business address and telephone number;
- (6) Date, issuing state and number of driver's license or other identification card information if applicable;
- (7) Social Security number; and,
- (8) Satisfactory written proof that the individual is at least eighteen (18) years of age.

(d) Attached to the application form shall be the following:

(1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(2) A statement detailing the permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously obtained or is seeking to obtain an Adult-Oriented Business Employee Permit in this City or any other county, city, state, or country, and whether such applicant has ever had a license, permit, or authorization to do business in an Adult-Oriented Business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted within the past five (5) years, as of the date of submitting the application, of a Specified Criminal Activity as defined in this Chapter and, if so, the particular California statute section listed in the definition of Specified Criminal Activity, the date, place and jurisdiction of each conviction.

(e) Every application for a permit under this Chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

(f) Every application for an Adult-Oriented Business Employee Permit, whether for a new permit or for a renewal of an existing permit, shall be accompanied by a non-refundable application, investigation and permit fee as set forth in the schedule of fees established from time to time by the City Council.

(g) The fact that an applicant possesses other types of state, City or county permits or licenses does not exempt the applicant for the requirement of obtaining an Adult-Oriented Business Employee Permit.

#### **4.31.205 INVESTIGATION AND ACTION ON APPLICATION.**

(a) Upon receipt of an application for an Adult-Oriented Business Employee Permit and the required non-refundable application, investigation, and licensing fee, the Chief of Police shall issue a 15-day temporary permit to the applicant.

(b) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within five (5) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have ten (10) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with Chief of Police as set forth herein

(c) Within fifteen (15) business days after the issuance of the temporary permit, the Chief of Police shall grant or deny the application and so notify the applicant as follows:

(1) If the application is approved, the Chief of Police will write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an Adult-Oriented Business Employee Permit.

(2) If the application is denied, the Chief of Police will write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(3) The documents specified in (1) and (2) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(d) The Chief of Police shall grant the application unless it is determined by a preponderance of the evidence that any of the following findings is true:

(1) That the applicant has been convicted of a Specific Criminal Activity except the Chief of Police shall issue a permit to any person convicted of any of the crimes described above if the person is otherwise qualified for a permit; and the longer of the following time periods has passed:

- (A) Five years from date of the conviction; or
- (B) Five years from release from confinement; or
- (C) Five years from formal release from probation period; or
- (D) Five years from formal release from parole.

(2) That the applicant has knowingly made a material misrepresentation in the application.

(3) That the applicant has had an Adult-Oriented Business Employee Permit revoked for cause by this City or any other city or county within the last five years except as provided in this Chapter.

(4) That the applicant is not at least eighteen (18) years of age.

(5) That the applicant has not paid the required fee

(e) The permit, if granted shall expire one (1) year from the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding Permit, the City Manager shall transmit to the permittee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the Chief of Police, but shall include a renewal form provided by the City, the required fee, and a copy of the permit to be renewed. The sole purpose of the renewal application is to update the information provided by the applicant on the initial application.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding Permit. Notwithstanding Section 4.10.085, the Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate to determine the standards for renewal are satisfied. In considering such renewal, the Chief of Police shall use the same standards as used for issuance of an initial permit. The Chief of Police shall extend the term of the immediately preceding Permit during the period of any investigation or examination required in order to determine whether the Permit should be renewed. The Chief of Police shall act upon applications for permit renewal as provided herein for applications for initial permits.

(f) The permit, if granted, shall state on its face the name of the person to whom it is granted, and the expiration date. The Chief of Police shall provide each person issued an Adult-Oriented Business Employee Permit with an identification card containing the name, address, photograph, and permit number of the Permit.

(g) Both the Permit and identification card shall be available for inspection at all times during which the Permittee is on the premises of an Adult-Oriented Business.

(h) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within fifteen (15) business days after its receipt, the applicant may begin employment at an Adult-Oriented Business, subject to strict compliance with the provisions of this Chapter for a period of 12 months subject to the renewal provisions as set forth in this Chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police from either granting or denying a completed application pursuant the terms of this Chapter even if more than thirty days has elapsed since the receipt of a completed application.

**4.31.210 TRANSFER OF EMPLOYEE PERMIT.** A permit holder shall not transfer ownership or control of an Adult-Oriented Business Employee Permit.

#### **Article 5**

#### **DENIAL, SUSPENSION, AND REVOCATION OF LICENSE OR PERMIT**

**4.31.300 DENIAL OF LICENSE OR PERMIT.** When the Chief of Police denies application for a license or permit or the application for a renewal of a license or permit, other than due to the failure to pay the required fees, the applicant shall not be issued a license or permit for one (1) year from the date of denial. If, subsequent to denial, the Chief of Police finds that the basis for denial has been corrected or abated, the applicant shall be granted a license or permit if at least ninety (90) days have elapsed since the date denial became final and the applicant is otherwise qualified to obtain a license or permit.

#### **4.31.305 SUSPENSION OR REVOCATION OF LICENSE OR PERMIT.**

(a) A Licensee or Permittee may be subject to suspension or revocation of his or her License or Permit, or be subject to other appropriate remedial action, including the imposition of additional conditions, for any of the following causes arising from the acts or omissions of the Licensee or Permittee, or an employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business:

(1) The Licensee or Permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a License or Permit, or in any report or record required to be filed with the City.

(2) The Licensee or Permittee, employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business has engaged in or knowingly allowed or permitted, or has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the Adult-Oriented Business:

(A) Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.

(B) Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.

(C) Any conduct constituting a criminal offense which requires registration under Section 290 of the California Penal Code.

(D) The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of Sections 315, 316, or 318 or Section 647(b) of the California Penal Code.

(E) Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including but not limited to Sections 311 through 313.4.

(F) Any conduct prohibited by this Chapter.

(3) The Licensee or Permittee failed to abide by any lawful condition previously imposed by an authorized City official.

(4) The Licensee or Permittee failed to abide by any applicable provision of this Chapter.

(b) In accordance with the provisions of this Chapter, if the Chief of Police finds and determines that there are grounds for action, the Chief of Police shall propose one of the following:

(1) A warning;

(2) Suspension of the License or Permit for a specified period not to exceed six months;

(3) Revocation of the License or Permit.

(4) The Chief of Police shall propose the revocation of a License or Permit if it has been suspended within the proceeding (12) months.

(c) The revocation of a License or Permit shall continue for one (1) year, and the Licensee or Permittee shall not be issued an Adult-Oriented Business license or permit for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may apply for and be granted a new license or permit if at least ninety (90) days have elapsed since the date the revocation became effective and the applicant is otherwise qualified for a license or permit.

**4.31.306 SUSPENSION OR REVOCATION HEARING.** On determining that grounds for license or permit revocation or suspension exist, the Chief of Police shall furnish written notice of the proposed suspension or revocation to the Licensee or Permittee. Such notice shall set forth the time and place of a hearing to be conducted by a Hearing Authority appointed by the City Manager, and the grounds upon which the hearing is based, the pertinent Code sections at issue, and a brief summary of the facts in support of the suspension or revocation. The notice shall be mailed, postage

prepaid, to the last know address of the Licensee or Permittee, or shall be delivered to the Licensee or Permittee personally, at least ten (10) working days prior to the hearing date. At the hearing, all parties shall have a right to offer testimonial, documentary, and tangible evidence on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence upon which reasonable persons are accustomed to rely in the conduct of serious matters may be admitted. Any hearing under this Chapter may be continued for a reasonable time for the convenience of a party or witness. Notice of the Hearing Authority's decision shall be mailed to the applicant or Licensee or Permittee no later than seven (7) days after the close of the hearing. If the Hearing Authority determines that grounds for revocation or suspension exist, the Hearing Authority shall include in its written decision any one or more of the actions listed in section 4.31.305(b) to be effective within fourteen (14) days of the hearing.

#### **4.31.310 APPEAL.**

(a) All decisions of the Chief of Police and/or the Hearing Authority to issue, renew, deny, suspend or revoke a license or permit are final within thirty (30) calendar days. After denial of an application, renewal, or a suspension or revocation, the applicant or licensee or permittee may seek prompt judicial review of such decision in any court of competent jurisdiction as provided by law, including judicial review pursuant to Section 1094.8 of the California Code of Civil Procedure. Notwithstanding the applicant's or licensee's or permittee's right to initiate judicial review, the City shall, upon the written request of an aggrieved applicant, licensee, or permittee within three (3) business days of its receipt of the request, file an action with a court of competent jurisdiction seeking declaratory and injunctive relief, including temporary and preliminary relief, as to the propriety of the denial, revocation, or suspension.

(b) If, upon request, the City files such action seeking judicial review or the aggrieved applicant, licensee or permittee files the action, the City's revocation, suspension, or denial of renewal application will be stayed pending a judicial decision on the merits by a court of competent jurisdiction.

(c) If the City denies an initial application of a license or permit and the aggrieved applicant commences a legal action to determine the validity of the denial or makes a written request in the manner set forth herein that the City commence such action, the City shall issue a temporary license or permit if the court has not rendered a decision on the merits within the earlier of twenty (20) calendar days after the matter is submitted to the court or fifty (50) calendar days of the filing of the action. This temporary license or permit shall remain in effect only until the court in which the action is pending renders its decision on the merits as to the propriety of the denial.

**4.31.315 CONFIDENTIALITY.** The City deems confidential license and permit applications required by this Chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the applications or the information contained therein.

**Article 6**  
**DEVELOPMENT AND PERFORMANCE STANDARDS**

**4.31.400 PROHIBITION AGAINST MINORS.** It shall be unlawful for any Licensee, operator, or other person in charge of any Adult-Oriented Business to permit to enter, or remain within the Adult-Oriented Business, any person who is not at least eighteen (18) years of age or to provide any service for which this Chapter requires a license, to any person who is not at least eighteen (18) years of age.

**4.31.405 CONCEALING SPECIFIED ACTIVITIES AND ANATOMICAL AREAS FROM PUBLIC VIEW.** No Adult-Oriented Business shall be operated in any manner that permits the observation of any material or activities depicting or describing Specified Sexual Activities or Specified Anatomical Areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window, or other opening. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.

**4.31.410 POSTING NOTICES RELATING TO MINORS.** The building entrance to an Adult-Oriented Business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Such notice shall be constructed and posted to the satisfaction of the Planning Director or his or her designee.

**4.31.415 INDOOR AREAS OPEN TO VIEW BY MANAGEMENT.** All indoor areas of the Adult-Oriented Business where patrons or members of the public are permitted, excluding rest rooms and non-public areas of Adult Motels, shall be open to view by management at all times.

**4.31.420 BUILDING REQUIREMENTS.** The premises and grounds of all Adult-Oriented Businesses shall comply with the following;

(a) Maximum occupancy load, fire exits, aisles, parking and fire equipment shall be regulated, designed and provided in accordance with the fire department and building regulations and standards adopted by the City.

(b) The premises within which the Adult-Oriented Business is located shall provide sufficient sound-absorbing insulation so that noise generated inside the premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.

(c) All interior areas of the Adult-Oriented Business shall be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

- (1) Adult Bookstores - 20 foot-candles;

(2) Adult Theaters, Adult Motion Picture Theaters and Adult Cabarets - 5 foot-candles (except during performances, at which times lighting shall be at least 1.25 foot-candles);

(3) Adult Arcades - 10 foot-candles;

(4) Adult Motels - 20 foot-candles (in public areas)

(5) Nude Model Studios - 20 foot-candles.

(d) All off-street parking areas and premise entries of the Adult-Oriented Business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of at least one (1) foot candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the Adult-Oriented Business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

(e) The exterior of the Adult-Oriented Business shall be equipped with a security system that visually records and monitors all off-street parking areas provided for the Adult-Oriented Business during all times that the business is open or occupied for business.

(1) The surveillance equipment utilized shall provide continuous recording for at least a 24-hour period, with all recording maintained for a minimum of 72 hours.

(2) Immediately upon request, the surveillance recording for all or any portion of the previous 72-hour period shall be made available to the Chief of Police, or his or her designated representative. Such recordings shall be utilized only for purposes of investigation of an alleged violation of a local, state or federal law, or the enforcement thereof. Except as necessary to enforce a local, state or federal law, the City deems confidential the surveillance recordings required by this Chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the surveillance recordings or the information contained therein.

(3) Signs shall be posted in the parking area, near the entrances to the premises, and at a conspicuous location inside the premises in such a manner as to notify the public that the exterior of the premises is subject to recorded surveillance.

(f) The exterior portions of the building shall be painted in a single achromatic color unless the Adult-Oriented Business is a part of a commercial multi-unit center and the exterior portions of each individual unit in the commercial center, including the exterior portion of the business, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit center. Nothing in this provision shall be construed to

require the painting of an otherwise unpainted exterior portion of an Adult-Oriented Business.

(g) No exterior signage shall contain photographs, silhouettes, drawings, images or pictorial representations in any manner, depicting or making linguistic reference to nudity, specified anatomical areas, specified sexual activity, or any device or paraphernalia designed for use in connection with specified sexual activity.

**4.31.425 HOURS OF OPERATIONS.** An Adult-Oriented Business shall be open for business only between the hours of 10 a.m. and 12 a.m./midnight on any particular day.

**4.31.430 SECURITY GUARDS.** Adult-Oriented Businesses shall employ off-duty law enforcement officers or security guards in order to maintain the public peace and safety, based upon the following standards:

(a) Adult-Oriented Businesses shall provide at least one (1) officer or security guard at all times while the business is open. If the occupancy limit of the Adult-Oriented Business is greater than thirty-five (35) persons, an additional officer or security guard shall be on duty.

(b) Officers or security guards shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of these regulations. Officers and security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as an officer or security guard as required by applicable provisions of state law. No officer or security guard required pursuant to this Chapter shall act as a door person, ticket seller, ticket taker, admittance person, entertainer or performer, or sole occupant of the manager's station while acting as a security guard.

(c) Officers and security guards shall report any violation of law immediately to the responsible manager on the premises at the time the violation or threatened violation occurs, and shall prepare a written report outlining the violation or threatened violation observed. Copies of all written reports required by this Chapter shall be maintained on the premises and shall be available for inspection by law enforcement personnel at all times during regular business hours.

**4.31.435 REGISTER AND PERMIT NUMBER OF EMPLOYEES.** Every Licensee of an Adult-Oriented Business that provides live entertainment depicting Specified Anatomical Areas or involving Specified Sexual Activities must maintain a register of all past and current persons so performing at the Adult-Oriented Business and their permit numbers. Such register shall be available for inspection during regular business hours by any police officer of the City.

**4.31.440 INSPECTION.**

(a) When the Chief of Police, the Planning Director, and/or Code Enforcement Officers have reasonable cause to believe that violations of this Title and/or other

provisions of the Zoning Code are occurring on the premises where an Adult-Oriented Business is operating, they, and/or their authorized representatives, may conduct a reasonable inspection of the public areas of and areas otherwise open to plain view on or within, the premises or the Adult-Oriented Business to the extent allowed by law and during the business hours of the Adult-Oriented Business

(b) It is a violation of this Chapter for a person who operates an Adult-Oriented Business or that person's agent or Employee to refuse to permit such lawful inspection of the Adult-Oriented Business at any time it is open for business.

**4.31.445 RESTROOM FACILITIES.** The Adult-Oriented Business shall provide and maintain separate restroom facilities for male patrons and Employees, and female patrons and Employees. Male patrons and Employees shall be prohibited from using the restroom(s) for females, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. Female patrons and Employees shall be prohibited from using the restroom(s) for males, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. The restrooms shall be free from any Adult Material as defined in Section 4.31.010(b)(1) and (2). Restrooms shall not contain television monitors or other motion picture or video projection, recording, or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an Adult-Oriented Business which deals exclusively with the sale or rental of Adult Material which is not used or consumed on the premises, such as an Adult Bookstore or Adult Video Store, and which does not provide restroom facilities to its patrons or the general public.

**4.31.450 SPECIAL REGULATIONS -- LIVE ENTERTAINMENT.** The following additional requirements shall pertain to Adult-Oriented Businesses providing live entertainment distinguished or characterized by the depiction, description, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities, except for businesses regulated by the California Department of Alcoholic Beverage Control.

(a) No person shall perform live entertainment for patrons of an Adult-Oriented Business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least six (6) feet from the nearest area occupied by patrons. Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this Chapter. Performer shall mean any person who is an Employee or independent contractor of the Adult-Oriented Business, or any person who, with or without compensation or other form of consideration, performs live entertainment for patrons of an Adult-Oriented Business.

(b) The Adult-Oriented Business shall provide separate dressing room facilities for performers which are exclusively dedicated to the performers' use.

(c) The Adult-Oriented Business shall provide an entrance/exit for performers which is separate from the entrance/exit used by patrons.

(d) The Adult-Oriented Business shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the Adult-Oriented Business shall provide a minimum three (3) foot wide aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers capable of (and which actually results in) preventing any physical contact between patrons and performers.

(e) No performers, either before, during, or after performances, shall have physical contact with any patron and no patron shall have physical contact with any performer either before, during or after performances by such performer. This paragraph shall only apply to physical contact anywhere on or within the premises of the Adult-Oriented Business, including off-street parking areas.

(f) No patron shall directly pay or give any gratuity to any performer and no performer shall solicit any pay or accept gratuity from any patron.

(g) No owner or other person with managerial control over an Adult-Oriented Business shall permit any person on the premises of the Adult-Oriented Business to engage in a live showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This paragraph may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

#### **4.31.455 SPECIAL REGULATIONS -- ADULT MOTELS.**

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an Adult Motel.

(b) It is a violation of this Chapter for a person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an Adult-Oriented Business License to rent or sub-rent the same sleeping room to another person more the two (2) times in a period of time that is less than ten (10) hours.

(c) For purposes of paragraphs (a) and (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

#### **4.31.460 SPECIAL REGULATIONS -- FILMS, VIDEOS OR VIEWING ROOMS.**

A person who operates or causes to be operated an Adult-Oriented Business, including an Adult Arcade and other than an Adult Motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts Specified

**Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:**

(a) Upon application for an Adult-Oriented Business License, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of premises to an accuracy of plus or minus six (6) inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was first prepared.

(b) No alteration in the configuration or location of a manager's station may be made without the prior written approval of the Chief of Police.

(c) It is the duty of the Licensee of the Adult-Oriented Business to ensure that at least one properly permitted Employee is on duty and situated in each manager's station at all times that any patron is present inside the Adult-Oriented Business.

(d) The interior of the Adult-Oriented Business shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the Adult-Oriented Business to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing equipment. If the Adult-Oriented Business has two (2) or more designated manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the Adult-Oriented Business to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required by this Section must be by direct line of sight from the manager's station.

(e) It shall be the duty of the Licensee to ensure that the view area specified in this Section remains unobstructed at all times by any doors, curtains, partitions, walls, merchandise, display racks or other materials.

(f) It shall be the duty of the Licensee to ensure that no patron is permitted access to any area of the Adult-Oriented Business which has been designated as an area in which patrons will not be permitted pursuant to paragraph (a) of this section.

(g) No viewing room may be occupied by more than one (1) person at any time.

(h) No viewing room shall have any door, curtain, shutter, or any other device blocking or capable of blocking, wholly or partially, the entrance to the viewing booth.

(i) The Adult-Oriented Business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level.

(j) It shall be the duty of the Licensee to ensure that the illumination required by this Section is maintained at all times that any patron is present in the premises.

(k) No openings of any kind shall exist between viewing rooms or booths.

(l) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(m) The Licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(n) The Licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(o) The Licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition Board or other porous material shall be used within forty-eight (48) inches of the floor.

(p) The floors, seats, walls, and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, or saliva in any such booths shall be evidence of improper maintenance and inadequate sanitary controls.

(q) Customers, patrons, or visitors shall not be allowed to loiter in the vicinity of any such video booths, or remain in the common area of such Adult-Oriented Business, other than the restrooms, unless actively engaged in shopping for or reviewing the products available or on display for purchaser viewing. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.

(r) It is a violation of this Chapter for a person having a duty under this Section to knowingly fail to fulfill that duty.

#### **4.31.465 SPECIAL REGULATIONS -- NUDE MODEL STUDIOS.**

(a) A Nude Model Studio shall not employ any person under the age of eighteen (18) years.

(b) It is a violation of this Chapter for a person under the age of eighteen (18) years to appear Semi-Nude or in a State of Nudity in or on the premises of a Nude Model Studio. It is a defense to prosecution under this Section if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

(c) A Nude Model Studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

#### **4.31.470 SPECIAL REGULATIONS -- PUBLIC NUDITY.**

(a) It is a violation of this Chapter for a person knowingly and intentionally, in a public area of an Adult-Oriented Business (except a restroom), to appear in a State of Nudity;

(b) It is a violation of this Chapter for a person knowingly and intentionally, in an Adult Oriented Business, to engage in or perform the following Specified Sexual Activities:

(1) Actual sex acts, normal or perverted, consisting of intercourse, oral copulation or sodomy;

(2) Actual masturbation; and/or

(3) Excretory functions as part of or in connection with any of the activities described in subdivision (1) or (2) above or as part of or in connection with the fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breast.

(c) It is a violation of this Chapter for a person knowingly or intentionally, in a public area of an Adult-Oriented Business, to appear in a Semi-Nude condition unless the person is an Employee or performer who, while Semi-Nude, is upon a stage at least eighteen (18) above the level of the floor which is separated by a distance of at least six (6) feet from the nearest areas occupied by patrons.

(d) It is a violation of this Chapter for an Employee or performer while Semi-Nude in an Adult-Oriented Business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any Employee or performer in an Adult Oriented Business.

(e) It is a violation of this Chapter for an Employee or performer, in an Adult-Oriented Business, while Semi-Nude, to knowingly and intentionally, touch a patron or customer or the clothing of a patron or customer.

**4.31.475 PROHIBITION -- SEXUAL ENCOUNTER CENTERS.** A sexual encounter center is not a permitted use.

### **Article 7 ENFORCEMENT**

**4.31.500 EACH DAY SEPARATE OFFENSE.** Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day

during any portion of which any such person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

**4.31.505 PUBLIC NUISANCE.** Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the Municipal Code.

**4.31.510 INFRACTIONS.** Any person who violates, causes, or permits another person to violate any provision of this Chapter commits an infraction. Any person convicted of an infraction shall be subject to a fine to the maximum amount permitted by state law. Any person twice convicted of an infraction for repeat violations of the same provision within a one (1) year period, may be charged with a misdemeanor upon being issued a citation for the repeated violation of the same provision since, rather than simply a violation of a provisions of this Chapter, such repeat violations evidence a disregard of municipal authority. Any person convicted of a misdemeanor shall be subject to punishment by fine or imprisonment to the maximum permitted by state law. Pursuant to Government Code section 36900(a), the City Attorney may prosecute these violations in the name of the People of the State of California.

**4.31.515 CIVIL INJUNCTION.** The violation of any provision of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause for injunctive relief.

**4.31.520 ADMINISTRATIVE REMEDIES.** In addition to the remedies set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies, as set forth in the Municipal Code.

**4.31.525 REVOCATION OF LICENSE.** In addition to the remedies set forth above, violation of the provisions of this Chapter constitutes grounds for the revocation of an Adult-Oriented Business License and/or Adult-Oriented Business Employee Permit.

## **CHAPTER 4.35**

### **OUTDOOR FESTIVALS**

#### **Article I**

#### **General Provisions and Requirements**

##### **Sections:**

- 4.35.000 Purposes.
- 4.35.005 City Manager.
- 4.35.006 Exclusion for City Park and Recreation Department Festivals.
- 4.35.010 Definitions.
- 4.35.015 Same - Automobile Parking Space.
- 4.35.020 Same - Outdoor Festival.
- 4.35.025 Same - Sponsors and Promoters.
- 4.35.030 Landowner's Consent.
- 4.35.035 Sponsor Responsibilities.
- 4.35.040 Same - Water.
- 4.35.045 Same - Sanitary Facilities.
- 4.35.050 Same - Automobile Parking Spaces.
- 4.35.055 Same - Security Personnel.
- 4.35.060 Same - Fire Protection.
- 4.35.065 Same - Lighting Equipment.
- 4.35.070 Same - Sound Levels.
- 4.35.075 Same - Garbage.
- 4.35.080 Same - Emergency Communications.
- 4.35.085 Same - Access Ways.
- 4.35.090 Same - Dust.
- 4.35.095 Same - Food.
- 4.35.100 Same - Damage Reimbursement.
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- 4.35.110 Limitation Upon Attendance.
- 4.35.115 Conduct Prohibited.
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- 4.35.130 Termination of Festival.

#### **Article 2**

#### **Special Business License**

- 4.35.205 License Required.
- 4.35.210 Filing Time.
- 4.35.215 Application Contents.
- 4.35.220 Same - Identification of Applicants.
- 4.35.225 Same - Identification of Property Owners.
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**Article 1**  
**General Provisions and Requirements**

**4.35.000 PURPOSES.** In this state and elsewhere, outdoor festivals have been promoted and have attracted large numbers of persons, sometimes exceeding one hundred thousand. Occurrences at those outdoor festivals already held include the stealing of automobiles, abandonment of automobiles stolen elsewhere, totally unmanageable traffic congestion, slaughtering of cattle and other animals on adjoining property without permission of the owners thereof, unauthorized destruction of property, scattering of trash, garbage, and other debris on adjoining property, overnight camping at random locations, collision of automobiles with persons sleeping on the ground, and, generally, the commission of serious crimes with impunity due to the inability of police to patrol the area.

Such festivals, with their attendant large crowds create serious health and safety risks for persons attending and the general public thereafter unless adequate sanitary facilities, drinking water supplies, lighting, medical services, vehicular parking areas, supervision, and other services and guarantees are provided.

The regulatory provisions of this Chapter are necessary to insure that outdoor festivals are held only at suitable places and are subject to reasonable conditions for the protection of the public health, safety, and welfare.

**4.35.005 CITY MANAGER.** The City Manager is charged with the responsibility of administering the regulations imposed by this Chapter, and exercising the authority conferred thereby. Such authority shall include the power and duty to issue Special Business Licenses authorizing outdoor festivals, promulgate administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to outdoor festivals and the issuance and administration of Special Business Licenses therefor, as are vested in the Chief of Police under Chapter 4.02, Section 4.02.070, 4.02.085, 4.02.100 and 4.02.105; and Chapter 4.10, Sections 4.10.000 through 4.10.155. Any reference to the "Chief of Police" shall be deemed to be a reference to the City Manager in relation to outdoor festivals.

**4.35.006 EXCLUSION FOR CITY PARK AND RECREATION DEPARTMENT FESTIVALS.** This Chapter does not apply to outdoor festivals held at City parks and conducted under the direction of the City Parks and Recreation Department.

**4.35.010 DEFINITIONS.** As used in this Chapter, the terms contained in Sections 4.35.015 through 4.35.025 shall be ascribed the meanings contained therein, unless the context indicates otherwise.

**4.35.015 SAME - AUTOMOBILE PARKING SPACE --** shall mean any maintained space, not less than one hundred eighty square feet in area nor less than nine feet wide at any place, on or contiguous to the land on which the outdoor festival is

conducted, and so located and arranged as to permit the parking of an average size, six-passenger automobile.

**4.35.020 SAME - OUTDOOR FESTIVAL** -- shall mean any outdoor gathering of more than five hundred persons for the purpose of participating in or attending a dance, music carnival, "rock" festival, or like musical activity at which vocal or instrumental or both vocal and instrumental music is provided by professional or amateur performers or by prerecorded means, held at any place other than in a permanent building, stadium or like permanent installation which has been constructed or customarily used for the purpose of housing such activities, and to which gathering members of the public are invited or admitted with or without the payment of admission charges in any form.

**4.35.025 SAME - SPONSORS AND PROMOTERS** -- shall mean all persons and business entities having a direct financial interest in the proceeds to be derived from the outdoor festival, whether such proceeds arise from ticket sales, sales of film, radio, television, or sound recording rights, or otherwise.

**4.35.030 LANDOWNER'S CONSENT.** It shall be unlawful for any person to sponsor, conduct, operate, promote or advertise an outdoor festival unless the owner or owners of the land upon which the festival is or would be conducted have consented to the use thereof for such purposes. If the land is not solely owned by the person or persons sponsoring, conducting, operating, promoting or advertising the festival, such consent shall be evidenced by a written instrument containing the notarized signatures of all record owners.

**4.35.035 SPONSOR RESPONSIBILITIES.** Each person to whom a Special Business License required by Article 2 is issued, shall be responsible as licensee and at the sole cost and expense thereof, for provision of those facilities, services, resources and guarantees required by Sections 4.35.040 through 4.35.100.

**4.35.040 SAME - WATER.** The licensee shall provide drinking water of the quantity, quality, and from a source approved by the City Manager. Drinking fountains shall be provided as follows:

- (a) One drinking fountain for the first one hundred persons;
- (b) Two drinking fountains for more than one hundred but less than five hundred persons; and
- (c) One additional drinking fountain for each additional five hundred persons or fraction thereof.

**4.35.045 SAME - SANITARY FACILITIES.** The licensee shall provide sanitary facilities as follows: at least one water closet and one urinal, or in lieu thereof two patented chemical toilets, for every two hundred males, and at least one water closet or patented chemical toilet for every one hundred females, unless the City Manager finds that a lesser number is sufficient, in which case he or she shall designate each number. If both sexes are admitted to any sanitary facility, for purposes of determining the

required quantity of facilities the persons attending the outdoor festival shall be assumed to be equally divided by sex. Prior to the commencement of the outdoor festival, the City Manager shall inspect the sanitary facilities with regard to adequacy of quantity, functioning, and plans for periodic removal of wastes therefrom, and shall approve the sanitary facilities only if they meet applicable health standards. While any premises are being prepared for use for an outdoor festival or for parking or other uses incidental thereto, the licensee shall provide on the premises one patented chemical toilet for each twenty persons or fractional part thereof working at the job site. Every patented chemical toilet installed in accordance with this Section shall be maintained and operated in accordance with the rules and regulations approved by the City Manager.

**4.35.050 SAME - AUTOMOBILE PARKING SPACES.** On all premises on which an outdoor festival is conducted, or contiguous thereto and under the control of the applicant, in addition to those ways described in Section 4.35.080 of this Chapter, there shall be automobile parking spaces equal in number to one-fourth of the number of persons which the license permits to attend the outdoor festival, unless the City Public Works Director finds that a lesser number of parking spaces is sufficient in which case the licensee shall provide the lesser number of spaces. Such automobile parking spaces shall be graded, plainly and individually marked, and separated by a physical barrier from the area where patrons will watch the performances. At all times between two hours before the commencement of the outdoor festival and two hours after its termination the licensee shall provide parking attendants at all entrances and exits to the parking area within the area.

**4.35.055 SAME - SECURITY PERSONNEL.** At any outdoor festival, one off-duty law enforcement officer or uniformed security guard for each two hundred persons which the license permits to attend, whether such permissible attendance is present or not, shall be in constant attendance during the entire time the outdoor festival is in progress. Each officer or security guard shall be approved by the Chief of Police or shall be provided by a private patrol operator whose name and address has been stated in the application and who is licensed pursuant to Chapter 11 of Division 3 of the Business and Professions Code. The Chief of Police shall approve any security guard if the guard meets the qualifications stated in Sections 7526 and 7526.3 of the Business and Professions Code. The officers and security guards shall devote their entire attention and time to keeping order and enforcing all applicable statutes and ordinances, including this Chapter.

**4.35.060 SAME - FIRE PROTECTION.** The licensee shall provide such fire protection measures and equipment as the Chief of that Fire Protection District with jurisdiction over the site on which the outdoor festival is conducted finds reasonably necessary to provide fire protection to the immediate and adjoining premises and to persons participating in and attending the outdoor festival.

**4.35.065 SAME - LIGHTING EQUIPMENT.** If the hours during which the outdoor festival can be held as provided in the license are such that any portion thereof is between sunset of one day and sunrise of the following day, or if the license permits

any participant or person in attendance to remain overnight, the licensee shall provide such lighting, including light standards and electrical switches, and such power supply as the Chief of Police and director of public works find necessary for the public safety and welfare.

**4.35.070 SAME - SOUND LEVELS.** The licensee shall propose reasonable limits on sound emanating from the festival grounds into adjoining areas with resident homes or businesses. At the option of the Chief of Police, the licensee shall provide up to three sound monitoring locations at the edge of the property where the outdoor festival is to be conducted. The monitoring locations shall be equipped to measure the decibels of sound emanating from the festival grounds and, at the option of the Chief of Police, may be monitored by City personnel to assure compliance with the sound level limits set forth in the permit.

**4.35.075 SAME - GARBAGE.** The licensee shall provide solid waste receptacles to receive solid wastes at a ratio of one cubic yard of available receptacle space for each two hundred fifty persons which the license permits to attend the outdoor festival.

All solid waste receptacles shall be serviced once every twenty-four hours during the festival. Within seventy-two hours after the conclusion of an outdoor festival, the licensee shall clean the premises, including contiguous public roads, ways, and easements, removing all trash, garbage, and debris therefrom which matter would not have been deposited therein had not the outdoor festival occurred.

**4.35.080 SAME - EMERGENCY COMMUNICATIONS.** At all times during the conduct of an outdoor festival, the licensee shall maintain such emergency communications systems as the Chief of that Fire Protection District with jurisdiction over the site on which the outdoor festival is conducted and Chief of Police find reasonably necessary for fire and police protection.

**4.35.085 SAME - ACCESS WAYS.** The licensee shall provide all exterior and interior access ways which the Chief of Police and Director of Public Works find necessary for the use of those attending the outdoor festival. All such access ways shall be clearly marked and delineated by means of curbs or temporary buffers on the ground.

**4.35.090 SAME - DUST.** The licensee shall use such methods of dust control as are approved by the City Manager. The City Manager shall approve such methods if he finds that such methods will prevent the arising of dust to an extent which may endanger public health and safety.

**4.35.095 SAME - FOOD.** In selling, preparing, delivering, or serving food or beverages or both, all persons proposed by the licensee to sell food shall comply with the California Restaurant Act, Chapter 11 (beginning with Section 28600), Division 21, of the California Health and Safety Code and with Chapter 6.04 of the Municipal Code.

**4.35.100 SAME - DAMAGE REIMBURSEMENT.** The licensee and owner or owners of the premises upon which the outdoor festival would be held shall sign a unilateral written contract promising that they will reimburse all owners and occupants of property adjoining the subject premises for any and all loss, injury, or damages to such owners or occupants or to their property caused by the licensee, by the owner of the subject premises, or by any other person attending the outdoor festival, which damage would not have occurred had the outdoor festival not been held. Accompanying and securing this agreement shall be a surety bond in favor of the City of Elk Grove and all persons to whom the licensee or owner of the subject premises may be liable because of the above-required agreement. The bond shall be prepared by a corporate bonding company authorized to do business within the State of California by the Department of Insurance, and shall be in the amount of not less than fifty thousand dollars, or ten dollars per person permitted by the license to attend the outdoor festival, whichever is more.

**4.35.105 SAME - CLEAN-UP.** The licensee and owner or owners of the premises upon which the outdoor festival would be held shall sign a unilateral written contract promising that, within seventy-two hours after the conclusion of the outdoor festival, they will clean up the premises, including contiguous public roads, ways, and easements, and remove all debris, garbage, trash, litter, and other waste matter from, in, and around the premises. Accompanying and securing this agreement shall be a surety bond in favor of the City of Elk Grove and all persons to whom the applicant may be liable because of the above-required agreement prepared by a corporate bonding company authorized to do business in the State of California by the Department of Insurance, obligating the licensee and owner for all costs necessitated to clean up the premises and to remove debris, garbage, trash, litter, or other waste matter from, in, or around the premises. Such surety bond shall be in the amount of not less than five (\$5,000.00) thousand dollars.

**4.35.110 LIMITATION UPON ATTENDANCE.** Adequate facilities, services and accommodations for those in attendance of an outdoor festival and required to otherwise protect the public peace, health, safety and welfare necessitate a planned limit upon the volume of potential attendance and the establishment of means to ensure that the volume limit is not exceeded.

The licensee shall provide such facilities on the premises where a festival is to be conducted and such personnel as the Chief of Police deems necessary to effectively control the number of persons in attendance as required in order to ensure that the limit for which the Special Business License is issued is not exceeded.

The licensee shall not admit to the outdoor festival, and shall prevent the entrance thereto of, any person who does not possess a ticket, except a peace officer or other public officer in the performance of his duty. Admission to an outdoor festival shall be by ticket only. The licensee shall not sell, give, or otherwise distribute or cause to be distributed a greater number of tickets than the number of persons the license permits to attend. The licensee shall not admit any person to an outdoor festival if such

admission would result in a greater number of persons present than is permitted by the license.

The provisions of this Section shall not be construed to require that tickets be sold for money as distinguished from given away or exchanged for some other consideration. Nor shall the provisions of this Section be construed to require the persons desiring to attend to identify themselves either as a condition of receiving a ticket or of admission.

**4.35.115 CONDUCT PROHIBITED.** The attendant harm and danger caused by large numbers of persons who are under the influence of intoxicating liquor or prohibited drugs necessitate the following restrictions.

No person shall, nor shall any licensee permit any person to enter, be, or remain on any part of the premises on which an outdoor festival is being conducted which such person is in possession of, consuming, using, or under the influence of any alcoholic beverage or legally proscribed dangerous drugs or narcotics.

**4.35.120 ADVERTISING.** No person shall advertise or announce by any means or medium, including, but without limitation to, posters, pamphlets, handbills, newspaper, radio or television, the holding of an outdoor festival prior to the granting of a Special Business License permitting such outdoor festival.

Any and all such advertising shall contain reference to the fact that attendance is prohibited without possession of a ticket or other entitlement to attend, and the maximum number of persons permitted by the license to attend.

**4.35.125 DAYS AND HOURS.** The licensee shall operate the outdoor festival only on those days and during those hours specified in the Special Business License.

**4.35.130 TERMINATION OF FESTIVAL.** During the conduct of an outdoor festival for which a Special Business License has been issued under the provisions of Chapter 4.10 and this Chapter, the Chief of Police shall be empowered to interrupt and terminate the festival, order the cessation thereof, and order all persons in attendance to disburse if he or she finds any of the following:

(a) That the actual attendance at the festival exceeds the maximum attendance authorized by the License; or

(b) That violations of Section 4.35.115 are occurring in such volume or under such circumstances that available law enforcement and security resources are inadequate to effectively enforce the prohibitions of that Section; or

(c) That any service on the site of the festival required by those in attendance is insufficient, and the insufficiency endangers the health, safety or welfare of those in attendance; or

(d) That conduct violating the penal laws of the State of California is occurring in such volume or under such circumstances that law enforcement and security resources are insufficient to effectively prevent such violations; or

(e) That the decibel level of sound intruding into neighboring properties exceeds the standards set by the license.

It shall be unlawful for any person to violate an order issued by the Chief of Police under the authority conferred by this Section.

## **Article 2 Special Business License**

**4.35.205 LICENSE REQUIRED.** No person shall sponsor, conduct, promote, advertise or sell or furnish tickets or other authority for an outdoor festival unless under and by authority of a valid, unexpired and unrevoked Special Business License authorizing the outdoor festival issued pursuant to the provisions of Chapter 4.10 and this Chapter.

**4.35.210 FILING TIME.** Notwithstanding the provisions of Chapter 4.10, an application for a Special Business License to conduct an outdoor festival shall be filed not later than ninety calendar days in advance of the date the festival is proposed to commence.

**4.35.215 APPLICATION CONTENTS.** In addition to the matters prescribed by Section 4.10.030, an application for a Special Business License to conduct an outdoor festival shall contain that information and material prescribed by Sections 4.35.220 through 4.35.240.

**4.35.220 SAME - IDENTIFICATION OF APPLICANTS.** The application shall include the name (including aliases), age, residence, mailing address, e-mail address, if any, and telephone numbers of each person making the application. If the application is filed by a partnership, the name (including aliases), age, residence and mailing address, the telephone numbers of each partner shall be included. If the application is filed by a corporation, the application shall be signed by the president, vice president and secretary thereof and contain their residences, mailing addresses, e-mail address, if any, and telephone numbers, contain the telephone numbers, the mailing addresses, and the street addresses of the principal place of business of the corporation, and include a certified copy of the articles of incorporation and the bylaws of the corporation.

**4.35.225 SAME - IDENTIFICATION OF PROPERTY OWNERS.** The application shall include the names, addresses and telephone numbers of the owners of the premises upon which the proposed outdoor festival, including automobile parking and other incidental uses, is to be held, and the exact location, legal description, and area of these premises. If any of the owners of the premises is a partnership, the names, addresses, e-mail address, if any, and telephone numbers of all partners shall be included. If any of the owners of the premises is a corporation, the street address and telephone numbers of the principal place of business of the corporation, together

with the names, addresses, e-mail addresses, if any, and telephone numbers of the principal officers thereof, shall be included.

**4.35.230 SAME - TIME - ATTENDANCE - ADVERTISING.** The application shall include:

(a) The date or dates and the hours during which the proposed outdoor festival is proposed to be conducted;

(b) A statement of the maximum number of persons proposed to be admitted to the outdoor festival on each day;

(c) Specification of the means of identifying the persons permitted to attend the festival, whether by tickets or otherwise; the number of tickets or other entitlements to admission to be issued for distribution; the names and addresses of all persons who are to receive such entitlements for distribution; and the number of such entitlements to be provided to each distributor;

(d) Identification of all fencing, the number and location of admission gates, security and other measures proposed to ensure that actual attendance does not exceed the maximum prescribed by the License; and

(e) The text of all advertising intended for the purpose of publicizing the festival, which shall be subject to approval only in relation to compliance of the text with those requirements prescribed by Section 4.35.120.

**4.35.235 SAME - PROVISIONS FOR SERVICES.** The application shall include a detailed statement of the applicant's plans to supply all facilities, services, resources and guarantees required by Sections 4.35.040 through 4.35.105; together with:

(a) The names and addresses of all business entities or other person intended to supply the facilities, services and resources, coupled with an exact description of the facilities, services or resources each business entity or other person is intended to supply;

(b) Contracts or other written statements executed by the providers showing the charges to be imposed for the facilities, services or resources to be provided, and the dates and amounts of all deposits or other advance payments required therefor; and

(c) Financial statements by the applicant showing the availability of funds with which to make any deposits or advance payments required.

The application shall include copies of the written instruments required by Sections 4.35.030, 4.35.100 and 4.35.105. The bonds required by Sections 4.35.100 and 4.35.105 shall be filed with the City Manager not later than the date of and as a condition precedent to issuance of the Special Business License.

**4.35.240 SAME - MAPS AND DIAGRAMS.** The application shall include a map of white background print, drawn to scale, showing:

- (a) The location of the property on which the proposed outdoor festival and all related activities will be held;
- (b) The location of all highways, streets, alleys, lots, and parcels of land within seven hundred feet of the exterior boundaries of the proposed use;
- (c) All access ways to the property;
- (d) All exterior access ways;
- (e) The location of all buildings and structures on the premises, or to be erected thereon, including, but without limitation to, all bandstands, stages, tents other facilities for performers, and bleachers, tents or seats for those attending;
- (f) The location of all loudspeakers; and
- (g) The location of all toilets, medical facilities, lighting, emergency communications, drinking facilities, and solid waste receptacles.

**4.35.245 FINGERPRINTS AND PHOTOGRAPHS.** An application shall not be deemed completed until each of the following persons associated with an applicant has been fingerprinted and photographed at the Police Department:

- (a) All general partners, if the applicant is a partnership;
- (b) All joint venturers, if the applicant is a joint venture; and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this Section would apply if the partnership or corporation were the applicant;
- (c) A sole proprietor, if the applicant is a sole proprietorship;
- (d) All owners of more than ten percent of the voting shares of stock, if the applicant is a commercial corporation;
- (e) All directors, if the applicant is either a commercial or non-profit corporation;
- (f) All members of the management committee, if the applicant is a partnership or joint venture;
- (g) All members of a governing body or other Board or committee to which management is entrusted, if the applicant is an unincorporated association; and

(h) Each president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm who is the applicant.

**4.35.250 PROCESSING OF APPLICATION.** Upon receipt of a fully completed application, the City Manager shall provide copies thereof to the Chief of Police, Director of Public Works, Chief of the Fire Protection District with jurisdiction over the site where the outdoor festival is to be conducted, and Planning Director. Each of these officials shall determine whether, with regard to their specific areas of responsibility under this Chapter, the proposed outdoor festival can be held without violating any of the provisions of this Chapter, and shall make such determinations as are otherwise required by the provisions of this Chapter.

Each such official shall submit to the City Manager within twenty (20) calendar days following the date of filing of a completed application his or her written findings, determinations and requirements.

**4.35.255 ISSUANCE.** Notwithstanding the provisions of Section 4.10.040, the City Manager shall act upon the application not later than thirty calendar days following the date of filing of the application, and the provisions of Section 4.10.040(c) shall not constitute grounds for denial of a Special Business License to conduct an outdoor festival.

The City Manager shall issue the Special Business License within thirty days after the date on which the application is filed, unless, in addition to the grounds prescribed by Section 4.10.040, either:

(a) The Planning Director, Chief of Police, Director of Public Works, Chief of the Fire Protection District with jurisdiction over the site where the outdoor festival is to be conducted, or City Manager has found in writing that the proposed outdoor festival sites or facilities would not comply with all health, zoning, fire and safety requirements and standards imposed by the laws (including ordinances) applicable to the site where the outdoor festival is to be conducted, including this Chapter; or

(b) The Planning Director, Chief of Police, Director of Public Works or City Manager finds in writing that any of the facilities, services, resources or guarantees proposed by the applicant as required by this Chapter are insufficient to satisfy any discretionary requirement imposed by any of these officials pursuant to authority conferred by this Chapter; or

(c) The City Manager finds in writing that because of the inadequacy of financial resources of the applicant or for other reasons that there is a significant risk that any of the facilities, services, resources or guarantees required of the applicant by this Chapter will not be provided.

**4.35.260 LICENSE REQUIREMENTS.** A Special Business License authorizing an outdoor festival pursuant to the provisions of this Chapter, shall state on its face, and

the City Manager shall be vested with discretionary authority to determine based upon considerations of health, safety and welfare as identified by this Chapter, the following:

- (a) The maximum number of persons authorized to attend the festival on each date the festival will be conducted;
- (b) The dates and hours during which the festival may be conducted; and
- (c) Such conditions pertaining to conduct of the festival as may be deemed appropriate.

To the extent that the License authorizes a lower maximum number of persons to attend the festival than proposed by the applicant, authorizes the festival on fewer dates or during more restricted hours than proposed by the applicant, or contains conditions to which the applicant objects, such provisions of the License shall be appealable in the same manner and in accordance with the same procedure as if the application had been denied, and the appeal shall be governed by the procedures and standards prescribed by Sections 4.10.110 through 4.10.130.

## **CHAPTER 4.54**

### **ADDITIONAL REGULATIONS AND PROHIBITIONS FOR BUSINESSES**

#### **Article 1 Street Businesses**

Sections:

- 4.54.000 Purposes.
- 4.54.005 Definitions.
- 4.54.010 Prohibitions.
- 4.54.015 Exceptions.
- 4.54.020 Food Vendors.

#### **Article 2 Aggressive Solicitation**

- 4.54.100 Purposes.
- 4.54.105 Definitions.
- 4.54.110 Aggressive Solicitation Prohibited.
- 4.54.115 All Solicitation Prohibited At Specified Locations.
- 4.54.120 Penalty.
- 4.54.125 Severability.

#### **Article 3 Drug Paraphernalia**

- 4.54.200 Purposes.
- 4.54.205 Definitions.
- 4.54.210 Same - Drug Paraphernalia.
- 4.54.215 Proof.
- 4.54.220 Display of Drug Paraphernalia.
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- 4.54.230 Exceptions.

#### **Article 4 Fireworks**

- 4.54.300 General Prohibition Against Possession, Sale or Use of Fireworks.
- 4.54.310 Exception - Certain Public Displays.
- 4.54.320 Exception - Safe and Sane Fireworks.
- 4.54.330 License to Sell Fireworks Required.
- 4.54.340 Wholesale Storage of Fireworks.
- 4.54.350 License Restricted.
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- 4.54.370 Denial of License.
- 4.54.380 Operation of Stand.

- 4.54.390 Temporary Fireworks Stand.
- 4.54.400 General Requirements for Licenses.
- 4.54.410 Enforcement.
- 4.54.420 Revocation of License - Appeal.
- 4.54.430 Penalty; Infraction.
- 4.54.440 Seizure of Fireworks.
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**Article 5**  
**Public Convenience Determination for Alcohol Licenses**

- 4.54.500 Application for Determination of Public Convenience.
- 4.54.510 Review of Applications.
- 4.54.520 Hearing Required.

**Article 1**  
**Street Businesses**

**4.54.000 PURPOSES.** Regulation of the sale of merchandise upon the public streets and sidewalks within the City is necessary for the purpose of promoting the free and safe flow of vehicular and pedestrian traffic. The City Council finds that the use of such rights-of-way for such purposes in violation of the prohibitions of this Article would constitute an interruption of the free flow of traffic and a serious and dangerous hazard to the public.

**4.54.005 DEFINITIONS.** As used in this Article, the following terms shall be ascribed the following meanings:

(a) "Public Streets" -- shall mean that portion of any County, State or public road or highway within the City which is utilized for motor vehicle or bicycle traffic, including any improved shoulder adjacent to traffic lanes, and excluding sidewalks.

(b) "Sidewalks" -- shall mean any right-of-way within the City which is improved for public pedestrian traffic, including paved walks and pathways.

(c) "Stand" -- shall mean any fixed, temporary, permanent or mobile rack, counter, shelving, vehicle or other structure or device utilized for the purpose of transporting, storing, carrying or displaying merchandise or for the purpose of conducting sales of merchandise.

(d) "Merchandise" -- shall mean any item of personal property, including but not limited to, written materials, foods and wares.

**4.54.010 PROHIBITIONS.** Except as otherwise provided by Section 4.54.015, it shall be unlawful for any person to:

(a) Hawk or peddle merchandise upon the public streets; or

(b) Place a stand or merchandise upon a sidewalk for the purpose of hawking or peddling merchandise.

**4.54.015 EXCEPTIONS.** The provisions of this Article shall not be applicable to or deemed to prohibit:

(a) The placement of newspaper racks upon sidewalks; or

(b) The peddling or hawking of merchandise by the taking of orders or delivering of commodities from any vehicle which is parked not longer than required in order to complete a single transaction adjacent to the premises or residents of the customer, patron or purchaser.

**4.54.020 FOOD VENDORS.** No person operating a vehicle from which candy, confections, ice cream, beverages or other articles of food are sold or offered for sale under the authority of Section 4.54.015(b):

(a) shall park or stand the vehicle for purposes of sale within three hundred fifty feet of the grounds of any public school in which children at or below the twelfth grade level are enrolled, and which is in session; or

(b) shall sell any non-food items including, but not limited to, toys, clothing, or fireworks.

## **Article 2 Aggressive Solicitation**

**4.54.100 PURPOSES.** The City Council finds that aggressive solicitation negatively impacts the quality of life of residents of the City. Patrons of commercial districts in which aggressive solicitation occurs are less likely to patronize the City's businesses and negatively impact the public interest in economic growth and tax revenues to the City. Mindful of everyone's right of free speech, the City Council finds there is a reasonable balance between those interests and the rights of listeners to be left alone -- even in public places. Furthermore, the City Council takes notice that the specific provisions of this Article have been judicially upheld by the California Supreme Court.

**4.54.105 DEFINITIONS.** For purposes of this Article:

(a) "Solicit, ask or beg" includes using the spoken, written, or printed word, or bodily gestures, signs or other means with the purpose of obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services.

(b) "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, an apartment house or hotel not constituting a room or apartment designed for actual residence.

**4.54.110 AGGRESSIVE SOLICITATION PROHIBITED.**

(a) No person shall solicit or beg in an aggressive manner in any public place.

(b) "Aggressive manner" means any of the following:

(1) Approaching or speaking to a person, or following a person before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, damage to or loss of property, or otherwise be intimidated into giving money or other thing of value;

(2) Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent in the course of soliciting, asking or begging;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

(4) Using violent or threatening gestures toward a person solicited either before, during, or after soliciting, asking or begging;

(5) Persisting in closely following or approaching a person after the person solicited has been solicited and informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or any other thing of value to the solicitor; or

(6) Using profane, offensive or abusive language that is inherently likely to provoke an immediate reaction, either before or after solicitation.

#### **4.54.115 ALL SOLICITATION PROHIBITED AT SPECIFIED LOCATIONS.**

(a) Banks and ATMs. No person shall solicit, ask, or beg within 15 feet of any entrance or exit of any bank, savings and loan association, credit union, or check cashing business during its business hours or within 15 feet of any automated teller machine during the time it is available for customers' use. However, when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. No person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility. Nothing in this paragraph shall be construed to prohibit the lawful vending of goods and services within such areas.

(1) Definitions. For purposes of this section:

(A) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(B) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(C) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(D) "Check cashing business" means any person duly licensed as a check seller, bill payer, or prorater pursuant to Division 3 of the California Financial Code, commencing with section 12000.

(E) "Automated teller machine" shall mean any electronic information processing device that accepts or dispenses cash in connection with a credit, deposit, or convenience account.

(F) "Automated teller machine facility" shall mean a secure area comprised of one or more automated teller machines, and any adjacent space that is made available to banking customers after regular banking hours.

(2) Exemptions. The provisions of this Subdivision shall not apply to any unenclosed automated teller machine located within any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings as long as such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.

(b) Motor vehicles and parking lots.

(1) Motor Vehicles. No person shall approach an operator or occupant of a motor vehicle for the purpose of soliciting, asking or begging while such vehicle is located in any public place.

(2) Parking lots. No person shall solicit, ask or beg in any public parking lot or structure any time after dark. "After dark" means any time from one-half hour after sunset to one-half hour before sunrise.

(3) Exemptions. This Subdivision shall not apply to any of the following:

(A) to solicitations related to business that is being conducted on the subject premises by the owner or lawful tenants;

(B) to solicitations related to the lawful towing of a vehicle; or

(C) to solicitations related to emergency repairs requested by the operator or other occupant of a vehicle.

(c) Public Transportation Vehicles and Stops.

(1) "Public transportation vehicle" shall mean any vehicle, including a trailer bus, designed, used or maintained for carrying 10 or more persons, including the driver; or a passenger vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire.

(2) Any person who solicits, asks or begs in any public transportation vehicle, or within ten feet of any designated or posted public transportation vehicle stop, is guilty of a violation of this section if:

(A) He or she remains there after being asked to leave by the owner, driver, or operator of a public transportation vehicle; the agent of the owner, driver or operator of a public transportation vehicle; the owner or manager of a public transportation facility; the agent of the owner or manager of a public transportation facility; a member of a security force employed by the public transportation facility; or by a peace officer, as defined in Chapter 4.5 of Title 3 of the California Penal Code (commencing with Penal Code, § 830); or

(B) Within the immediately preceding 30 days, he or she engaged in a solicitation at that location and had been asked to leave by a person specified in Paragraph (A), above.

(C) Paragraph (B) above is not violated if a person who has been requested to leave enters the property within the designated period and solicits, asks, or begs with the express authorization of a person specified in Paragraph (A) above.

(d) Restaurants. Any person who solicits, asks, or begs in any outdoor or indoor dining area of a restaurant or other establishment serving food for immediate consumption is guilty of a violation of this section if:

(1) He or she remains there after being asked to leave by the owner, manager or supervisor of the restaurant or other food establishment; the agent of the owner, manager or supervisor of the restaurant; a member of a security force employed by the restaurant; or by a peace officer, as defined in Chapter 4.5 of Title 3 of the California Penal Code (commencing with Penal Code, § 830), acting at the request of any of the persons specified in this Subdivision; or

(2) Within the immediately preceding 30 days, he or she engaged in a solicitation at that location and had been asked to leave by a person specified in Paragraph (1) above.

(3) Paragraph (2) above is not violated if a person who has been requested to leave enters the property within the designated period and solicits, asks, or begs with the express authorization of a person specified in Paragraph (1) above.

**4.54.120 PENALTY.** A violation of this section is punishable as a misdemeanor or infraction, chargeable at the City Attorney's discretion. Nothing in this Article shall limit or preclude the enforcement of other applicable laws.

**4.54.125 SEVERABILITY.** The provisions of this Article are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Article, or the invalidity of the application thereof to any person

or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

### **Article 3 Drug Paraphernalia**

**4.54.200 PURPOSES.** The illegal use of controlled substances within the City creates serious social, medical and law enforcement problems. The illegal use of such substances by persons under eighteen years of age is a matter of great public interest. It is causing serious physical and psychological damage to the youth of this community, and impairment of educational achievement and of the efficiency of the educational system, increases in non-drug related crime and a threat to the ability of the community to ensure future generations of responsible and productive adults, all to the detriment of the health, safety and welfare of the residents of Elk Grove.

The proliferation of the display of drug paraphernalia in retail stores within the City, and the distribution of such paraphernalia intensifies and otherwise compounds the problem of illegal use of controlled substances within this community.

A ban only upon the display and distribution of drug paraphernalia to persons under eighteen years of age would not be practical. The person who displays or distributes drug paraphernalia would have difficulty determining who could lawfully view or receive drug paraphernalia. The already thinly staffed law enforcement agencies would be subjected to intolerable added enforcement burdens by adding age of a person who views or receives paraphernalia as an element of a prohibition upon display and distribution. A significant number of high school students are eighteen years of age or older. It would be lawful to distribute paraphernalia to some students attending the same school in which the distribution to other students would be prohibited. Permitted display and distribution to adults within the community would symbolize a public tolerance of illegal drug use, making it difficult to explain the rationale of programs directed against similar abuse by youth. The problem of illegal consumption of controlled substances by adults within this community is significant and substantial, necessitating a cessation of the encouragement of drug abuse which the display and distribution of drug paraphernalia create.

This Article is a measure which is necessary in order to discourage the illegal use of controlled substances within the City.

**4.54.205 DEFINITIONS.** As used in this Article, the following terms shall be ascribed the following meanings:

(a) "Business" means a fixed location, whether indoors or outdoors, at which merchandise is offered for sale at retail.

(b) "Controlled substance" means those controlled substances set forth in Sections 11054, 11055, 11056, 11057 and 11058 of the California Health and Safety Code, identified as Schedules I through V, inclusive.

(c) "Display" means to show to a patron or place in a manner so as to be available for viewing or inspection by a patron.

(d) "Distribute" means to transfer ownership or a possessory interest to another, whether for consideration or as a gratuity. "Distribute" includes both sales and gifts.

(e) "Patron" means a person who enters a business for the purpose of purchasing or viewing as a shopper merchandise offered for sale at the business.

**4.54.210 SAME - DRUG PARAPHERNALIA.** As used in this Article, the terms "drug paraphernalia" mean all equipment, products, and any materials of any kind which are intended by a person charged with a violation of this Article for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of any law of the state. "Drug paraphernalia" includes, but is not limited to, all of the following:

(a) Kits intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices intended for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances intended for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, intended for use in cutting controlled substances;

(g) Separation gins and sifters intended for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Blenders, bowls, containers, spoons and mixing devices intended for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, and other containers intended for use in packaging small quantities of controlled substances;

(j) Containers and other objects intended for use in storing or concealing controlled substances; and

(k) Objects intended for use in injecting, inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

- (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls,
- (2) Water pipes,
- (3) Carburetion tubes and devices,
- (4) Smoking and carburetion masks,
- (5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand,
- (6) Miniature cocaine spoons and cocaine vials,
- (7) Chamber pipes,
- (8) Carburetor pipes,
- (9) Air-driven pipes,
- (10) Bongs.

**4.54.215 PROOF.** In determining whether an object is "drug paraphernalia", a court or other authority may consider, in addition to all other logically relevant factors, the following:

- (a) Statements by an owner or by anyone in control of the object concerning its use,
- (b) The proximity of the object to controlled substances,
- (c) The existence of any residue of controlled substances on the object,
- (d) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver to persons whom he knows, intend to use the object to facilitate a violation of the laws of the state relating to controlled substances,
- (e) Instructions, oral or written, provided with the object concerning its use,
- (f) Descriptive materials, accompanying the object which explain or depict its use.
- (g) National and local advertising concerning its use,

- (h) The manner in which the object is displayed for sale,
- (i) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise,
- (j) The existence or scope of legitimate uses for the object in the community, and
- (k) Expert testimony concerning its use.

**4.54.220 DISPLAY OF DRUG PARAPHERNALIA.** Except as authorized by law, it is unlawful for any person to willfully maintain or operate any business knowing or under circumstances where one reasonably should know that drug paraphernalia is displayed at such business.

Except as authorized by law, it is unlawful for any person who is the owner of a business, an employee thereof or one who works at such business as an agent of the owner, to willfully display drug paraphernalia at such business.

**4.54.225 DISTRIBUTION OF DRUG PARAPHERNALIA.** Except as authorized by law, it is unlawful for any person to willfully distribute to another person drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, product, process, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of any law of the state.

**4.54.230 EXCEPTIONS.** No provision of this Article shall be deemed, whether directly or indirectly, to authorize any act which is otherwise prohibited by any law of the state or require any act which is otherwise prohibited by any law of the state. Nor shall any provision of this Article be deemed, whether directly or indirectly, to prohibit any act or acts which are prohibited by any law of the state.

#### **Article 4 Fireworks**

**4.54.300 GENERAL PROHIBITION AGAINST POSSESSION, SALE OR USE OF FIREWORKS.** Except as otherwise provided in this Article, no person shall possess, sell, use, display or explode any rocket, firecracker, roman candle, squib, torpedo, torpedo cane, fire balloon, wire core sparkler, wooden core sparkler, black cartridge or other combustible device or explosive substance or any kind of fireworks, by whatsoever name known, within the City.

**4.54.310 EXCEPTION - CERTAIN PUBLIC DISPLAYS.** Public displays of fireworks may be given with a written permit issued by the fire chief, or the fire chief's designee, of the fire district within which the display is to be given so long as such display takes place under the supervision and direction of a State of California licensed fireworks operator.

**4.54.320 EXCEPTION - SAFE AND SANE FIREWORKS.** It shall not be unlawful to possess, sell, use, display or discharge within the City those fireworks as are defined and classified as "safe and sane fireworks" in Part 2 (commencing with Section 12500) of Division 11 of the California Health and Safety Code during that time period beginning at 12:00 noon on June 28 and ending at 10.00 p.m. on July 5 of the same year.

**4.54.330 LICENSE TO SELL FIREWORKS REQUIRED.** It shall be unlawful for any person to sell "safe and sane fireworks" within the City without a valid City business license authorizing such sales.

**4.54.340 WHOLESALE STORAGE OF FIREWORKS.** The wholesale storage of fireworks shall be unlawful in the City without valid permits for such storage from the fire district in whose jurisdiction the storage site is located and the Chief Building Inspector. Any such storage is limited to the period from June 1st through July 15th of each year.

**4.54.350 LICENSE RESTRICTED.**

(a) No City business license authorizing the sale of "safe and sane fireworks" shall be issued to any person, firm, corporation, organization or group other than organizations which are exempted from the payment of the bank and corporation tax by Sections 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g), 23701(h), 23701(i), 23701(j), 23701(k), 23701(l), 23701(m), 23701(n), 23701(o), 23701(p), 23701(q), 23701(r), 23701(s), 23701(t), 23701(u), 23701(v), 23701(w) of the Revenue and Taxation Code as long as the organization satisfies the following criteria:

(1) It has its principal and permanent meeting place in the City of Elk Grove;

(2) It has been organized and established in the City of Elk Grove for a continuous period of at least one (1) year immediately preceding the application for a permit; and

(3) It has a bona fide membership of at least twenty (20) members.

(b) No organization shall submit more than two applications for licenses to sell fireworks within the City. Submittal of more than two such applications shall be grounds for denial of all applications.

(c) City business licenses authorizing the sale of "safe and sane fireworks" shall not be transferable to another organization.

(d) Transfer of temporary stands from the location for which the license was initially issued may be made if the application is made to the City Manager on or before the first day of June, and if any such location change has been approved in writing by the fire district having jurisdiction, the Chief Building Inspector, and otherwise complies with all provisions of this Article regulating the location of temporary fireworks stands.

#### **4.54.360 APPLICATION.**

(a) All applications for a City business license to sell fireworks shall be in writing to the City Manager on forms supplied by the City. Applications shall be received and filed with the City Manager on or before the second Tuesday in April of each year. Applications shall specify the proposed location of the fireworks stand, the name, address and telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored, such other information as may be required by the City Manager, and an application fee in an amount periodically set by the City Council.

(b) The application shall be made in triplicate. The original of the application shall be retained by the City Manager, one copy shall be transmitted to the fire district in whose jurisdiction the proposed fireworks stand will be located, and one copy shall be sent to the City Building Inspection Division.

(c) Applicants for a license shall be notified by the City Manager of the tentative approval or denial of the application for a City business license by the first Monday in May of each calendar year. Within two weeks of the notification of the tentative approval of the City business license, the applicant shall furnish to the City's Risk Manager evidence of insurance providing comprehensive general liability coverage written on an occurrence basis, including but not limited to premises/operations, personal injury contractual liability, independent contractors, and products/completed operations, with a \$1 million combined single limits for bodily injury and property damage. The insurance policy shall designate the City, its officers, agents, employees and volunteers as additional insureds as to products sold and to premises/operations of the named insured. The insurance policy shall further be endorsed to provide that any insurance and/or self insurance maintained by the City of Elk Grove shall apply in excess of, and not contribute with, insurance provided by the applicant. The City Risk Manager shall be the certificate holder. In the event of non-renewal or cancellation of the insurance policy, thirty (30) days advance notice shall be provided to the the City's Risk Manager. The insurance policy shall be limited to the specific location for which the City business license is issued. The City Manager shall issue the license to the applicant upon the presentation and approval of required proof of insurance.

(d) A copy of the City business license shall be transmitted to the fire district in whose jurisdiction the proposed fireworks stand will be located.

(e) The continued validity of any City business license issued pursuant to this Article shall be subject to the requirement that at least one of the responsible adults listed in the licensee's application shall attend a fireworks stand operator seminar conducted by the fireworks industry and approved by a fire department or fire district within the City. The failure of a licensee to have such a responsible individual attend such safety seminar shall subject the City business license to revocation.

#### **4.54.370 DENIAL OF LICENSE.**

(a) The City Manager shall issue the City business license to sell fireworks unless:

(1) The City Manager finds in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit a determination respecting compliance with the requirements of this Article;

(2) The City Manager finds in writing that the applicant is not in compliance with any of the requirements of this Article;

(3) The City Manager finds in writing that the applicant falls within the provisions of Section 4.54.420(c) of this Article; or

(4) Either the fire district in whose jurisdiction the proposed stand will be located or the City Building Inspection Division fails to approve the application.

(b) Any denial of a license pursuant to this section may be appealed pursuant to the procedures set forth in Section 4.54.420(b) of this Article.

#### **4.54.380 OPERATION OF STAND.**

(a) No person shall sell fireworks to any person under the age of eighteen.

(b) Sale of fireworks shall begin no earlier than 12:00 noon on June 28th and shall not continue after 10:00 p.m. on July 5th of the same year. Sale of fireworks shall be permitted only from 9:00 a.m. to 10:00 p.m. daily.

(c) No person other than the licensee organization shall operate the stand for which the license is issued or share or otherwise participate in the profits of the operation of such stand.

(d) No person other than the individuals who are members of the licensee organization or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of fireworks at such stand.

(e) No person under the age of eighteen shall sell or participate in the sale of fireworks.

(f) No person shall be paid any consideration by the licensee or any wholesale distributor of "safe and sane" fireworks for selling or otherwise participating in the sale of fireworks at such stand except compensation may be paid for security personnel during non-sale hours and to the party authorizing location of the stand on its property.

(g) Fireworks stands shall be removed from the temporary locations by noon on July 18th, and all accompanying litter shall be cleared from such locations by that date and time.

**4.54.390 TEMPORARY FIREWORKS STAND.** All retail sales of "safe and sane" fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is hereby prohibited. Temporary stands shall be subject to the following provisions:

(a) No fireworks stand shall be located within twenty-five feet of any other building or within one hundred feet of any gasoline pump or distribution point.

(b) Fireworks stands need not comply with the provisions of the applicable Building Code except all stands shall be erected under the supervision of the Chief Building Inspector, who shall require that stands be constructed in a manner that will reasonably insure the safety of attendants and patrons and that any electrical installations shall comply with all applicable codes.

(c) No stand shall have a floor area in excess of seven hundred and fifty square feet.

(d) Each stand shall have at least two exits. Each stand in excess of forty feet in length shall have at least three exits spaced approximately equidistant apart except in no case shall the distance between exits exceed twenty feet. Exit doors shall be not less than twenty-four inches wide and six feet and two inches in height and shall swing in the direction of exit travel.

(e) Each stand shall be provided with two (2) two and one-half gallon "water-type" (minimum rating 2A) fire extinguishers in good working order and easily accessible for use in case of fire.

(f) Fireworks stands shall be located on property zoned SC, LC, GC, AC, TC, M-1 or M-2, or in any other zoning classification if the County's Chief Building Inspector certifies in writing to the City Manager that the operation of a fireworks location in such other zoning classification will not endanger the health and safety of the community or create a fire hazard to surrounding properties.

**4.54.400 GENERAL REQUIREMENTS FOR LICENSEES.**

(a) Stands shall not be located closer than six hundred feet apart, unless separated by a principal arterial roadway.

(b) All weeds and combustible material shall be cleared from the location of the stand to a distance of at least twenty-five feet surrounding the stand.

(c) "NO SMOKING" signs shall be prominently displayed on and in the fireworks stand.

(d) Each stand must have an adult watchman in attendance and in charge thereof when the stand is being used for sale, dispensing or storage of fireworks.

(e) All unsold stock of fireworks in the hands of the retailer after 10:00 p.m. on the 5th day of July shall be returned to the distributor or wholesaler and removed from the City within ten days. On closing of stands, all litter shall be removed from the premises.

(f) No fuel-powered generator or similar equipment shall be allowed within fifty (50) feet of a fireworks stand.

**4.54.410 ENFORCEMENT.** The division of authority for enforcement of this Article shall be as follows:

(a) The chief of any fire protection district or his designated representatives shall have authority to enforce this Article and issue citations for violations in their respective districts.

(b) The City Building Inspector shall have authority to enforce this Article in any area lying without any fire protection district.

(c) The City Building Inspector shall have authority to enforce this Article in any fire protection district upon request of the chief of the fire protection district or the governing body thereof.

**4.54.420 REVOCATION OF LICENSE - APPEAL.**

(a) The City Building Inspector may revoke, immediately and without notice or hearing, the license of any licensee who violates the provisions of Section 4.54.360(e), Section 4.54.380(a), (b) or (e), or Section 4.54.400(d). If the revocation occurs between June 22nd and July 5th, the City Building Inspector shall inform the licensee that the licensee may seek review of the City Building Inspector's decision by the City Manager, or the City Manager's designee, on the next business day. At the earliest opportunity on the next business day after the revocation, the City Building Inspector shall provide the City Manager with written notice that a fireworks business license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. If requested by the licensee, the City Manager, or the City Manager's designee, shall meet with the licensee on that day to review the City Building Inspector's decision. The decision of the City Manager or his designee shall be final. If the revocation occurs before or after the specified period, the appeal procedures of subsection (b) shall apply.

(b) The City Building Inspector may revoke the license of any licensee who violates any provision of this Article not specified in subsection (a). Such revocation shall not take effect for five days, during which time the licensee may seek review of the City Building Inspector's decision by submitting a written request for review to the City Manager. The City Building Inspector shall provide the City Manager with written notice that a fireworks license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. The City Manager, or the City Manager's

designee, shall meet with the licensee and the City Building Inspector to review the City Building Inspector's decision. The decision of the City Manager or his designee shall be final.

(c) Any licensee whose permit has been revoked pursuant to subsections (a) or (b) hereof shall be barred from receiving a license under this Article for five (5) years from the date of revocation.

#### **4.54.430 PENALTY; INFRACTION.**

(a) Notwithstanding the provisions of Section 1.01.190 or any other section of this Code, and with the exception of the fourth and subsequent violation of this Article within one (1) year as provided in subdivision (c) of this section, the violation of any of the provisions of this Article is an infraction subject to the procedures set forth in Penal Code sections 19.6 and 19.7.

(b) Every violation of any provision of this Article constituting an infraction is punishable as follows:

(1) a fine not exceeding one hundred (\$100) dollars for a first violation;

(2) a fine not exceeding two hundred (\$200) dollars for a second violation of this Article within one year; and

(3) a fine not exceeding five hundred (\$500) dollars for a third violation of this Article within one year.

(c) The fourth and each subsequent violation of this Article within one (1) year shall constitute a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than six (6) months, or both.

**4.54.440 SEIZURE OF FIREWORKS.** The Chief, or the Chief's designee, of the fire district in whose jurisdiction a fireworks stand is located may seize, take, remove or cause to be removed, at the expense of the licensee, all stocks of fireworks offered or exposed for sale, stored or held in violation of this Article when such violation creates an imminent threat to public health or safety.

**4.54.450 CONCURRENT AUTHORITIES.** This Article is not the exclusive regulation for fireworks within the City. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore and hereafter enacted by the County, the State, or any other legal entity or agency having jurisdiction.

### **Article 5**

#### **Public Convenience Determination For Alcohol Licenses**

**4.54.500 APPLICATION FOR DETERMINATION OF PUBLIC CONVENIENCE.** Any person whose application for any alcohol license is subject to a determination of public convenience or necessity by the City pursuant to Business and Professions Code

section 23958.4, shall submit an application to the City for a determination whether or not the public convenience and necessity would be served by the granting of such license. Such application shall be made on forms approved by the City Manager and shall contain such information as required by him or her. At a minimum, any application shall contain that information required by §110-01 of the Zoning Code of the City of Elk Grove. The application shall be accompanied by payment of a fee to be established by resolution of the City Council calculated to offset the costs of the review and determination.

#### **4.54.510 REVIEW OF APPLICATIONS.**

(a) Upon receipt of such request for a determination of public convenience or necessity or notice of an application for an alcohol license from the Department of Alcohol Beverage Control ("ABC"), the City Manager shall refer such application to the departments and advisory bodies of the City for review and comment.

(b) At a minimum, the Chief of Police shall determine whether there are existing problems regarding criminal activity at the applicant premises or in the area surrounding the applicant premises. If the Chief of Police determines that there are such existing problems with criminal activity he shall report such problems, in writing, to the City Manager.

(c) At a minimum, the Department of Community Services shall determine whether the applicant premises are within the appropriate land use designations and have received all required entitlements to permit the type of sale of alcoholic beverages described in the application. The Department shall report its determination, in writing, to the City Manager.

(d) At a minimum, the Department of Community Services shall also determine whether there is a pending zoning enforcement action regarding the applicant premises. If the Department determines that there is a pending enforcement action, it shall report such, in writing, to the City Manager.

(e) At a minimum, the City personnel responsible for Business Licenses shall determine whether any required business license has been issued and is in good standing for the applicant premises. If the City personnel determine that a license is required and has not been issued or is not in good standing, they shall report such, in writing, to the City Manager.

(f) At a minimum, the Chief Building Inspector shall determine whether there are any building code violations at the applicant premises and shall report such, in writing, to the City Manager.

(g) The City Manager shall also determine whether any protests were lodged with the ABC in relation to the applicant's request for a license with that body.

(h) The written reports required by this section are to be received by the City Manager within fifteen (15) days from the date the application is forwarded to such departments and advisory bodies.

#### **4.54.520 HEARING REQUIRED.**

(a) Proceedings to determine the public convenience or necessity of issuing any alcohol license subject to Business and Professions Code section 23958.4(b)(2) shall be scheduled before the City Council. Notice of the hearing shall be given in the same manner as required by Section 110-04 of the Zoning Code of the City of Elk Grove.

(b) The hearing shall be held without regard to the technical rules of evidence and all persons desiring to appear shall be permitted to do so. The City Manager or his or her designee shall present the results of all written reports from the City departments and advisory bodies. The alcohol license applicant shall be required to demonstrate, by substantial evidence, that the public convenience or necessity will be served by the issuance of a license.

(c) The hearing may be continued from time. At the conclusion of the hearing, the City Council shall determine, within the limits of Business and Professions Code section 23958.4(b)(2) whether the public convenience or necessity will be served by the issuance of a license for the alcohol license applicant premises. The determination shall be reduced to writing by the City Manager and shall be served by mail upon the alcohol license applicant and ABC.

(d) The City Council may determine that the public convenience or necessity will be met only if certain conditions (specifically authorized by Business and Professions Code section 23800 to 23805 (particularly sections 23800(a) and 23801) are imposed upon any license issued by the Department of Alcoholic Beverage Control. Such conditions shall be included in the City Council's decision and shall be submitted by the City within the time periods specified in Business and Professions Code in order to preserve the rights of the City to seek imposition of such conditions.

#### **Section 5: No Mandatory Duty of Care.**

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

#### **Section 6: Severability.**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the

invalidity of any portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

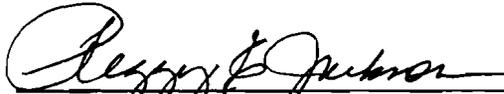
**Section 7: Effective Date and Publication.**

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to Government Code section 36933(c)(1).

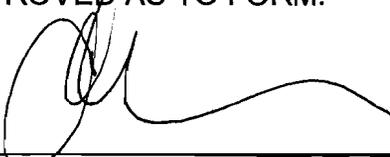
PASSED AND ADOPTED by the City Council of the City of Elk Grove this 14<sup>th</sup> Day of December 2005.

  
\_\_\_\_\_  
DANIEL BRIGGS, MAYOR OF THE  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

EFFECTIVE DATE:            January 14, 2006

AYES:                        Scherman, Soares, Briggs, Cooper, Leary  
NOES:                        None  
ABSTAIN:                    None  
ABSENT:                     None

<b>AGENDA ITEM TYPE</b>
<input type="checkbox"/> Consent
<input checked="" type="checkbox"/> Public Hearing
<input type="checkbox"/> Regular Action

## CITY OF ELK GROVE

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**ELK GROVE CITY COUNCIL AGENDA ITEM**  
**April 7, 2004**

**TO: MAYOR AND COUNCIL**

**FROM: ANTHONY MANZANETTI, CITY ATTORNEY**

**SUBJECT: AMENDMENTS TO THE ZONING AND BUSINESS REGULATION CODES REGARDING BUSINESSES PERMITTED BY §11360 ET SEQ. OF THE CALIFORNIA HEALTH AND SAFETY CODE: A public hearing to consider an ordinance amending Title 1, Chapter 25, Article 1 (Definitions) of the City of Elk Grove Zoning Code; Title II, Chapter 25, Article 2 (Permitted Uses Within the Buildable Area of Commercial Lots) of the City of Elk Grove Zoning Code; and Title 4 (Business Regulation) of the City of Elk Grove Municipal Code.**

### **RECOMMENDATION**

That the City Council approve an urgency ordinance, by a 4/5<sup>th</sup> majority, amending Title 1, Chapter 25, Article 1 (Definitions) of the City of Elk Grove Zoning Code; Title II, Chapter 25, Article 2 (Permitted Uses Within the Buildable Area of Commercial Lots) of the City of Elk Grove Zoning Code; and Title 4 (Business Regulation) of the City of Elk Grove Municipal Code.

### **BACKGROUND**

On November 5, 1996, the voters of California passed Proposition 215, known as the Compassionate Use Act of 1996 (the Act), codified at Health

& Safety Code sections 11362.5 *et seq.* The Act exempts patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana. The Act also provides physicians who recommend use of marijuana for medical treatment shall not be punished or denied any right or privilege.

Problems and uncertainties related to the implementation of the Act prompted the State Legislature to adopt and the Governor to sign Senate Bill No. 420 (the Bill). The Bill requires the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes.

The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the People of the State of California by passing Proposition 215, and the Legislature of the State of California by passing SB 402, have provided for the medical use of marijuana, and with that in mind, the City Council wishes to insure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove.

The proposed amendments to the City's Zoning Code would clarify where Medical Cannabis Dispensary facilities may be legally located within the City of Elk Grove and would impose various conditions to regulate such use.

## **ANALYSIS**

The City's Zoning Code currently does not list Medical Cannabis Dispensaries as a permitted use. Therefore, the Zoning Code must be amended to clearly designate where Medical Cannabis Dispensaries are permitted so that the City is in compliance with the intent of the Act and the Bill. Staff reviewed the City's Zoning Code and concluded that the use in question is most compatible with the Shopping Center (SC) zoning district. The Business License regulations must also be amended to apply to such businesses.

As proposed, the amendments would amend the zoning code and business license regulations to, in summary, require the following:

- 1) **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
- 2) **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
- 3) **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.
- 4) **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
- 5) **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.
- 6) **On-site Use Prohibited:** On-site use of cannabis is prohibited.
- 7) **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.
- 8) **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
- 9) **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
- 10) **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
- 11) **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the

safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.

- 12) **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
- 13) **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all “Qualified Patients” and/or “Primary Care Givers” to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
- 14) **No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.
- 15) **Application for Special License and Employee Permits:** A Medical Marijuana Dispensary requires that the operator undergo a background check and be fingerprinted. In addition all employees must submit an application for an Special Employee Permit, or an application for the renewal of an Employee Permit, to work in a Medical Marijuana Dispensary, that requires drug abuse screening.
- 16) **Revocation:** Failure to comply with any of the above can result in the revocation of either the businesses conditional use permit and/or its business license.

## **ENVIRONMENTAL ANALYSIS**

The project is exempt pursuant to CEQA §15061(b)(3). CEQA applies only to projects which have the potential for causing a significant effect on the environment. There is no possibility that the activity in question may have a significant effect on the environment.

## **FINANCIAL IMPLICATIONS TO CITY**

Development permitted by the proposed ordinance would result in increased tax revenue to the City offsetting the costs of governmental services, resulting in no general fund implications. Infrastructure is funded

by the developer and through development impact fee programs. The general fund will not be used to pay for any infrastructure costs of this project.

## **ATTACHMENTS**

- A. Proposed Ordinance Amending Titles I and II of the Zoning Code and Title IV of the Municipal Code - Page 6

**AN URGENCY ORDINANCE TO AMEND THE CITY OF ELK GROVE ZONING CODE REGARDING PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS AND TO AMEND TITLE 4 OF THE MUNICIPAL CODE REGARDING BUSINESS REGULATION REGARDING BUSINESSES PERMITTED BY §11360 ET SEQ. OF THE CALIFORNIA HEALTH AND SAFETY CODE**

**[THIS ORDINANCE AMENDS TITLE 1, CHAPTER 25, ARTICLE 1 (DEFINITIONS) OF THE CITY OF ELK GROVE ZONING CODE; TITLE II, CHAPTER 25, ARTICLE 2 (PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS) OF THE CITY OF ELK GROVE ZONING CODE; AND TITLE 4, (BUSINESS REGULATION) OF THE CITY OF ELK GROVE MUNICIPAL CODE]**

The City Council of the City of Elk Grove does ordain as follows:

**Section 1: Purpose**

The purpose of this Ordinance is to amend Title I, Chapter 25, Article 1 of the City of Elk Grove Zoning Code, creating definitions of "Medical Cannabis Dispensary" to amend Title II, Chapter 25, Article 2 of the City of Elk Grove Zoning Code, establishing Medical Cannabis Dispensaries as conditionally permitted use within the buildable area of lots with a zoning designation of SC; and amend Title 4 of the Elk Grove Municipal Code regarding Business Regulation requiring a license for the operation of a Medical Cannabis Dispensary within the City of Elk Grove.

**Section 2: Findings**

1. In adopting this Ordinance, the City Council makes the following findings:
  - A. The People of the State of California passed Proposition 215, The Compassionate Use Act of 1996, which protects patients and physicians who prescribe marijuana for medical treatment.
  - B. The Legislature of the State of California passes SB 402 which was designed to provide greater certainty regarding the medical use of marijuana and establishes use procedures and voluntary identification/registration cards to qualified patients.
  - C. The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the People of the State of California by passing Proposition 215, and the Legislature of the State of California by passing SB 402, have provided for the medical use of marijuana, and with that in mind, the City Council wishes to insure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove.
  - D. On March 25, 2004, the Elk Grove Planning Commission held public hearings on the proposed amendment to the City Code, and recommended that the City Council approve the proposed amendment.

- E. On April 7, 2004, the City Council held a public hearing on the proposed amendment to the City Code, at which time public testimony was taken and duly considered.
- F. The City Council finds that the revised Code is consistent with the goals, policies, implementation programs and land use designations specified in the City's General Plan, as required by Government Code Section 65860.
- G. The establishment of Medical Cannabis Dispensaries is contemplated by Health & Safety Code sections 11362.5 et seq.
- H. Medical Cannabis Dispensaries create adverse secondary effects, including but not limited to, an increase in driving under the influence of marijuana in the community in which they exist, increase illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

### **Section 3. CEQA Findings**

1. The proposed project is exempt pursuant to CEQA §15061(b)(3).
2. The City Council finds that adoption of this ordinance does not have the potential for causing a significant effect on the environment.

### **Section 4. Amendments to Title I, Chapter 25, Article 1 and to Title II, Chapter 25, Article 2 of the City of Elk Grove Zoning Code**

- 1) Title I, Chapter 25, Article 1 of the Zoning Code of the City of Elk Grove is hereby amended by adding the sections as shown below:

#### **a) §130-122.3. Medical Cannabis Dispensary**

"Medical Cannabis Dispensary" shall mean a "Primary Care Giver," provides education, referral, network services, facilitation or assistance in the lawful possession, acquisition, and distribution of medical cannabis, to two (2) or more "Qualified Patients" and/or "Primary Care Givers", in possession of an identification card, or Written Recommendation, issued by the County of Sacramento, or the State of California, or other agency recognized by the City of Elk Grove pursuant to the California Health & Safety Code

Medical cannabis may not be provided to another person in the City of Elk Grove except by a Medical Cannabis Dispensary.

#### **B. §130-137.1. Primary Care Giver**

"Primary Care Giver" shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

**C. §130- 138.5. Qualified Patient**

“Qualified Patient” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

**D. §130-198.9.e. Written Recommendation**

“Written Recommendation” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

2) **Title II, Chapter 25, Article 2 of the City of Elk Grove Zoning Code is hereby amended to establish Medical Cannabis Dispensaries as conditionally permitted uses in the SC zoning designation, as shown below by the additional rows added to Table II, in §225-11 and by the additional condition of approval in §225-14.**

**A. §225-11. Table II**

TABLE II PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS									
USE, SERVICE OR FACILITY (Unless otherwise indicated, listings denote retail sales operations)	MP*	BP	SC	LC	GC	AC	TC	CO	DW
<b>C. Health Services</b>									
1 Acupuncture or Acupuncture Office	X	14	X	X	X	X			
1 5 Adult Day Health Center		14	X	X	X			14	
2 Ambulance Service			14	X	X	X	X		
3 Clinic, Child-Family Guidance	X	X	X	X	X				
4 Clinic, Counseling	X	X	X	X	X				
4 5 Clinic, Diet Counseling with Incidental Sales of Diet Products	X	X	X	X	X				
5 Clinic, Kidney Dialysis	X	X	X	X	X				
6 Clinic, Physical Therapy	X	X	X	X	X				
7 Convalescent Hospital		14		14	14			14	
8 Eyeglasses, Frames, Contact Lens - Sales and Service	X	X	X	X	X				
9 Hearing Aids - Sales and Service	X	X	X	X	X				
10 Hospital		14		14	14			14	

11 Laboratory - Medical, Dental or Optical	X	X	X	X	X				
12 Laboratory - Research, Analysis	14			10	10				
13 Medical or Dental Office	X	X	X	X	X	X			
14 Psychiatric Facility				14	14				
15 Sanitarium		14		14	14				
16 Social Rehabilitation Center		14		14	14				
17 Orthopedic Appliances Sales/Service	X	X	X	X	X				
18 Medical Cannabis Dispensary			63						

**B. §225-14. Special Conditions**

(63) Permitted, subject to the issuance of a conditional use permit by the Elk Grove Planning Commission, and when all of the following criteria are met:

1. **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
2. **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
3. **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.
4. **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
5. **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.
6. **On-site Use Prohibited:** On-site use of cannabis is prohibited.
7. **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.

8. **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
9. **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
10. **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
11. **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.
  - a. The City Council finds that the public interest served in preserving the confidentiality of any such Safety and Security Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove.
  - b. Said current approved written Safety and Security Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
12. **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
13. **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all "Qualified Patients" and/or "Primary Care Givers" to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
  - a. The City Council finds that there is an important security public interest served in preserving the confidentiality of any such Confidentiality Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

- b. Said current approved written Confidentiality Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
- 14. **No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.
- 15. **Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license.

Section 5: Title 4, of the City of Elk Grove Municipal Code is hereby amended as follows:

- a) Section 4.06.015(a) is amended to add a subsection 4.06.15 (a) (1) that shall read as follows: "A Medical Cannabis Dispensary shall not for the purposes of this Title be considered a medical delivery service and any Medical Cannabis Dispensary shall be subject to the general and special licensing requirements."
- b) Section 4.10.005 is amended to add subsection 4.10.005 (p) that shall read as follows: "Any Medical Cannabis Dispensary."
- c) Section 4.10.045 is amended to add a subsection 4.10.045 (a) that shall read as follows:

"A Medical Cannabis Dispensary shall obtain a Special Business License pursuant to Elk Grove Municipal Code chapter 4.10 and in addition to the general and special licensing requirements each business license for a Medical Cannabis Dispensary shall have, and each licensee shall be required to obtain a conditional use permit from the Elk Grove Planning Commission which conditional use permit shall have, the following conditions:

- 1) **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
- 2) **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
- 3) **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.
- 4) **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
- 5) **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents

and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.

- 6) **On-site Use Prohibited:** On-site use of cannabis is prohibited.
- 7) **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.
- 8) **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §§11014.5, 11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
- 9) **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
- 10) **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
- 11) **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.
  - (a) The City Council finds that the public interest served in preserving the confidentiality of any such Safety and Security Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove.
  - (b) Said current approved written Safety and Security Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
- 12) **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
- 13) **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all "Qualified Patients" and/or "Primary Care Givers" to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
  - (a) The City Council finds that there is an important security public interest served in preserving the confidentiality of any such Confidentiality Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.
  - (b) Said current approved written Confidentiality Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.

**14)No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.

**15)Applications for Employee Permits:** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to work in a Medical Marijuana Dispensary, shall contain the following:

(a) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;

(b) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control regulated substances;

(c) A declaration by a Medical Marijuana Dispensary employer that the applicant is employed by or has an offer of employment by that employer to work in the Medical Marijuana Dispensary;

(d) A declaration by the Medical Marijuana Dispensary employer that the applicant, who is employed by or has an offer of employment with the employer, has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;

(e) The name of the Medical Marijuana Dispensary business which the applicant is employed by or has an offer of employment from;

(f) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

(g) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10 of Title 4 of this Code. (SCC 1048 § 20, 1996; SCC 578 § 6 (part), 1983).

**16)Issuance or Renewal of Employee Permit:** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit or renewal of the Permit pursuant to Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.10.045 (a), or is otherwise incomplete;

(b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;

(c) That information contained in the application is false or otherwise inaccurate;

(d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, the applicant would not work in a Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a Permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction the applicant would not work in the Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm; or

(e) One or more of the grounds for Permit revocation or suspension exists pursuant to Section 4.14.100 of this Chapter. (SCC 1048 § 21, 1996; SCC 578 § 6 (part), 1983).

**17) Employee Permit Void Upon Termination of Employment.** The Employee Permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after termination of employment.

The holder of the Special Business License employing the holder of the Employee Permit shall notify the Chief of Police within three (3) days upon termination of the holder's employment. (SCC 1048 § 22, 1996).

**18) Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license."

d) Section 4.10.070 shall be amended to read as follows:

" 4.10.065 EMPLOYEE PERMITS. With respect to certain types of enterprises described by Section 4.10.005, protection of the public health, safety and welfare require that personnel retained by the enterprises to perform specified functions or duties be of good moral character, not have been convicted of particular criminal offenses, and, in certain instances, possess minimum skills necessary to insure public safety. Personnel

required to possess such minimum qualifications are identified by the provisions of Chapters 4.14 through 4.50 and section 4.10.005(p).

The procedures set forth in this Chapter relating to Employee Permits shall be applicable to all personnel required by Chapter 4.14 through 4.50 and section 4.10.005(p) to possess minimum qualifications which are subject to review by the Chief of Police.” (SCC 578 § 4 (part), 1983)

e) Section 4.10.070 shall be amended to read as follows:

“4.10.070 PERMIT REQUIRED. Whenever under the provisions of Chapters 4.14 through 4.50, or section 4.10.005(p), personnel of a particular enterprise are required to meet minimum qualifications or possess a permit or license, it shall be unlawful for a person to perform the duties or functions specified and unlawful for the holder of a Special Business License to permit the person to perform such duties or functions unless the person has first applied for and obtained an Employee's Permit.” (SCC 578 § 4 (part), 1983.)

#### Section 6: No Mandatory Duty of Care

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

#### Section 7: Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

#### Section 8: Urgency: Effective Date and Publication

The City Council finds, in addition to the findings above, that the potential adverse secondary effects of the providing of medical cannabis present a clear and present danger to the immediate preservation of the public peace, health or safety such that this Ordinance shall take effect immediately upon its adoption by a 4/5<sup>th</sup>'s majority of this City Council. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this \_\_\_\_ day of April 2004.

\_\_\_\_\_  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY



*Incorporated July 1, 2000*

8400 Laguna Palms Way  
Elk Grove, California 95758

**CITY OF ELK GROVE**

Telephone: 916/683-7111  
Fax: 916/691-2001  
www.elkgrovecity.org

**OFFICE OF THE CITY CLERK**

AFFIDAVIT OF POSTING and/or MAILING  
CITY OF ELK GROVE  
CITY HALL

I, Tina McVay, certify that today, March 22, 2014, I caused to be posted the attached document, at City Hall, 8400 Laguna Palms Way, Elk Grove, Ca 95758.

Micki De La Fuente  
~~Tina McVay, Deputy City Clerk~~ Micki De La Fuente, Admin. Asst.  
City of Elk Grove



**Incorporated July 1, 2000**

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**City of Elk Grove – City Council**  
**Notice of Public Hearing**

**Dated: March 22, 2004**

**NOTICE** is hereby given pursuant to section 65090 and 65091 of the California Government Code that on **April 7, 2004, at 6:30 p.m.**, or as soon thereafter as the matter may be heard, the City Council of the City of Elk Grove will hold a Public Hearing at the **Elk Grove City Hall, located at 8400 Laguna Palms Way, Elk Grove**, to consider the following applications:

**AMENDMENT TO CITY OF ELK GROVE ZONING CODE**

**REQUEST:** Consider a City-initiated ordinance to amend the City of Elk Grove Zoning Code, including §225-11 (Permitted Uses Within the Buildable Area of Commercial Lots), Title 1, Chapter 25, Article 1 (Definitions), and related sections, regarding businesses permitted by §4.54.200 of Article 5 of the Municipal Code and by §11360 et. sec. of the California Health and Safety Code.

**LOCATION/APN:** City wide  
**ENVIRONMENTAL:** The project is exempt pursuant to CEQA §15061(b)(3).  
**PROJECT PLANNER:** Bill Pable

**NOTICE REGARDING CHALLENGES TO DECISIONS**

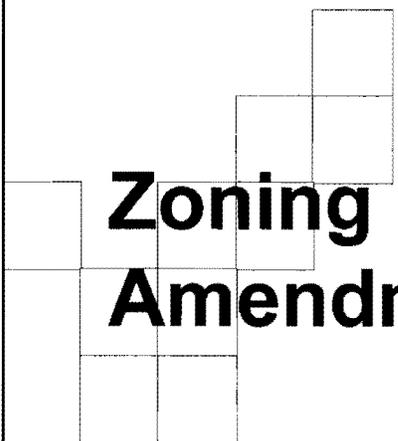
Pursuant to all applicable laws and regulations, including without limitation, California Government Code Section 65009 and/or California Public Resources Code Section 21177, if you wish to challenge in court any of the above decisions (regarding planning, zoning and/or environmental decisions), you may be limited to raising only those issues you or someone else raised at the public hearing(s) described in this notice/agenda, or in written correspondence delivered to the city at, or prior to, this public hearing.

**ADA COMPLIANCE STATEMENT**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact City Clerk Peggy Jackson at (916)683-7111. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Peggy E. Jackson, City Clerk

00018



# **Zoning & Business License Amendments:**

## **Medical Marijuana Dispensary**

**Elk Grove City Council  
April 7, 2004**



## Background

- **The City of Elk Grove does NOT approve of the use of marijuana, but cannot prohibit the legal use.**
- **Proposition 215 - The Compassionate Use Act - passed by the voters in 1996 - protects patients who possess and physicians who prescribe marijuana for medical treatment.**
- **Uncertainties in Prop 215 led to the Legislature passing SB 420, which establishes use procedures and voluntary identification cards to qualified patients.**
- **City has received inquiries regarding how the sale of medical marijuana would be regulated in Elk Grove.**



## Analysis

- **Currently:**
  - **Zoning Code does not list Medical Marijuana Dispensary as a use. – Could locate any where in City.**
  - **Business License Code does not list Medical Marijuana Dispensary as requiring a license. – No Business License.**
  
- **Proposed Code Amendments:**
  - **Would impose conditions of approval and licensing.**
  - **Would clarify that Medical Marijuana Dispensary may be legally located in Shopping Center (SC) zoning district (17 possible locations)**



## **Code Amendments**

- **Defines “Medical Marijuana Dispensary”**
- **Conditionally permits “Medical Marijuana Dispensary” in SC zone:**
- **Requires such business to obtain special business license**
- **Amends Title 4 of the City Code for consistency / clarity**
- **Establishes Conditions to the business use:**



**Summary of Conditions:**

- 1. Hours of Operation:** 9:00 a.m. - 3:00 p.m.
- 2. Distance Requirements:** 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade).
- 3. Conditional Use Permit:** To insure the least impact on the community, the Planning Commission may impose distance requirements with respect to uses that draw minors - Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and others.
- 4. Development Requirements:** Development requirements imposing lighting and visibility standards are applicable to such uses.
- 5. Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must notify by mail residents and property owners within 1,000 feet.



**Summary of Conditions (cont.):**

- **On-site Use Prohibited:** On-site use of marijuana is prohibited.
- **On-site cultivation prohibited:** On-site cultivation of is prohibited.
- **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of any implement used to administer medical marijuana is prohibited.
- **Disclosure of Supplier:** The Business shall disclose the names and addresses of all suppliers of marijuana products.
- **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
- **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of medical marijuana, which Plan shall include a hard-wired monitored alarm system.



**Summary of Conditions (cont.):**

- **Removal of Solid Waste:** All solid waste shall be physically removed at least twice per day, and no solid waste shall be allowed to remain on site during time not open to the public.
- **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all to whom medical marijuana has been dispensed.
- **No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.



**Summary of Conditions (cont.):**

- **Application for Special License and Employee Permits:** Operator undergo a background check and be fingerprinted. All employees must submit an application for an Special Employee Permit that requires drug use screening.
- **Revocation:** Failure to comply with any of the above can result in the revocation of either the businesses conditional use permit and/or its business license.



**Medical Marijuana Dispensaries  
can cause immediate and  
adverse effects within the community.**

- The target of robbery.
- The target for illegal street sales.
- Increase in Driving While Under the Influence of Marijuana.



**CITY OF ELK GROVE**  
**POLICE DEPARTMENT**  
*Inter-Department Correspondence*



April 7, 2004

**To:** Anthony Manzanetti – City Attorney  
**From:** Ed Kelly – Assistant Police Chief  
**SUBJECT:** **Criminal Activity – Medical Marijuana Facility**

I have contacted the Police Department in Roseville . . . In the two month period of this facility being open, there have been 10 events requiring law enforcement service. This is an extremely high number of service requests for a new business.

- > . . . illegal sales of marijuana could increase as a result of the establishment of a medical marijuana facility is disturbing .
- > . . . need to maintain strict control of the business operation.
- > . . . need to safeguard that this schedule I narcotic is safely secured during and after hours of operation.



## **Recommendation**

**That the City Council – by a 4/5<sup>th</sup>s vote:**

- (1) Waive full reading of the ordinance, and instead read only the title, and**
- (2) ADOPT AN URGENCY ORDINANCE TO AMEND THE CITY OF ELK GROVE ZONING CODE REGARDING PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS AND TO AMEND TITLE 4 OF THE MUNICIPAL CODE REGARDING BUSINESS REGULATION REGARDING BUSINESSES PERMITTED BY §11360 ET SEQ. OF THE CALIFORNIA HEALTH AND SAFETY CODE , BASED ON THE FINDINGS IN THE STAFF REPORT, THIS PRESENTATION AND THE INFORMATION PRESENTED AT THIS PUBLIC HEARING.**

**AN ORDINANCE TO AMEND THE CITY OF ELK GROVE ZONING CODE REGARDING PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS AND TO AMEND TITLE 4 OF THE MUNICIPAL CODE REGARDING BUSINESS REGULATION REGARDING BUSINESSES PERMITTED BY §11360 ET SEQ. OF THE CALIFORNIA HEALTH AND SAFETY CODE**

**[THIS ORDINANCE AMENDS TITLE 1, CHAPTER 25, ARTICLE 1 (DEFINITIONS) OF THE CITY OF ELK GROVE ZONING CODE; TITLE II, CHAPTER 25, ARTICLE 2 (PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS) OF THE CITY OF ELK GROVE ZONING CODE; AND TITLE 4, (BUSINESS REGULATION) OF THE CITY OF ELK GROVE MUNICIPAL CODE]**

The City Council of the City of Elk Grove does ordain as follows:

**Section 1: Purpose**

The purpose of this Ordinance is to amend Title I, Chapter 25, Article 1 of the City of Elk Grove Zoning Code, creating definitions of "Medical Cannabis Dispensary" to amend Title II, Chapter 25, Article 2 of the City of Elk Grove Zoning Code, establishing Medical Cannabis Dispensaries as conditionally permitted use within the buildable area of lots with a zoning designation of SC; and amend Title 4 of the Elk Grove Municipal Code regarding Business Regulation requiring a license for the operation of a Medical Cannabis Dispensary within the City of Elk Grove.

**Section 2: Findings**

1. In adopting this Ordinance, the City Council makes the following findings:
  - A. The People of the State of California passed Proposition 215, The Compassionate Use Act of 1996, which protects patients and physicians who prescribe marijuana for medical treatment.
  - B. The Legislature of the State of California passes SB 402 which was designed to provide greater certainty regarding the medical use of marijuana and establishes use procedures and voluntary identification/registration cards to qualified patients.
  - C. The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the People of the State of California by passing Proposition 215, and the Legislature of the State of California by passing SB 402, have provided for the medical use of marijuana, and with that in mind, the City Council wishes to insure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove.
  - D. On March 25, 2004, the Elk Grove Planning Commission held public hearings on the proposed amendment to the City Code, and recommended that the City Council approve the proposed amendment.

- E. On April 7, 2004, the City Council held a public hearing on the proposed amendment to the City Code, at which time public testimony was taken and duly considered.
- F. The City Council finds that the revised Code is consistent with the goals, policies, implementation programs and land use designations specified in the City's General Plan, as required by Government Code Section 65860.
- G. The establishment of Medical Cannabis Dispensaries is contemplated by Health & Safety Code sections 11362.5 et seq.
- H. Medical Cannabis Dispensaries create adverse secondary effects, including but not limited to, an increase in driving under the influence of marijuana in the community in which they exist, increase illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

### **Section 3. CEQA Findings**

- 1. The proposed project is exempt pursuant to CEQA §15061(b)(3).
- 2. The City Council finds that adoption of this ordinance does not have the potential for causing a significant effect on the environment.

### **Section 4. Amendments to Title I, Chapter 25, Article 1 and to Title II, Chapter 25, Article 2 of the City of Elk Grove Zoning Code**

- 1) Title I, Chapter 25, Article 1 of the Zoning Code of the City of Elk Grove is hereby amended by adding the sections as shown below:

#### **a) §130-122.3. Medical Cannabis Dispensary**

“Medical Cannabis Dispensary” shall mean a “Primary Care Giver,” provides education, referral, network services, facilitation or assistance in the lawful possession, acquisition, and distribution of medical cannabis, to two (2) or more “Qualified Patients” and/or “Primary Care Givers”, in possession of an identification card, or Written Recommendation, issued by the County of Sacramento, or the State of California, or other agency recognized by the City of Elk Grove pursuant to the California Health & Safety Code

Medical cannabis may not be provided to another person in the City of Elk Grove except by a Medical Cannabis Dispensary.

#### **B. §130-137.1. Primary Care Giver**

“Primary Care Giver” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

**C. §130- 138.5. Qualified Patient**

“Qualified Patient” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

**D. §130-198.9.e. Written Recommendation**

“Written Recommendation” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

**2) Title II, Chapter 25, Article 2 of the City of Elk Grove Zoning Code is hereby amended to establish Medical Cannabis Dispensaries as conditionally permitted uses in the SC zoning designation, as shown below by the additional rows added to Table II, in §225-11 and by the additional condition of approval in §225-14.**

**A. §225-11. Table II**

TABLE II PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS									
USE, SERVICE OR FACILITY (Unless otherwise indicated, listings denote retail sales operations)	MP*	BP	SC	LC	GC	AC	TC	CO	DW
<b>C. Health Services</b>									
1 Acupuncture or Acupuncture Office	X	14	X	X	X	X			
1 5 Adult Day Health Center		14	X	X	X			14	
2 Ambulance Service			14	X	X	X	X		
3 Clinic, Child-Family Guidance	X	X	X	X	X				
4 Clinic, Counseling	X	X	X	X	X				
4 5 Clinic, Diet Counseling with Incidental Sales of Diet Products	X	X	X	X	X				
5 Clinic, Kidney Dialysis	X	X	X	X	X				
6 Clinic, Physical Therapy	X	X	X	X	X				
7 Convalescent Hospital		14		14	14			14	
8 Eyeglasses, Frames, Contact Lens - Sales and Service	X	X	X	X	X				
9 Hearing Aids - Sales and Service	X	X	X	X	X				
10 Hospital		14		14	14			14	

11 Laboratory - Medical, Dental or Optical	X	X	X	X	X				
12 Laboratory - Research, Analysis	14			10	10				
13 Medical or Dental Office	X	X	X	X	X	X			
14 Psychiatric Facility				14	14				
15 Sanitarium		14		14	14				
16 Social Rehabilitation Center		14		14	14				
17 Orthopedic Appliances Sales/Service	X	X	X	X	X				
18 Medical Cannabis Dispensary			63						

**B. §225-14. Special Conditions**

(63) Permitted, subject to the issuance of a conditional use permit by the Elk Grove Planning Commission, and when all of the following criteria are met:

1. **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
2. **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
3. **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.
4. **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
5. **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.
6. **On-site Use Prohibited:** On-site use of cannabis is prohibited.
7. **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.

8. **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
9. **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
10. **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
11. **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.
  - a. The City Council finds that the public interest served in preserving the confidentiality of any such Safety and Security Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove.
  - b. Said current approved written Safety and Security Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
12. **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
13. **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all "Qualified Patients" and/or "Primary Care Givers" to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
  - a. The City Council finds that there is an important security public interest served in preserving the confidentiality of any such Confidentiality Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

- b. Said current approved written Confidentiality Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
- 14. **No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.
- 15. **Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license.

Section 5: Title 4, of the City of Elk Grove Municipal Code is hereby amended as follows:

- a) Section 4.06.015(a) is amended to add a subsection 4.06.15 (a) (1) that shall read as follows: "A Medical Cannabis Dispensary shall not for the purposes of this Title be considered a medical delivery service and any Medical Cannabis Dispensary shall be subject to the general and special licensing requirements."
- b) Section 4.10.005 is amended to add subsection 4.10.005 (p) that shall read as follows: "Any Medical Cannabis Dispensary."
- c) Section 4.10.045 is amended to add a subsection 4.10.045 (a) that shall read as follows:

"A Medical Cannabis Dispensary shall obtain a Special Business License pursuant to Elk Grove Municipal Code chapter 4.10 and in addition to the general and special licensing requirements each business license for a Medical Cannabis Dispensary shall have, and each licensee shall be required to obtain a conditional use permit from the Elk Grove Planning Commission which conditional use permit shall have, the following conditions:

- 1) **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
- 2) **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
- 3) **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.
- 4) **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
- 5) **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents

and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.

- 6) **On-site Use Prohibited:** On-site use of cannabis is prohibited.
- 7) **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.
- 8) **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §§11014.5, 11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
- 9) **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
- 10) **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
- 11) **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.
  - (a) The City Council finds that the public interest served in preserving the confidentiality of any such Safety and Security Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove.
  - (b) Said current approved written Safety and Security Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
- 12) **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
- 13) **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all "Qualified Patients" and/or "Primary Care Givers" to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
  - (a) The City Council finds that there is an important security public interest served in preserving the confidentiality of any such Confidentiality Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.
  - (b) Said current approved written Confidentiality Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.

**14)No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.

**15)Applications for Employee Permits:** In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to work in a Medical Marijuana Dispensary, shall contain the following:

(a) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;

(b) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control regulated substances;

(c) A declaration by a Medical Marijuana Dispensary employer that the applicant is employed by or has an offer of employment by that employer to work in the Medical Marijuana Dispensary;

(d) A declaration by the Medical Marijuana Dispensary employer that the applicant, who is employed by or has an offer of employment with the employer, has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;

(e) The name of the Medical Marijuana Dispensary business which the applicant is employed by or has an offer of employment from;

(f) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

(g) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10 of Title 4 of this Code. (SCC 1048 § 20, 1996; SCC 578 § 6 (part), 1983).

**16)Issuance or Renewal of Employee Permit:** Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit or renewal of the Permit pursuant to Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

(a) That the application fails to contain information required by the Chief of Police or Section 4.10.045 (a), or is otherwise incomplete;

(b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;

(c) That information contained in the application is false or otherwise inaccurate;

(d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, the applicant would not work in a Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a Permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction the applicant would not work in the Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm; or

(e) One or more of the grounds for Permit revocation or suspension exists pursuant to Section 4.14.100 of this Chapter. (SCC 1048 § 21, 1996; SCC 578 § 6 (part), 1983).

**17) Employee Permit Void Upon Termination of Employment.** The Employee Permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after termination of employment.

The holder of the Special Business License employing the holder of the Employee Permit shall notify the Chief of Police within three (3) days upon termination of the holder's employment. (SCC 1048 § 22, 1996).

**18) Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license."

d) Section 4.10.070 shall be amended to read as follows:

" 4.10.065 EMPLOYEE PERMITS. With respect to certain types of enterprises described by Section 4.10.005, protection of the public health, safety and welfare require that personnel retained by the enterprises to perform specified functions or duties be of good moral character, not have been convicted of particular criminal offenses, and, in certain instances, possess minimum skills necessary to insure public safety. Personnel

required to possess such minimum qualifications are identified by the provisions of Chapters 4.14 through 4.50 and section 4.10.005(p).

The procedures set forth in this Chapter relating to Employee Permits shall be applicable to all personnel required by Chapter 4.14 through 4.50 and section 4.10.005(p) to possess minimum qualifications which are subject to review by the Chief of Police.” (SCC 578 § 4 (part), 1983)

e) Section 4.10.070 shall be amended to read as follows:

“4.10.070 PERMIT REQUIRED. Whenever under the provisions of Chapters 4.14 through 4.50, or section 4.10.005(p), personnel of a particular enterprise are required to meet minimum qualifications or possess a permit or license, it shall be unlawful for a person to perform the duties or functions specified and unlawful for the holder of a Special Business License to permit the person to perform such duties or functions unless the person has first applied for and obtained an Employee's Permit.” (SCC 578 § 4 (part), 1983.)

#### Section 6: No Mandatory Duty of Care

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

#### Section 7: Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

#### Section 8: Urgency: Effective Date and Publication

The City Council finds, in addition to the findings above, that the potential adverse secondary effects of the providing of medical marijuana present a clear and present danger to the immediate preservation of the public peace, health or safety such that this Ordinance shall take effect immediately upon its adoption by a 4/5<sup>th</sup>s majority of this City Council. The City Council also intends that the public hearing, City Council consideration and vote on this ordinance on April 7, 2004 also constitute the introduction of a regular ordinance, to be followed by a second reading no sooner than five days after the introduction with the regular ordinance becoming effective on the 31<sup>st</sup> day after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and

fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this \_\_\_\_ day of April 2004.

\_\_\_\_\_  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY



**CITY OF ELK GROVE**  
**POLICE DEPARTMENT**  
*Inter-Department Correspondence*

April 7, 2004

**To:** Anthony Manzanetti – City Attorney

**From:** Ed Kelly – Assistant Police Chief

**SUBJECT: Criminal Activity – Roseville Medical Marijuana Facility**

I had contacted the Police Department in Roseville regarding the issues or problems they have seen as a result of the Medical Marijuana Facility operating in their jurisdiction.

In the two month period of this facility being open, there have been 10 events requiring law enforcement service. This is an extremely high number of service requests for a new business. Two of the calls came from the business operator requesting law enforcement to remove illegal marijuana sellers who were hanging out in front of the store offering sales at lower prices.

The fact that illegal sales of marijuana could increase as a result of the establishment of a medical marijuana facility is disturbing to law enforcement. If the idea is to allow true patients who have legitimate medical needs and not to make marijuana available to anyone who wishes to use it recreationally, then we need to maintain strict control of the business operation.

Although the business in Roseville has not been the subject of a burglary or theft in the first two months of operation, they have had 3 reports of possible burglary through their alarm system. We need to safeguard that this schedule I narcotic is safely maintained within the business during and after hours of operation. We cannot allow the product to be susceptible to theft.

Roseville did have one incident close to the store where a female was smoking marijuana while operating her motor vehicle. She held a doctor's recommendation for the marijuana, but it was not determined if she purchased the product from the store. Per Roseville Police Chief Neves, he had been told from CHP that they had seen an increase in DUI drivers under the influence of Marijuana with close proximity to the store. I am trying to obtain a letter containing this information and statistics.

**MINUTES OF THE CITY COUNCIL  
REGULAR MEETING  
Wednesday, January 13, 2010**

**CALL TO ORDER/ROLL CALL**

Mayor Scherman called the regular City Council meeting of January 13, 2010 to order at 6:07 p.m.

Present: Mayor Scherman, Vice Mayor Detrick, Council Members Cooper, Davis and Hume

Absent: None.

A Monterey Trail High School student led the Pledge of Allegiance.

Mayor Scherman asked that a moment of silence be observed.

**APPROVAL OF AGENDA**

***Motion: M/S Davis/Detrick to move Items 6.6 and 6.7 to the regularly scheduled meeting of February 10, 2010 and approve the remainder of the agenda as presented. **The motion passed by the following vote: Ayes: 5; Noes: 0.*****

**CLOSED SESSION**

None.

**PRESENTATIONS/ANNOUNCEMENTS**

- 4.1 Karen Wilcox from the Sacramento Area Council of Governments presented the Distinguished Budget Award to the Finance Department on behalf of the Government Finance Officers Association.
- 4.2 Vice Mayor Detrick presented a plaque to David L. Morgan in recognition of his service on the Disability Advisory Committee during the period of February 2005 through January 2010.
- 4.3 Mayor Scherman presented a plaque to Council Member Patrick Hume in recognition of his service as Mayor during the period of December 11, 2008 through December 9, 2009.

## **PUBLIC COMMENT**

Nikki Carpenter was dismayed that the ad hoc committee meetings regarding the New Parish Catholic Church Project were not open to the public. She felt that the public had a right to know what was being discussed. Further, she suggested that the Church Project be put to a vote of community members.

Jim Burich thanked Council Members for the work they have done since being elected. In reference to allegations made at the December 9, 2009 City Council meeting by members of the public, Mr. Burich felt they were erroneous and should not have been raised.

Tim Murphy reported that the ad hoc committee meetings regarding the New Parish Catholic Church Project have been productive. He thanked Council Member Hume for his leadership and integrity while serving as Mayor.

Gene Endicott announced that the California High-Speed Rail Authority would be hosting a public scoping meeting in Sacramento on January 27. Comments would be accepted through February 26.

Daphne Harris, Co-Chair of the Complete Count Committee, reported that a meeting would be held on January 14 at which subcommittee members would be assigned to handle distribution of census material to faith based organizations, businesses, and schools. An open house is scheduled for January 25.

Kris Chalas, owner of Color Me Mine store, invited everyone to attend the February 6 fundraiser for the Elk Grove Food Bank. She thanked Council Member Davis and Vice Mayor Detrick for participating and asked the remaining Council Members to sign a bowl that would be auctioned at the event.

Barbara Lemar believed that charters were not working well in other cities and many would prefer to abolish them. Further, she objected to the process being rushed. She urged Council to table the matter and, if brought up again in the future, to make sure it has full public input. She complained that, at the October 29 meeting regarding the charter, there was incorrect information distributed to attendees related to definitions of "from" versus "by" district elections.

Bruce Acton asked Council to consider adopting an ordinance that would prohibit people from searching through residents' garbage cans for recyclable material.

Michael Monasky asked that the City's website include instructions to users that City Council meeting staff reports and supporting documents can be accessed by clicking on the agenda numbers.

## **CONSENT CALENDAR ITEMS**

Prior to action on the consent calendar items approval, Vice Mayor Detrick read the following statement of recusal into the record:

*State law provides that council members not participate in any decision that may have an effect on real property owned or leased by that council member. Therefore, I will not be participating in Consent Item 6.10. The record should reflect my recusal on this item and my abstention from participation in this matter. In addition to my recusal here today, I have not made, participated in making, or otherwise influenced or attempted to influence this decision.*

**Motion:** *M/S Hume/Davis to approve the Consent Calendar as presented with abstention noted on Agenda Item No. 6.10 (Detrick). **The motion passed by the following vote: Ayes: 5; Noes: 0***

**Agenda Item No. 6.1:** Approved Automatic Clearing House Nos. 677 through 696 and 698 through 780 dated December 1, 2009 through December 31, 2009, General Warrant Nos. 50533 through 51096, and Electronic Fund Transfer Nos. 2010062 through 2010071

**Agenda Item No. 6.2:** Approved November 2009 Treasurer's Report

**Agenda Item No. 6.3:** Approved City Council Meeting Minutes: 1) December 9, 2009 Special Meeting, and 2) December 9, 2009 Regular Meeting

**Agenda Item No. 6.4:** Received report on City Manager approved purchases and contracts authorized by Elk Grove Municipal Code Chapter 3.42 Contracts and Purchasing, filed through January 6, 2010

**Agenda Item No. 6.5:** Received report on Requests for Proposals, Qualifications, and Bids

**NOTE:** *Items 6.6. and 6.7 were pulled from the agenda and moved to the regularly scheduled meeting of February 10, 2010.*

~~**Agenda Item No. 6.6:** Adopt **Ordinance No. 23-2009** enacting Elk Grove Municipal Code Chapter 16.17 entitled Abandoned Residential Property Registration (**Second Reading**)~~

~~**Agenda Item No. 6.7:** Adopt **Ordinance No. 24-2009** amending Elk Grove Municipal Code Chapter 16.20 to add Article XII regarding the Rental Housing Registration Program (**Second Reading**)~~

**Agenda Item No. 6.8:**     **Ordinance No. 25-2009** adopted amending Elk Grove Municipal Code Section 16.90.030 regarding waiver of permit fees for residential photovoltaic solar system installation (**Second Reading**)

**Agenda Item No. 6.9:**     **Ordinance No. 28-2009** adopted repealing Elk Grove Municipal Code Chapter 4.16, "Medical Cannabis Dispensaries" (**Second Reading**)

**Agenda Item No. 6.10:**   **Resolution No. 2010-1** adopted approving an abandonment of an Irrevocable Offer of Dedication in conjunction with the Elk Grove Retirement Residence (EG-08-024)

***Approved by Consent vote with Vice Mayor Detrick abstaining. The motion was approved by the following vote: Ayes: 4; Noes: 0; Abstentions: 1 (Detrick).***

**Agenda Item No. 6.11:**   **Resolution No. 2010-2** adopted approving an Addendum to the previously adopted Initial Study / Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program; and **Resolution No. 2010-3** adopted authorizing the City Manager to execute a consultant contract amendment with Wood Rodgers, Inc. for the Franklin Boulevard / Elk Grove Boulevard Intersection Widening and Bus Turnouts Project in the amount of \$13,845 [*for a total compensation amount not to exceed \$701,093*]

**Agenda Item No. 6.12:**   **Resolution No. 2010-4** adopted authorizing the City Manager to execute an agreement with Dell Marketing, L.P. for the purchase of 40 replacement computers in an amount not to exceed \$75,000

**Agenda Item No. 6.13:**   **Resolution No. 2010-5** adopted authorizing the City Manager to execute a Memorandum of Understanding and First Amendment to the contract with Intergraph Corporation for Professional Services and Software License Agreement

**Agenda Item No. 6.14:**   **Resolution No. 2010-6** adopted declaring intention to annex territory to Community Facilities District No. 2006-1 (Maintenance Services) and to levy a special tax to pay for certain maintenance services (Annexation No. 15); and **Resolution No. 2010-7** adopted declaring intention to annex territory to Community Facilities District No. 2003-2 (Police Services) and **Resolution No. 2010-8** to levy a special tax to pay for certain police services (Annexation No. 16); and 3) declaring intention to levy Street Maintenance Assessments Zone 2A – Laguna Area (Annexation No. 5)

**Agenda Item No. 6.15:**   **Resolution No. 2010-9** adopted waiving competitive bidding requirements and authorizing the City Manager to execute a contract with Goodwin Consulting Group, Inc. to complete a Park Improvements Fee Program for the Laguna Ridge Specific Plan Area in an amount of \$19,000

**Agenda Item No. 6.16:** Resolution No. 2010-10 adopted authorizing the City Manager to execute a contract and related documents with Willdan Financial Services to provide Financing District Administration Services

**Agenda Item No. 6.17:** Resolution No. 2010-11 adopted authorizing the City Manager to execute a consultant services agreement with Keller Group Office Environments for design services for the Police Space Planning and Reorganization Project within 8380 and 8400 Laguna Palms Way in the amount of \$31,750

### **PUBLIC HEARINGS**

**Agenda Item No. 7.1:** A public hearing to consider Sheldon and Waterman Rezone and Tentative Subdivision Map; project site 9350 Sheldon Road (APN: 127-0010-077; Project EG-06-1146)

### **PLANNING COMMISSION RECOMMENDATION**

1. Adopt resolution approving a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Sheldon and Waterman Tentative Subdivision Map Project No. EG-06-1146; and
2. Introduce and waive the full reading, by substitution of title only, an Ordinance amending the City of Elk Grove Zoning Map from Agricultural General 80-acre minimum (AG-80) to Agricultural Residential (AR-2) for the Sheldon and Waterman Tentative Subdivision Map Project No. EG-06-1146; and
3. Adopt resolution approving the Sheldon and Waterman Tentative Subdivision Map Project No. EG-06-1146, subject to the Findings and Conditions of Approval.

With the aid of an overhead presentation (filed), Christopher Jordan, Senior Planner, reported that the project under consideration was comprised of 118 acres at the southeast corner of Sheldon and Waterman Roads. The request is to rezone from AG-80 to AR-2 and a tentative subdivision map to divide the property into 26 new residential lots ranging in size between two and four acres. There would be one remaining open space lot of approximately 50 acres. The property is critical to the trails master plan, as it would serve as a hub for a number of other trails. The project is subject to the California Environmental Quality Act. An Initial Study Mitigated Negative Declaration was prepared, which identified eight potential impacts that could be mitigated to less than significant levels. Two comments were received, which did not alter the conclusions of the Declaration.

In answer to Council Member Hume, Mr. Jordan confirmed that buyers of lots 7 through 11 will have easements across the property lines, which run to the center line of the creek.

Terry Rose, project manager with Task Engineering, noted that the applicant has agreed with all the condition modifications asked for by the Planning Commission.

Mayor Scherman declared the public hearing open.

**PUBLIC COMMENT:**

Leo Fassler spoke in support of the project and the public process that took place during its development. He expressed hope that there would not be white fences scattered throughout the properties.

Shirley Peters stated that the members of the Greater Sheldon Homeowner's Association and residents in the rural area are in support of the project. She reminded Council that residents would like to have a roundabout at the intersection of Sheldon and Waterman Roads.

Tom Shine voiced support for the project and the process that was undertaken.

Connie Conley expressed support for the project.

Michael Monasky voiced concern about impacts to Laguna Creek. He requested that an Environmental Impact Report be done on the wetland area impacts.

Kathy Lee stated that she was in support of the project and appreciated the level of public involvement throughout the process.

Mayor Scherman declared the public hearing closed.

In answer to Council Member Hume, Planning Director Hazen reported that the Laguna Water Creek Watershed representatives fully endorsed the protection measures built into the project design, as were the resource agencies that oversee the protection of the creek.

In reply to Vice Mayor Detrick, Mr. Hazen explained that, if anything is destroyed, it must be mitigated to the acceptance of State and Federal agencies, which he noted was part of the process to apply for a stream alteration permit.

**Motion #1: M/S Hume/Detrick to adopt **Resolution No. 2010-12** approving a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Sheldon and Waterman Tentative Subdivision Map Project No. EG-06-1146. ***The motion passed by the following vote: Ayes: 5; Noes: 0.*****

**Motion #2: M/S Hume/Detrick to introduce and waive the full reading, by substitution of title only, **Ordinance No. 1-2010** amending the City of Elk Grove Zoning Map from Agricultural General 80-acre minimum (AG-80) to Agricultural Residential (AR-2) for the Sheldon and Waterman Tentative Subdivision Map**

Project No. EG-06-1146 *The motion passed by the following vote: Ayes: 5; Noes: 0.*

**Motion #3:** *M/S Hume/Detrick* to adopt **Resolution No. 2010-13** approving the Sheldon and Waterman Tentative Subdivision Map Project No. EG-06-1146, subject to the Findings and Conditions of Approval. *The motion passed by the following vote: Ayes: 5; Noes: 0.*

**Agenda Item No. 7.2:** A public hearing to consider approving a Letter of Public Convenience and Necessity for a Type 20 alcohol license for Kwik N Save located at 8112 Sheldon Road, Suite 850 (APN: 116-0021-016; Project EG-09-059)

**RECOMMENDATION:**

Adopt resolution approving a Letter of Public Convenience and Necessity for a Type 20 off-sale beer and wine license for Kwik N Save, project EG-09-059.

With the aid of an overhead presentation (filed), Mike Costa, Associate Planner, reported that the site at which Kwik N Save is located is zoned Shopping Center Commercial which permits the sale of alcoholic beverages by right per the Zoning Code. The State Department of Alcoholic Beverage Control has deemed the site over concentrated with alcohol sales; however, the Elk Grove Police Department reviewed crime statistics and did not identify any issues of concern related to the application.

At the request of Council Member Davis, Police Chief Lehner explained that the concentration of liquor licenses in the area was examined, as well as crime statistics within the census tract area. Safety mitigation measures requested by the Police Department were agreed to by the applicant.

Mayor Scherman asked staff to include a map identifying other liquor license sites, when these requests come forward in the future.

Raj Dhaliwal representing Kwik N Save stated that the business will be a community store with free-internet and seating for customers to have coffee and ice cream.

Mayor Scherman declared the public hearing open.

**PUBLIC COMMENT:**

None.

Mayor Scherman declared the public hearing closed.

Council Member Davis supported the concept of a community store; however, he believed it could be successful without the sale of beer and wine.

**Motion: M/S Cooper/Detrick to adopt **Resolution No. 2010-14** approving a Letter of Public Convenience and Necessity for a Type 20 off-sale beer and wine license for Kwik N Save, project EG-09-059. ***The motion passed by the following vote: Ayes: 4; Noes: 1 (Davis).*****

**Agenda Item No. 7.3:** A public hearing to consider extending the moratorium on medical marijuana dispensaries

**RECOMMENDATION:**

Adopt and waive the full reading, by substitution of title only, an Urgency Ordinance extending the moratorium on medical marijuana dispensaries.

Susan Cochran, City Attorney, provided an overview of the staff report and recommendation noting that, if approved, the moratorium would last for an additional ten months, while staff continues to study the issue of how to best protect the community from medical marijuana dispensaries.

Mayor Scherman declared the public hearing open.

**PUBLIC COMMENT:**

Terryl Wheat stated that the issue of legalizing marijuana would be on the 2010 statewide election ballot. She pointed out that, by extending the moratorium, Elk Grove would be sending revenue to Sacramento. Ms. Wheat reported that she lives near many clinics in downtown Sacramento and has never felt threatened or witnessed crime or illegal drug sales around the clinics. She encouraged Council to engage in open communication with the clinics and hear first hand testimonials about their benefits.

Michael Monasky asked how the Police Department responds when members of the public are found to legally possess marijuana when stopped for traffic violations. Additionally, he inquired what zoning limits would be imposed on dispensaries, once the issue is decided by the courts.

Stefanie Vasquez stated that she was speaking on behalf of the owner of River City Wellness in downtown Sacramento, which shares the goal of preventing illegal distribution and use of marijuana. She voiced opposition to the moratorium. Ms. Vasquez stated that River City Wellness strives to provide safe and comfortable access for patients who use cannabis for treatment. She asked the City to work with River City Wellness in establishing a basis for operation that is satisfactory to the City, its Police Department, and the medical patients whose rights the community has an obligation to respect and protect.

Mayor Scherman declared the public hearing closed.

In answer to Vice Mayor Detrick, Police Chief Lehner explained that it is a legally complex issue that has not yet been resolved. Prior to making charging decisions under certain circumstances, the Police Department would refer cases to the District Attorney for review.

Council Member Hume stated that he believed in the medical benefits of marijuana and that the recreational detriments are potentially less than that of alcohol; however, until there is full decriminalization of marijuana, there will be gray areas in the law and, for this reason, he preferred that persons obtain it legally in another jurisdiction.

***Motion: M/S Cooper/Davis*** to adopt and waive the full reading, by substitution of title only, **Urgency Ordinance No. 2-2010** extending the moratorium on medical marijuana dispensaries. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

### **REGULAR AGENDA ACTION ITEMS/RECOMMENDATIONS**

**Agenda Item No. 8.1:** Receive Charter Commission final report and proposed charter language; provide direction as deemed appropriate

#### **RECOMMENDATION:**

Receive Elk Grove Charter Commission final report and proposed charter language; provide direction as deemed appropriate.

Jake Allen, Charter Commission Chair, noted that the Commission has been criticized for its public outreach efforts. He reported that the Commission had realized early on that community input was essential in developing a charter that would be supported by a majority of voters in the City. After identifying community partners, selecting a public relations firm, and studying the results of a telephone survey to gauge citizens' opinions on various matters, the Commission was directed by the City Council not to pursue public outreach until it addressed all the topics outlined in the Charter Commission's establishing resolution. Following completion of the initial draft of the charter, the City Council then decided to move the date for the charter measure from the November General Election to the June Primary Election; which effectively shortened the timeframe by six months. Mr. Allen pointed out that this six month time period had been planned for public outreach. With the time available to them, the Charter Commissioners attended various public and private meetings that reached approximately 700 individuals. The City's webpage on the charter has received more than 2,000 hits. The topic of the charter had been reported on and published four times in the City's newsletter, which is sent to every household.

Mr. Allen stated that, it had been suggested, the Commissioners were using the process for personal gain. He confirmed that no Commissioners had received any

money, gift, or anything of value in exchange for a vote on the Commission. He claimed that several special interests in Elk Grove sought to exert their influence over the charter; however, they did not go through the Charter Commission – they used individual Council Members. He stated that language was inserted in the charter directly from unions and certain community groups insisted on “from” district elections in an effort to exert power. After weighing the City Council’s concerns and considering public input, the Commission ultimately decided to substantially shorten the charter. He noted that a common suggestion from the public was to decrease the length of the charter and make it easier to understand. He reviewed the main concepts of the proposed charter:

- Six member city council with a directed elected mayor;
- Mayor would serve four year term;
- “By” district elections;
- Council members would be required to win a seat by a 50%+1 vote;
- Maintain Council-Manager form of government;
- Positions of City Manager, City Attorney, and City Clerk would remain City Council appointees; and
- The Public Works section was removed entirely from the charter.

Mr. Allen stated that the inclusion of specific language regarding prevailing wage created a “political firestorm”. Further, the Commission was not provided with a fiscal impact report on the matter, and the subject was removed with the deletion of the Public Works section. Mr. Allen asserted that the charter, as now proposed, is what is desired by the majority of Elk Grove residents, though it is not what special interest groups are seeking. Mr. Allen asked the City Attorney to research whether the City Council is obligated to place the Charter Commission’s proposed charter on the ballot, as he believed the Commission was an independent body.

**PUBLIC COMMENT:**

Nikki Carpenter was opposed to the proposed charter and believed that placing it on the June Primary Election ballot would be a mistake. She expressed concern with the hurried manner in which the process was conducted.

Leo Fassler noted that he had attended many Charter Commission meetings and commended the Commission for its hard work and diligence. Among many concerns he had regarding the proposed charter, Mr. Fassler was most concerned about the fact that charter cities do not have to make decisions consistent with the General Plan.

Matt Kelly submitted a four page handout (filed) on the advantages of prevailing wage and asked that language on the subject be included in the charter.

Tom Shine recalled that the concept of a charter arose three years ago when many members of the community believed that Elk Grove had a dysfunctional government and management staff. He felt there had been much improvement since then and

there was no longer a need for a charter. He expressed support for requiring a 50%+1 vote for council members and to continue with "from" district elections.

Greg Dornback stated that he was a beneficiary of prevailing wage laws and urged Council to keep the prevailing wage language in the charter that had been added at the September 9 City Council meeting. He pointed out that adequate wages are essential to the economic health of the community.

Lynn Wheat felt that the June 2010 Primary Election was too soon to place the charter measure on the ballot and believed that much more public outreach needed to occur in order for it to be successful.

Dave Young believed that the City was doing well as it is currently operating. He expressed concern regarding the impact a charter would have on the General Plan. He preferred that prevailing wage be included in any charter being considered.

Manny Carrillo voiced support for including prevailing wage and apprenticeship program language in the charter.

Nathan Adawe stated that he was a member of the Carpenter's Apprenticeship program and would oppose any charter that did not include prevailing wage language.

Suzanne Pecci stated that a large number of people in the community know nothing about the charter. She had asked the City Clerk's Office for documentation regarding Charter Commission outreach and was provided with 32 pages of information, in which there were only three attendance sheets with 18 signers. She asked where responses from surveys were documented. She believed that cities have charters for matters concerning revenue. She expressed concern that charter cities have the right to build without putting contracts out to bid and can substantially increase the transfer tax. She recommended that the Commission and subject of a charter be tabled and suggested the information be used as a starting point for discussion in the future during a process that involved all citizens.

Michael Monasky felt that the process was being rushed and there had not been sufficient public outreach and education done. He was opposed to the elimination of prevailing wage language and the use of public relations firms to facilitate meetings.

Nicole Goehring, representing the Associated Builders and Contractors, voiced concern that the City Council attempted to insert prevailing wage language in the charter, which would take away the City's ability to exempt volunteers from prevailing wage. She urged Council to support the charter as proposed by the Charter Commission.

Connie Conley reported that Elk Grove Community Connection hosted community meetings on the topic of the charter in March and October. She did not believe there was adequate time to fully consider and amend the charter to suit the needs of the community in time for the June Primary ballot and recommended that it be tabled until the process could be done right.

Tim Murphy urged Council to reject any charter that included Public Works language. He felt it was important that the City retain control and flexibility in determining which projects are valid and worthy of commanding the prevailing wage that unions seek.

Juanita Sendejas-Lopez, Charter Commissioner, stated that the Commission did the best it could with the time and resources it had available. She pointed out that Commissioners held full-time jobs in addition to their volunteer service. Though Commission meetings were open to the public and agendas were posted on the Internet, very few people attended the meetings. She believed the charter concept was good; however, the shortened timeframe may not be preferable to the community. She noted that the charter was meant to be for the entire community, not one special group, and the prevailing wage issue was not included as a topic in the Charter Commission establishing resolution.

Heather Martin, Charter Commissioner, noted that she did not have political aspirations and as a 20-year State employee she brought a certain perspective to the process. She maintained that the charter proposed by the Commission met the direction that was originally provided by the City Council. She took exception to criticism regarding the public outreach because the Council redirected the Commission in the summer of 2009 and later reduced the timeframe of the process significantly. She stated that the prevailing wage language was a divisive issue. She urged Council to adopt the charter as proposed by the Commission, noting that it may be beneficial to place it on the November General ballot, as was originally planned, in order to allow additional public comment.

Shirley Peters favored retaining the right to vote for all Council Members who make decisions for all districts. She strongly supported "from" district elections.

Joe DosReis, Charter Commissioner, explained that the Commission removed prevailing wage language from the charter because it is a contentious issue. He asserted that, if the Commission's charter was approved as proposed, there would be no change from the current process for prevailing wage under California general law.

Marco Hernandez felt that the City was working fine as currently structured and urged Council to discontinue the Commission and charter. He felt that there was inadequate community involvement. He was in support of prevailing wage.

Andrew Meredith representing the International Brotherhood of Electrical Workers strongly urged Council to protect prevailing wages, as they create better futures and livelihoods for people.

Ron Pecci pointed out that outdated information was on the City's website regarding the charter, which indicated it would be considered at the November General Election. He was opposed to rushing such an important process and believed there to be a lack of public outreach and education regarding the matter.

Council Member Davis recalled that the effort began five years ago through a citizen led effort mainly concerned with having a mayor elected at large and requiring a majority vote for Council Members to be elected. He explained that whether prevailing wage language was, or was not, included in the charter, it would effect a change from the current situation. If prevailing wage was not addressed in the charter the Council could, on a case by case basis, decide whether or not it wanted to implement prevailing wage. Mr. Davis expressed his opinion that there was a concerted effort to circumvent the prevailing wage laws of the State of California. He reported that studies show prevailing wages, over time, result in higher quality work and cost savings in jurisdictions in which it is paid. He proposed that the charter issue be put off for a few years until the City Council or community requests that it be brought back. He suggested that the matter of directly electing the mayor be placed on a future ballot.

Vice Mayor Detrick estimated that would cost between \$100,000 and \$200,000 to finish the process and place the charter on the ballot. He recommended the charter be postponed until the City is in a more fiscally sound position. He suggested consideration be made to place a measure on a future ballot to directly elect the mayor and to decide whether there should be four or six districts.

Council Member Hume agreed with Council Member Davis' assertion that, if the prevailing wage issue remained silent in the charter, it would open an opportunity for Council to change its adherence to State law. He was opposed to a seven member council and to "by" district elections. He asked the City Attorney to research the question posed by Chair Allen during his comments.

Council Member Cooper supported "from" district elections and including prevailing wage and apprenticeship language in the charter. He believed the work done by the Charter Commission laid the foundation for Elk Grove to become a charter city and the information could be used to build upon at some point in the future. He supported placing a measure on a future ballot regarding directly electing the mayor.

Mayor Scherman preferred "from" district elections. She agreed that the charter be set aside for the time being and to move forward on a ballot measure to directly

elect the mayor. She presented certificates of appreciation to all Charter Commissioners in attendance.

City Clerk Blackston sought direction on whether Council intended the ballot measure for creating the position of an elected mayor be placed on the Primary or General Election ballot. She quoted California Government Code Section 34902, *"If a majority of the votes cast on the proposition is for it, the office of mayor shall thereafter be an elective office... At the next succeeding general municipal election held in the city one of the offices of city councilperson, to be filled at that election, shall be designated as the office of mayor..."* Ms. Blackston pointed out that there would not be sufficient time to redistrict between the June 8 Primary and the November 2 General Election.

City Attorney Cochran stated that staff would return at the next regularly scheduled meeting on January 27 with more information regarding the matter.

*NOTE: Council recessed at 9:05 p.m. and reconvened at 9:17 p.m. with all members present.*

**Agenda Item No. 8.2:** Adopt resolution approving Federal Fiscal Year 2011 earmark funding requests

**RECOMMENDATION:**

Adopt resolution approving the earmark funding requests for Federal Fiscal Year 2011.

Kara Reddig, Assistant to the City Manager, provided an overview of the staff report and recommendation.

Council Member Davis suggested that a multi-modal station be added to the funding requests, to which Council concurred.

**PUBLIC COMMENT:**

Michael Monasky asked that a program similar to what is done in the City and County of San Francisco be included, wherein public health issues are integrated with public works projects. He explained that when traffic calming and pedestrian issues need to be addressed, they are included in public works projects.

Council Member Davis replied that Elk Grove has already received funds from the Federal Government for sustainability in planning.

Mayor Scherman mentioned that she would not be attending the Capitol-to-Capitol trip in April and would instead be attending the March Washington D.C. trip that is focused strictly on city issues.

**Motion:** *M/S Hume/Davis* to adopt **Resolution No. 2010-15** approving the earmark funding requests for Federal Fiscal Year 2011 with the addition of a multi-modal station. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.3:** City's Tenth Anniversary / Fourth of July Celebration

**RECOMMENDATION:**

Staff requests City Council direction and suggestions regarding the City's upcoming tenth anniversary and Fourth of July celebrations.

With the aid of an overhead presentation (filed), Laura Gill, City Manager, reported that the Chamber of Commerce would not be hosting the Fourth of July Salute to the Red, White, and Blue event this year. In 2009 the Chamber budgeted \$47,000 for the event, and received an additional \$2,300 cash contribution from the City, as well as payment for banners. The Cosumnes Community Services District provided in-kind contributions valued at \$6,000. The amount available for appropriation from the contingency fund is just under \$88,000. The fireworks alone are estimated at \$25,000.

In reply to Council Member Cooper, Police Chief Lehner reported that the total cost for Police services during last year's Fourth of July event was \$43,000.

Council Member Cooper was opposed to expending funds on non-essential matters, particularly when employees were experiencing furloughs, due to financial constraints. He noted that the Complete Count Census Committee needs support and should be funded if possible.

City Manager Gill replied that she had not yet received a budget request from the Complete Count Committee.

At the request of Mayor Scherman, Linden King stated that the cost of fireworks would be \$25,000 whether they were done on July 1 or July 4. He commented that his company is the only one in the area that choreographs music and narration with the fireworks. He suggested that sponsors might defray costs.

**PUBLIC COMMENT:**

Nikki Carpenter favored a community picnic with no fireworks. She felt that money should be saved for more critical matters.

Michael Monasky felt that, due to difficult economic times, a less costly Fourth of July observance should be done this year.

Connie Conley supported having just one celebration, rather than multiple day events and suggested that the Economic Development Corporation partner with the City on the event.

***Motion: M/S Davis/Hume*** to waive rule of procedure not to consider new business after 10:00 p.m. and to proceed with the remainder of the agenda. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

Sharon Lynes felt that current economic conditions did not warrant a large expenditure for a Fourth of July celebration. She recommended that there not be fireworks and entertainment consist of local bands and a barbeque in the park on Saturday.

Daphne Harris representing the Complete Count Committee stated that she had been informed that the City did not have funds to go toward the census efforts. The Committee is planning a fundraiser in March and hopes to raise \$5,000 to \$6,000, which is needed to reach certain communities in the City.

Tom Shine favored having fireworks and noted that it is fairly inexpensive entertainment considering it is for the entire community.

El Stone recommended that there not be fireworks and instead invite Boy Scout troops and high school bands to have a patriotic community celebration.

Mayor Scherman supported having a celebration on July 4 to include vendors. She asked the City Manager if \$1,000 could be transferred from unspent budget funds allocated for intern support to go toward the Complete Count Committee.

Council Member Hume strongly supported having a July 4 celebration with fireworks for the community, noting that it is important, particularly during difficult economic times, for people to have an opportunity to enjoy themselves and escape temporarily from worries. He favored having local bands perform.

Council Member Davis agreed with Mr. Hume's comments and recommended that sponsors be solicited toward a goal of the event being cost neutral. He favored a barbeque in Elk Grove Park.

Vice Mayor Detrick supported having a one day celebration to include vendors and to attempt to have a cost neutral event with sponsors.

City Manager Gill recited her understanding of Council direction as follows:

- Pursue fireworks
- Return to Council with a request for \$25,000 to procure fireworks
- Work toward a goal of the event being cost neutral
- Hold a one-day event on July 4

All Council Members, with the exception of Council Member Cooper, agreed to direction as outlined by Ms. Gill.

**Agenda Item No. 8.4:** Consider appointment of one at-large member and one alternate member to Historic Preservation Committee

**RECOMMENDATION:**

Appoint one at-large member and one alternate member to the Historic Preservation Committee.

Susan Blackston, City Clerk, provided an overview of the staff report.

**PUBLIC COMMENT:**

None.

***Motion: M/S Hume/Detrick*** to adopt **Resolution No. 2010-16** appointing Thomas Russell as an at-large member and Tram Nguyen as an alternate member to the Historic Preservation Committee. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.5:** Review Council appointments to regional boards, commissions, and committees

**RECOMMENDATION:**

Review Council appointments to regional boards, commissions, and committees and provide direction.

Susan Blackston, City Clerk, provided an overview of the staff report.

**PUBLIC COMMENT:**

None.

By consensus, Council Member Cooper was selected to serve as the representative on the Sacramento Regional County Sanitation District Board of Directors and Council Member Davis was selected as the alternate representative on the Elk Grove Economic Development Corporation Board of Directors.

It was agreed that the Elk Grove Teen Center Board and Elk/Grove Galt Greenbelt 2x2 be deleted from the list of City Council appointments.

***NOTE: The City Council convened to the Special Redevelopment Agency meeting at 10:30 p.m. Council Members Cooper and Hume left the meeting at 10:38 p.m. The Regular City Council meeting was reconvened at 10:38 p.m. with Council Members Cooper and Hume absent.***

## **GENERAL ADMINISTRATION INFORMATION**

City Manager Laura Gill reviewed the January 13, 2010 Administrative Report (filed).

## **COUNCIL COMMENTS/FUTURE AGENDA ITEMS**

Reports on Regional Boards, Commissions, Committees; Travel/Training Expenditures Disclosure *(in accordance with Resolution 2006-295 and Government Code § 53232.3(d))*:

Council Member Davis announced that Census Night Out with the Kings basketball team would be held on March 19.

Vice Mayor Detrick commended staff on the accuracy of the budget projections and recent audit that was conducted. He and Council Member Davis were working on an incentive program and building relationships in an effort to bring State offices to Elk Grove. He agreed that the census was an important process and the City should invest in its accurate completion. He asked that a future item be scheduled to consider providing additional financial support to Arden Arcade's effort to incorporate.

Mayor Scherman was opposed to providing additional funding to Arden Arcade, as she felt the City had greater responsibility and needs toward its own citizens.

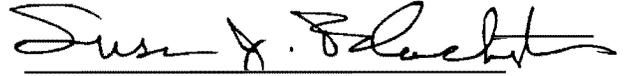
Council Member Davis stated that he would be open to discuss providing additional funding to Arden Arcade.

Deputy City Manager Tubbs reported that it was unclear what effect the additional incorporation of a city the size of Arden Arcade would have on regional boards voting structure, as each uses unique voting formulas.

Mayor Scherman noted that the Senior Center had a grand reopening celebration. Her term as Chair of the Sacramento Regional County Sanitation District Board ended today. She received a letter from her Youth Commissioner regarding the Grants Advisory Boards for Youth award. She thanked everyone who sent her get well cards and flowers. She announced that the State of the City Address is scheduled for March 26.

**ADJOURNMENT**

With no additional business to conduct, the January 13, 2010 City Council meeting was adjourned at 10:51 p.m.



SUSAN J. BLACKSTON,  
CITY CLERK

ATTEST:

  
SOPHIA SCHERMAN, MAYOR

**MINUTES OF THE CITY COUNCIL  
REGULAR MEETING  
Wednesday, March 10, 2010**

**CALL TO ORDER/ROLL CALL**

Mayor Scherman called the regular City Council meeting of March 10, 2010 to order at 6:05 p.m.

Present: Mayor Scherman, Vice Mayor Detrick, Council Members Cooper, Davis and Hume

Absent: None.

Norm DeYoung led the Pledge of Allegiance.

Mayor Scherman asked that a moment of silence be observed.

**APPROVAL OF AGENDA**

***Motion: M/S Cooper/Hume to pull Item 8.1 for discussion and approve the remainder of the agenda as presented. The motion passed by the following vote: Ayes: 5; Noes: 0.***

***Motion: M/S Detrick/Davis to remove Payment No. 51585 (vendor Colantuono & Levin in the amount of \$1,670) from the warrant listing on the grounds that there was no policy in place to have authorized the investigation for which the services were rendered. The motion FAILED by the following vote: Ayes: 2; Noes: 3 (Cooper, Hume, and Scherman).***

**CLOSED SESSION**

None.

**PRESENTATIONS/ANNOUNCEMENTS**

- 4.1 Roy Herburger, President of the *Elk Grove Citizen* newspaper, presented Eagle awards to honor community leaders Norm DeYoung and Howard Sihner. Norm DeYoung was recognized specifically for his efforts related to the Veterans' Parade and Howard Sihner for his work related to the Old Town Merchants Association.
- 4.2 Sarah Bontrager, Grants Specialist, reported that, in January, the City received an agreement from the U.S. Department of Housing and Urban

Development for \$2.4 million in Neighborhood Stabilization Plan funding. All funds must be obligated by September. The Down Payment Assistance Program has been operating since the summer of 2009. There is \$550,000 in the program which offers funds for low- and moderate-income homeowners to purchase foreclosed homes within the City. Four loans have been extended to date and seven loan applications are being considered. Funding in the amount of \$600,000 has been applied toward a very low-income acquisition rehabilitation and rental program with a goal of renting the units to very-low income households. The City will be partnering with Mission Housing who will acquire units beginning in April. Funding in the amount of \$1 million was applied toward a residential acquisition rehabilitation and resale component for low- and moderate-income households. Three proposals were received last month from firms who wish to partner with the City to acquire and rehabilitate 12 foreclosed properties. Staff will return to Council in April for approval to enter into a contract with a developer who will begin work in May.

Council Member Cooper asked staff to ascertain the track record, creditworthiness, and financial solvency of contractors and developers before entering into a contract for services to rehabilitate homes. Additionally, he requested that preference be given to local businesses.

Council Member Davis voiced agreement with Mr. Cooper's comments.

Ms. Bontrager reported that a committee comprised of Interim Assistant City Manager Rebecca Craig, Economic Development Coordinator / Ombudsman Heather Ross, and Planning Director Don Hazen will review contractor applications.

Council Member Hume mentioned that a residence at the corner of Waterman Road and Chablis Way is in dire need of rehabilitation, to which Ms. Bontrager responded that she would relay the information to contractors.

In response to Council Member Cooper, Interim Assistant City Manager Craig estimated that there were between two to three dozen units eligible for rehabilitation under the program.

#### **PUBLIC COMMENT**

Lynn Wheat asserted that there are health risks related to tattoos and piercings being done by unsterilized needles and regulations should be in place to protect consumers. She distributed a media advisory notice from the County of Sacramento that included information related to a proposed ordinance on the subject (filed).

Bruce Slaton introduced himself as a real estate broker and suggested that a map be created and provided to lenders for Elk Grove properties eligible for the Neighborhood Stabilization Plan. He recommended that Elk Grove model San Diego's incentive program to install front and rear irrigation on foreclosed properties, which is also designed for water conservation.

Michael Fajardo sought additional information related to the City's moratorium on medical marijuana dispensaries and its repeal of Municipal Code Chapter 4.16.

### **GENERAL ADMINISTRATION INFORMATION**

City Manager Laura Gill reviewed the March 10, 2010 Administrative Report (filed). Ms. Gill announced that Deputy City Manager Cody Tubbs has accepted a position with Southern California Edison and will be resigning effective March 18.

### **COUNCIL COMMENTS/FUTURE AGENDA ITEMS**

Reports on Regional Boards, Commissions, Committees; Travel/Training Expenditures Disclosure (*in accordance with Resolution 2006-295 and Government Code § 53232.3(d)*):

Council Member Cooper attended the Sacramento Regional County Sanitation District meeting at which it was announced that a water rate increase is slated for fiscal year 2009-10 and, due to budget cuts, the 2010-11 rate increase will be reduced by 40 cents. He asked staff to look into possible regulations on check cashing outlets that are charging usury loan rates.

Council Member Hume reported that, on March 11, the Sacramento Transit Authority will review sales tax projections and restructuring the new Measure A [countywide one-half percent sales tax for roadway and transit improvements]. Sacramento Regional Transit is projected to have a \$25 million revenue shortfall over the next two years. The Capital Southeast Connector Joint Powers Authority (JPA) Board authorized staff to enter into negotiations for a consulting firm to study the effects of the limited access roadway component that would potentially reorient businesses, residential driveways, and create a grid network in the Sheldon community. Residents of the Sheldon community asked the JPA to conduct an economic analysis of how the limited access roadway component would affect businesses. Mr. Hume stated that he also asked that the analysis include a bypass causeway to the south. The JPA Executive Director would like to know if the City will share in the cost of the economic analysis. City Manager Gill replied that staff would be attending the March 11 meeting and could bring an item back for Council consideration at the next regularly scheduled meeting on March 24.

Mayor Scherman asked staff to look into a possible parking violation of a large truck that has been advertising the closing of a furniture store for two years. Additionally, she noted that there are many illegally posted signs throughout the City. She reported on attending the following events:

- Elks Lodge bestowed medal of valor to fallen military soldier Bryan Hall;
- Ribbon cutting ceremony for new Burlington Coat Factory store;
- Welcome to Marine Corp Auxiliary Conference at Holiday Inn Express;
- Senior Center Board meeting at which fundraising was discussed.

Vice Mayor Detrick reported that he attended the Sacramento Metropolitan Cable Television Commission Board meeting last week at which a \$3 million grant was discussed. If the grant is approved, every school in Elk Grove will benefit from cable upgrades over a three year period.

Council Member Davis attended the Sacramento Area Council of Governments Committee meeting at which it was reported that \$1 million in reserve funds will have to be used due to decreased revenue and a mandate to produce the next metropolitan transportation plan for the region. He invited everyone to attend the March 25 neighborhood leaders' discussion at the Glenbrook Community Clubhouse regarding public safety and code enforcement. He noted that most of the opposition to the City's Sphere of Influence (SOI) application now at the Sacramento Local Agency Formation Commission is due to its inclusion of the flood plain. He felt the City should refocus its core municipal services of increasing jobs and keeping the public safe. He asked that a future agenda item be scheduled to consider removal of the flood plain from the SOI application. Council Members expressed support for an agenda item to discuss the matter.

Council Member Hume felt that it was premature to remove the flood plain at this time because benefits of its inclusion have not yet been discussed.

City Manager Gill reported that the final outreach meeting regarding the SOI would occur on March 31. She suggested the regularly scheduled meeting of April 14 for Council to discuss the matter of the flood plain, to which Council Members concurred.

### **CONSENT CALENDAR ITEMS**

***Motion: M/S Hume/Cooper*** to approve Consent Calendar Items 8.2 through 8.6 as presented. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

***Motion: M/S Hume/Cooper*** to approve Consent Calendar Item 8.1. ***The motion passed by the following vote: Ayes: 3; Noes: 2 (Davis, Detrick).***

**Agenda Item No. 8.1:** Approved Automatic Clearing House Nos. 917 through 1015 and 1046 through 1076, General Warrant Nos. 51575 through 52081, and Electronic Fund Transfer Nos. 2010087 through 2010101

**Agenda Item No. 8.2:** Approved the Regular City Council Meeting Minutes of February 24, 2010

**Agenda Item No. 8.3:** Received report on City Manager approved purchases and contracts authorized by Elk Grove Municipal Code Chapter 3.42 Contracts and Purchasing, filed through March 3, 2010

**Agenda Item No. 8.4:** Received report on Requests for Proposals, Qualifications, and Bids

**Agenda Item No. 8.5:** **Resolution No. 2010-42** adopted in support of the Local Taxpayer, Public Safety, and Transportation Protection Act of 2010

**Agenda Item No. 8.6:** **Resolution No. 2010-43** adopted authorizing the City Manager to execute a consultant services contract with Psomas, Inc. for the Elk Grove Boulevard / State Route 99 Interchange Modification Project in an amount not to exceed \$985,000

### **PUBLIC HEARINGS**

**Agenda Item No. 9.1:** A public hearing to consider: **A)** adoption of resolutions calling an election and declaring results of the special election for annexation to Community Facilities District No. 2006-1 (Maintenance Services) and introduction of an ordinance levying and apportioning the special tax to the annexing area (Annexation No. 15); **B)** adoption of resolutions calling an election and declaring results of the special election for annexation to Community Facilities District No. 2003-2 (Police Services) and introduction of an ordinance levying and apportioning the special tax to the annexing area (Annexation No. 16); and **C)** adoption of a resolution determining to levy street maintenance assessments for certain properties in the Laguna Area which represents Annexation No. 5 into Street Maintenance District No. 1 – Zone 2-A

### **RECOMMENDATION**

- A-1) Adopt resolution calling an election to submit the question of levying a special tax within the area proposed to be annexed to Community Facilities District No. 2006-1 (Maintenance Services) to the qualified electors;
- A-2) (*Following tabulation and certification of ballot results by the City Clerk*) Adopt resolution declaring the results of the special election held on March 10, 2010 for the fifteenth annexation to Community Facilities District No. 2006-1 (Maintenance Services); and
- A-3) Introduce and waive the full reading, by substitution of title only, an ordinance levying and apportioning the special tax in territory annexed to Community Facilities District No. 2006-1 (Maintenance Services) Annexation No. 15; **AND**
- B-1) Adopt resolution calling an election to submit the question of levying a special tax within the area proposed to be annexed to Community Facilities District No. 2003-2 (Police Services) to the qualified electors;

- B-2) (*Following tabulation and certification of ballot results by the City Clerk*) Adopt resolution declaring the results of the special election held on March 10, 2010 for the sixteenth annexation to Community Facilities District No. 2003-2 (Police Services); and
- B-3) Introduce and waive the full reading, by substitution of title only, an ordinance levying and apportioning the special tax in territory annexed to Community Facilities District No. 2003-2 (Police Services) Annexation No. 16; **AND**
- C) Conduct a public hearing on Supplement No. 5 to the Engineer's Report, the question of levying assessments within Street Maintenance District No. 1 – Zone 2 and creating a subset of Zone 2 to be titled Street Maintenance District No. 1, Zone 2-A for certain property in the Laguna Area pursuant to the Benefit Assessment Act of 1982. Following the close of the public hearing and tabulation of ballot results, staff recommends the adoption of a resolution determining to Levy Assessments in Street Maintenance District No. 1 – Zone 2-A (Annexation 5).

Andrew Keys, Finance Analyst, reported that this item is related to one project annexing into three financing districts. The project is comprised of 7.5 acres of commercial space for a future assisted living facility near at the intersection of Elk Grove Boulevard and Bruceville Road.

Mayor Scherman declared the public hearing open for Community Facilities District No. 2006-1 (Maintenance Services) Annexation No. 15.

**PUBLIC COMMENT:**

None.

Mayor Scherman declared the public hearing closed.

**Motion #1:** *M/S Cooper/Detrick* to adopt **Resolution No. 2010-44** calling an election to submit the question of levying a special tax within the area proposed to be annexed to Community Facilities District No. 2006-1 (Maintenance Services) to the qualified electors. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

City Clerk Blackston announced that, of eight possible votes, eight affirmative votes were cast authorizing the City of Elk Grove to levy a special tax at the rate apportioned and described. She confirmed that the measure passed with more than two-thirds of all votes cast in the election in favor of the measure.

**Motion #2:** *M/S Cooper/Detrick* to adopt **Resolution No. 2010-45** declaring the results of the special election held on March 10, 2010 for the fifteenth annexation to Community Facilities District No. 2006-1 (Maintenance Services). ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #3:** *M/S Cooper/Detrick* to introduce and waive the full reading, by substitution of title only, **Ordinance No. 5-2010** levying and apportioning the special tax in territory annexed to Community Facilities District No. 2006-1 (Maintenance Services) Annexation No. 15. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

Mayor Scherman declared the public hearing open for Community Facilities District No. 2003-2 (Police Services) Annexation No. 16

**PUBLIC COMMENT:**

None.

Mayor Scherman declared the public hearing closed.

**Motion #1:** *M/S Cooper/Detrick* to adopt **Resolution No. 2010-46** calling an election to submit the question of levying a special tax within the area proposed to be annexed to Community Facilities District No. 2003-2 (Police Services) to the qualified electors. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

City Clerk Blackston announced that, of eight possible votes, eight affirmative votes were cast authorizing the City of Elk Grove to levy a special tax at the rate apportioned and described. She confirmed that the measure passed with more than two-thirds of all votes cast in the election in favor of the measure.

**Motion #2:** *M/S Cooper/Detrick* to adopt **Resolution No. 2010-47** declaring the results of the special election held on March 10, 2010 for the sixteenth annexation to Community Facilities District No. 2003-2 (Police Services). ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #3:** *M/S Cooper/Detrick* to introduce and waive the full reading, by substitution of title only, **Ordinance No. 6-2010** levying and apportioning the special tax in territory annexed to Community Facilities District No. 2003-2 (Police Services) Annexation No. 16. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

Mayor Scherman declared the public hearing open for Street Maintenance District 1, Zone 2-A (Laguna Area) Annexation 5.

**PUBLIC COMMENT:**

None.

Mayor Scherman declared the public hearing closed.

City Clerk Blackston announced that there was no majority protest. She reported that of one possible vote, one affirmative vote was returned. The ballot approved

the proposed assessment and the proposed inflation adjustment limit described for the parcels identified in the ballot.

**Motion:** *M/S Cooper/Detrick* to adopt **Resolution No. 2010-48** determining to Levy Assessments in Street Maintenance District No. 1 – Zone 2-A (Annexation 5).  
***The motion passed by the following vote: Ayes: 5; Noes: 0.***

## **REGULAR AGENDA ACTION ITEMS/RECOMMENDATIONS**

### **Agenda Item No. 10.1:** Civic Center Project Update

#### **RECOMMENDATION:**

Receive a presentation from ERA-AECOM regarding the Civic Center Market and Financial Planning, Phase 1 – Market Report and Program Recommendations and provide direction on next steps for the Civic Center project.

Don Hazen, Planning Director, reported that, in 2004, the location of the Civic Center project was established as 76 acres south of Elk Grove Boulevard and east of Big Horn Boulevard. In 2007, the City Council authorized staff to work with Zaha Hadid Architects (ZHA) and the City entered into a contract with ZHA in 2008 in the amount of \$450,000. In 2009, Council determined potential uses to be included in the Civic Center site. Twenty acres on the northerly portion of the project were assessed by the firm ERA-AECOM.

Bill Lee of ERA-AECOM recommended that a 80,000 to 100,000 square foot library be the centerpiece of the new Civic Center. It would be the catalytic piece to create value for the project. Program costs are likely to be \$1,000 per program square foot and it is estimated to be a \$30 to 50 million capital project. The operating cost is likely to be \$2 to 3 million annually. A children's discovery museum of 22,000 to 24,000 gross square feet is recommended, half of which would be for an exhibit area. Its capital cost would range between \$8 to 12 million. The museum would have earned income from rentals and contributed income estimated at \$600,000 to 800,000 covered in part by membership fees, corporate donations, and grants. The museum would likely need a City fund subsidy of \$150,000 to 250,000. The central facility would be operated by a non-profit organization. A national trend shows a decline in participation in theater arts. Music plays have gained market share from other types of facilities. For most facilities, the earned income sources cover 40% to 60% of the budget. Because of a funding gap of \$3 to 4 million a year and in light of the current fiscal situation, ERA-AECOM recommends that three acres be reserved in the Civic Center complex for a performing arts center to be built five or more years in the future. An arts center or gallery, as well as a veteran's memorial hall, could be incorporated into the library or community center. Many cities use a hallway within their city hall or library building as a civic gallery. A botanical garden is not suggested; however, it is recommended that there be attractive landscaping and specialty garden(s). A destination restaurant of 10,000 square feet is

recommended to support the civic facilities and help generate revenue, as well as some concession space built into the library and other civic buildings. A community events center of 25,000 to 35,000 square feet with a 300 seat banquet room is recommended and should be designed for weddings and community events with a good backdrop of landscaped gardens, water features, bridges, and gazebos. It is strongly recommended that five acres be reserved on the eastern most portion of the civic center site for a hotel conference center development. The land lease to a hotel and transient occupancy tax may be able to generate \$1.5 million a year, which would off-set the operating carry on the community center and children's discovery center. A full service hotel with 200 rooms and a conference center of 12,000 to 16,000 square feet is recommended. Mr. Lee suggested that the hotel operate the conference center; otherwise, the estimated annual operating cost to the City would be \$500,000. The community center would be geared to local events and the hotel conference center would be for the purpose of revenue generation and economic development. It is also recommended that land be reserved next to the hotel for future expansion of either additional rooms, an expanded conference center, or an area for outdoor events where large tents could be erected. Recommended recreational facilities include a 25,000 square foot gymnasium, aquatics center, and sports tournament complex that is geared as an economic development tool. Elk Grove's population is expected to reach 211,000 by 2030. It is also recommended that land be reserved for ball fields.

Mr. Lee noted that ERA-AECOM's next step will be construction cost estimation, financial strategy, and development of an implementation plan. A more concise development plan and concepts of the buildings are needed in order to estimate costs.

In answer to Council Member Hume, Mr. Lee did not recommend including the children's discovery center into the library because entrance fees would be charged and the facility could be rented for birthday parties. He reiterated that the library would be the central iconic facility to anchor the civic center.

**PUBLIC COMMENT:**

Connie Conley stated that seating for 500 is needed in the banquet hall in order to accommodate conventions.

Council Member Hume voiced support for the following:

- Reserve space for a hotel and conference center;
- Include veteran's hall with space that can be used for multiple purposes;
- The main component of the civic center should be an iconic, recognizable attraction – he favored including a ZHA component;
- Agreeable to having City offices located in the civic center; however, the primary goal should be that is for public space.

Vice Mayor Detrick suggested that partitions be installed in large buildings so the space can be adjusted to suit the needs of various sized groups and events. In regard to sports facilities, he felt that the best use would be for training during the week and tournaments on the weekend. He supported centralizing government facilities at the civic center.

Council Member Davis stated that government facilities should be included in the civic center. He recommended reaching out to the Cosumnes Community Services District (CCSD) to ascertain its interest in collocating in the civic center in order to form a "one stop shop" for the convenience of the public. He believed that lease-leaseback construction would be a good method to use in order to take advantage of current low construction costs and use investments to create synergies and incentivize economic development along the Elk Grove Boulevard corridor. He suggested implementing a community council similar to what the City of Rancho Cordova has done where the non-profit, funded primarily by the City, organizes community events, helps to secure corporate partners, and applies for grants. He supported obtaining a general design for the main building by ZHA.

Council Member Cooper expressed concern about operating costs. He supported sports and tournament facilities, as well as government offices being located in the civic center. He agreed with the suggestion that the CCSD also be included to create a "one stop shop".

Mayor Scherman explained that veterans follow certain protocols for private functions and, therefore, it would be preferable to have the veteran's hall as a separate facility. She agreed that government offices should be located in the civic center and supported reserving an outdoor space large enough to erect tents for events. She expressed concern about the unusual building designs of ZHA and questioned whether such a design would be representative of Elk Grove.

In response to Mayor Scherman, Mr. Lee stated that the next step should be a land plan to guide the development of various components. He pointed out that development of the horizontal plane is as important as iconic buildings, to ensure all the pieces work together in a synergistic way. He felt that ZHA could be the architect for iconic vertical pieces, but likely not for land, park, and landscape planning. He explained that the centerpiece should be in context with the land plan, rather than dictate the land plan.

City Manager Gill summarized her understanding of Council's direction as follows:

- Incorporate governmental facilities and invite the County, CCSD, and other governmental agencies to collocate in the civic center;
- Include a community center with expansion to 500 seats; and
- Include veteran's hall with flexible space.

**Agenda Item No. 10.2:** Present Internal Audit Review of the Public Works Recommended Organization and Request for Proposals Model

**RECOMMENDATION:**

The Audit Committee recommends that the City Council direct staff in implementing the proposed organization and request for proposal recommendations.

Interim Assistant City Manager Rebecca Craig provided an overview of the staff report and recommendation.

Council Member Hume voiced support for the alternative described on Exhibit 4 of the staff report. Additionally, he recommended that the request for proposals be structured in a way that provides the greatest flexibility and allows for tailored responses, which would allow the City to select the optimal delivery of contractor services and provide the highest quality of services possible at the most competitive cost.

Council Member Cooper noted that the *Sinclair & Associates Development Services Delivery Review* report was concluded in April 2008, prior to the economic decline. He pointed out that Elk Grove has weathered financial difficulties better than other cities because of its contract model. He was opposed to making staff changes at this time and cautioned that the staff report claims the proposal “could” be cost neutral. He recalled many times in the past where staff’s recommendations ended up costing more than originally projected. He felt that department heads and management staff should be held accountable for creating sound agreements and monitoring contracts and invoicing.

In response to Council Member Cooper, Ms. Craig reported that, three of the six positions are for administrative functions, which would be transferred from the cost of the contractor to City services and result in a savings or be cost neutral. She believed the contract managers would “pay for themselves quickly”; however, it could not be quantified until controls were put in place. She reported that the Public Works Director has direct services of over \$10 million and oversees other contracts for construction and operations of approximately \$50 million annually. The auditors determined that additional assistance is needed to monitor this volume of cash flow.

Council Member Davis disagreed with the staff report suggestion that the City would be moving toward a deeper level of in-house employees. He did not believe there should be any further positions added, beyond the six being recommended. He was opposed to having multiple subcontractors as he believed it would result in contract managers dealing with disputes between the subcontractors and eventually require more contract managers to provide oversight. He stated that allegations have been raised about overbilling by City contractors and he expressed hope that the proposed changes would correct this. He felt that the best request for proposal model would be for one prime contractor. Further, he clarified that the City should design the best program operationally and find a contractor that will fit within it.

Vice Mayor Detrick expressed support for Exhibit 4 in the staff report and suggested that a salary incentive be offered for contract manager applicants who have professional certifications that would better qualify them for the position. He favored a flexible request for proposal model that would allow consultants to propose on single or multiple functional areas within Public Works.

Mayor Scherman expressed support for Exhibit 4. She also mentioned having heard allegations about overbilling and hoped that, with better oversight, it would no longer occur.

**PUBLIC COMMENT:**

None.

***Motion #1: M/S Scherman/Hume to direct staff to proceed with the Alternative "Contract Management" Model for Public Works (as described in Exhibit 4 of the staff report). **The motion passed by the following vote: Ayes: 4; Noes: 1 (Cooper).*****

***Motion #2: M/S Detrick/Hume to direct staff to use a flexible request for proposals model that will allow consultants to propose on single or multiple functional areas with in Public Works. **The motion FAILED by the following vote: Ayes: 2; Noes: 3 (Davis, Cooper, Scherman).*****

***Motion #3: M/S Davis/Cooper to direct staff to proceed with a request for proposals for one prime contractor. **The motion passed by the following vote: Ayes: 2; Noes: 2 (Detrick, Hume).*****

Public Works Director Richard Shepard received clarification from Council that the motion was to have a request for proposals issued for one prime contractor who would manage its subcontractors, so that the City would be managing one contract.

Council Member Cooper asked that costs related to the proposed changes be monitored to ensure staff's fiscal projections are accurate.

***NOTE: Council recessed at 9:13 p.m. and reconvened at 9:20 p.m. with all Members present.***

**Agenda Item No. 10.3: Adopt resolution supporting the findings of the California Statewide Local Streets and Roads Needs Assessment and authorizing the City Manager to express opposition to cuts in transportation funding to the Governor and each legislator**

**RECOMMENDATION:**

Adopt resolution supporting the findings of the California Statewide Local Streets and Roads Needs Assessment and authorizing the City Manager to express opposition to cuts in transportation funding to the Governor and each legislator.

Richard Shepard, Public Works Director / City Engineer, provided an overview of the staff report and recommendation.

**PUBLIC COMMENT:**

None.

***Motion:*** ***M/S Hume/Cooper*** to adopt **Resolution No. 2010-49** supporting the findings of the California Statewide Local Streets and Roads Needs Assessment and authorizing the City Manager to express opposition to cuts in transportation funding to the Governor and each legislator. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 10.4:** Review Alternatives and Provide Direction for Utility Billing Service Delivery

**RECOMMENDATION:**

Evaluate the merits for each alternative and provide direction for future Council action:

**Alternatives**

- 1) Applications and Deposits – obtain applications for new accounts with deposits to draw, if needed;
- 2) Lifeline Program Rate – provide a rate reduction to those who qualify while back-filling the discount with a General Fund subsidy and voluntary contributions;
- 3) Household Hazardous Waste Availability Fee – establish a fee for new customers who use the HHW but are not paying for weekly waste removal services;
- 4) Suspend Integrated Waste Services – reduce expenses by limiting services to those who pay and receivables to a few billing cycles for those who fail to pay;
- 5) Privatize Billing Services – transfer this activity and related issues to private sector services provider (Allied); **OR**
- 6) General Fund Reserve Transfer – authorize a one-time transfer of monies from the General Fund's reserves.

Rebecca Craig, Finance Director, provided an overview of the staff report and alternatives.

**PUBLIC COMMENT:**

Bruce Slayton complained that Finance Department staff are not being cooperative when realtors and bank representatives ask for substantiation of utility fees on foreclosed properties. Being that their intent is to pay the overdue bill, he felt that more assistance should be provided. He was opposed to suspending waste service as it would lead to additional problems. He suggested that the City institute a

program that ties the bill to the individual, such as those that require social security numbers, because customers are more likely to pay.

Discussion ensued regarding alternatives, during which the following determinations were made:

Applications and Deposits – obtain applications for new accounts with deposits to draw, if needed.

Council unanimously agreed.

Lifeline Program Rate – provide a rate reduction to those who qualify while back-filling the discount with a General Fund subsidy and voluntary contributions.

Council unanimously agreed.

Household Hazardous Waste Availability Fee – establish a fee for new customers who use the HHW but are not paying for weekly waste removal services.

Council unanimously agreed to implement for new customers. Following discussion regarding the approximately 30 residents who opted out of trash service, it was decided to consider elimination of exceptions at the time the Solid Waste Management Ordinance amendment is considered, which is tentatively scheduled for April 28.

***Motion: M/S Hume/Cooper to waive rule of procedure not to consider new business after 10:00 p.m. and to proceed with the remainder of the agenda. The motion passed by the following vote: Ayes: 5; Noes: 0.***

Suspend Integrated Waste Services – reduce expenses by limiting services to those who pay and receivables to a few billing cycles for those who fail to pay

Council agreed, with Vice Mayor Detrick dissenting, to place notices on trash receptacles of residents with the most overdue accounts notifying them that suspension of service is being considered. Staff will seek further direction from Council to regarding suspension of service on April 28.

Privatize Billing Services – transfer this activity and related issues to private sector services provider

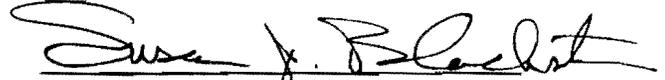
Council was unanimously opposed to privatizing billing service.

General Fund Reserve Transfer – authorize a one-time transfer of monies from the General Fund's reserves.

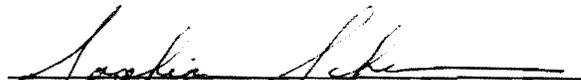
Council was unanimously opposed to a General Fund reserve transfer.

**ADJOURNMENT**

With no additional business to conduct, the March 10, 2010 City Council meeting was adjourned at 10:15 p.m. in recognition of Deputy City Manager Cody Tubbs' seven years of service to the City of Elk Grove.

  
SUSAN J. BLACKSTON,  
CITY CLERK

ATTEST:

  
SOPHIA SCHERMAN, MAYOR

## CITY OF ELK GROVE

Incorporated July 1, 2000

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### MINUTES OF THE CITY COUNCIL REGULAR MEETING Wednesday, April 21, 2004 CITY HALL COUNCIL CHAMBERS

#### CALL TO ORDER/ROLL CALL

Mayor Scherman called the April 21, 2004 regular City Council meeting to order at 6:32 p.m.

Present: Mayor Scherman, Mayor Pro Tem Soares, Councilmember Cooper

Absent: Councilmembers Briggs, Leary  
Note: Councilmember Briggs arrived at 6:57 p.m.  
Councilmember Leary arrived at 7:40 p.m.

Taylor Norgarad led the Pledge of Allegiance.

#### PUBLIC COMMENT

None.

#### APPROVAL OF AGENDA

**City Attorney Manzanetti** noted that pursuant to Government Code Section §54954.2(b)(2), staff is requesting Council to consider adding new Agenda Item No. 7.4, relating to the appointment of a hearing officer to conduct an administrative hearing under the City's stormwater management and drainage control Ordinance No. 22-2003 in response to an administrative appeal to notices of non-compliance issued to Lennar Communities, Inc. on February 13, 16, 19, 2004 by the City of Elk Grove.

***Motion:*** *M/S Cooper/Soares to approve the agenda with the removal of Consent Calendar item 5.13 and addition of new agenda item No. 7.4. The motion passed by the following vote: Ayes: 3; Noes: 0; Absent: Briggs, Leary*

#### PRESENTATIONS/ANNOUNCEMENTS

Proclamation: To the University Cheer Force Cheerleaders, presented by Councilmember Cooper

National Volunteer Week, City of Elk Grove Volunteer Recognition, presented by Police Chief Bob Simmons.

## **CONSENT CALENDAR ITEMS**

**Motion:** *M/S Cooper/Soares to approve the consent calendar items with the removal of consent calendar Agenda Item No. 5.5 for discussion. **The motion passed by the following vote: Ayes: 3; Noes: 0; Absent: Briggs, Leary***

**Agenda Item 5.1:** *Approve Warrant Listing through April 6, 2004 (Warrants 008702 through 008787)*

**Approved by Consent**

**Agenda Item 5.2:** *Approve Minutes of the March 17, 2004 Regular City Council Meeting*

**Approved by Consent**

**Agenda Item 5.3:** *Adopting **Ordinance No. 8-2004**, an ordinance of the City Council of the City of Elk Grove adding Chapter 16.91 to the Elk Grove Municipal Code relating to park and fire facilities development impact fees in Eastern Elk Grove (**Second Reading**)*

**Approved by Consent**

**Agenda Item 5.4:** *Adopting **Ordinance No. 9-2004**, an ordinance of the City Council of the City of Elk Grove Levying and Apportioning the Special Tax in the first annexation to Community Facilities District 2003-2 (Police Services) (**Second Reading**)*

**Approved by Consent**

**Removed for discussion:**

**Agenda Item 5.5:** *Adopting **Urgency Ordinance No. 10-2004**, an ordinance of the City Council of the City of Elk Grove amending Title 1, Chapter 25, Article 1 (Definitions) of the Elk Grove Zoning Code; Title II, Chapter 25, Article 2 (Permitted Uses Within the Buildable Area of Commercial Lots) of the Elk Grove Zoning Code and Title 4 (Business Regulation) of the Elk Grove Municipal Code (**Second Reading**)*

The following persons spoke in support of medical marijuana use: **Lucille Fisher, Kevin Gill, Ryan Landers, Nathan Sands, Zachary Bauer, Seth McLean.**

**Beverly Adams** spoke in support of additional regulation of medical marijuana use.

**Motion:** *M/S Cooper/Briggs to adopt Urgency Ordinance No. 10-2004. **The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: Leary***

**Agenda Item 5.6:** *Adopting **Ordinance No. 11-2004**, an ordinance of the City Council of the City of Elk Grove amending the Elk Grove Zoning Code Title 1, Chapter 10 (Special Permits) for consistency with the Housing Element and Title 3, Chapter 5 (Residential Use Development Standards) and Chapter 30 (Off-street Parking) to update development standards and allow design flexibility for multi-family development (**Second Reading**), **Approved by Consent***

**Agenda Item 5.7:** *Authorizing the City Manager to execute an agreement with Goodwin Consulting Group in an amount not to exceed \$60,000 to update the Laguna Road Development Impact Fee Program and the Stonelake Roadway Development Impact Fee Program*  
**Approved by Consent**

**Agenda Item 5.8:** **Resolution 2004-71** *authorizing the Public Works Director, City Engineer or Real Property Manager to execute Right-of-Way Certifications for transportation projects involving State and/or Federal funding*  
**Approved by Consent**

**Agenda Item 5.9:** **Resolution 2004-72** *accepting Subdivision Improvements for Sheldon Estate II Unit 1B, Quail Ridge Unit 8, and Retreat at Valley Hi*  
**Approved by Consent**

**Agenda Item 5.10:** **Resolution 2004-73** *recognizing the Birthday of the United States Army and designate June 14 through June 18, 2004 as United States Army Week*  
**Approved by Consent**

**Agenda Item 5.11:** **Resolution 2004-74** *adopting the City of Elk Grove revised Investment Policy and Internal Control Guidelines for Fiscal Year 2004-05*  
**Approved by Consent**

**Agenda Item 5.12:** **Resolution 2004-75** *adopting the Mitigated Negative Declaration, adopting the Mitigation and Monitoring Report Program, and approving the Bond Road widening project*  
**Approved by Consent**

**Removed from consideration at the approval of the agenda; See Agenda Item 7.4**

**Agenda Item 5.13:** *Appoint a Hearing Officer to Conduct Administrative Hearings for storm water management and discharge control in the City of Elk Grove*

**Agenda Item 5.14:** **Resolution 2004-76** *consent to establishing a portion of Calvine Road between Kingsbridge Drive and Vineyard Road as a County Highway*  
**Approved by Consent**

## **PUBLIC HEARINGS**

**Agenda Item 6.1:** *Public Hearing: Vacate a portion of a public street easement located at 8840 Bruceville Road*

**RECOMMENDATION:** *Adopt a resolution approving the vacation of a portion of the public street easement located at 8840 Bruceville Road*

**City Engineer Bob Lee** reviewed the staff report.

**Mayor Scherman** declared the public hearing open at 7:13 p.m.

With no public requests to speak, **Mayor Scherman** closed the public comment opportunity at 7:14 p.m.

***Motion:*** *M/S Briggs/Soares to adopt Resolution 2004-77 approving the vacation of a portion of the public street easement located at 8840 Bruceville Road. The motion was passed by the following vote: Ayes: 4; Noes: 0; Absent: Leary*

At the Mayor's request, **Councilmember Briggs** commented on Agenda No. 5.12 relative to the Bond Road Widening Project, noting the benefit of improving the intersection and other roadway appurtenances.

***Council heard Agenda Item No. 6.3 immediately after Agenda Item No. 6.1 as Agenda Item No. 6.2 required a supermajority Council approval (Councilmember Leary was absent).***

***Agenda Item 6.2:*** *Public Hearing: Declare the Necessity and authorize the commencement of Eminent Domain proceedings to secure real property interests from Dennis H. Buscher, APN 132-0030-045, for the construction and maintenance of Franklin Boulevard*

**RECOMMENDATION:** Adopt a resolution to Declare the Necessity and authorize the commencement of Eminent Domain proceedings to secure real property interests for the construction and maintenance of Franklin Boulevard

**Mayor Pro Tem Soares** declared the public hearing open at 8:11 p.m.

**Bob Lee**, City Engineer, and **Julie Cline**, Real Property Manager, provided the staff report and responded to Council questions.

Discussion items were related to: the alignment consistency with the East Franklin Specific Plan; appraiser selection process; noise mitigation by means of a sound wall installation; irrigation pipeline realignment.

**Mayor Scherman** opened the public comment opportunity at 8:19 p.m.

The following persons offered comment for Council consideration: **Dennis Buscher, Sharon Lynes.**

**Mayor Scherman** closed the public comment opportunity at 8:33 p.m.

***Motion:*** *M/S Leary/Cooper to adopt Resolution 2004-78 declaring the Necessity and authorizing the commencement of Eminent Domain proceedings to secure real property interests for the construction and maintenance of Franklin Boulevard and direct staff to continue negotiations with Mr. Buscher. The motion was passed by the following vote: Ayes: 5; Noes: 0*

**Agenda Item 6.3:** *Public Hearing: Elk Grove Triangle Special Planning Area*

**RECOMMENDATION:** At the conclusion of the public hearing, consider the Planning Commission's recommendation and review the Triangle SPA for conformance with the Elk Grove General Plan, based on the review Council may take action as follows:

1. ***Staff recommends that the City Council adopt the Negative Declaration***
2. Accept the Planning Commission's recommendation and introduce and waive the full reading, by substitution of title only, an ordinance of the City Council of the City of Elk Grove amending The Elk Grove Zoning Code To Incorporate The Elk Grove Triangle Special Planning Area (SPA) And Changing The Zoning Designation Of The Elk Grove Triangle Area From Various Zoning Districts To "Triangle SPA"; or
3. Direct staff to make changes to the Triangle SPA and bring a revised plan back to the Council for action; or
4. Provide direction to the Planning Commission and remand the Triangle SPA to the Commission for additional work; or
5. Request additional information from staff and postpone action to a future date

**Mayor Scherman** declared the public hearing open at 7:17.

**Eric Norris** of the Planning Department provided the staff report.

**Mayor Scherman** opened the public comment opportunity at 7:28 p.m.

The following persons offered comment for Council consideration: **Anthony Auriemma, Leon Rowland, Jerry Cookson, Dayle Imperato, Lynne Jackson, Bill Camuso, Gil Albiani, Sharon Lynes.**

**Mayor Scherman** closed the public comment opportunity at 7:52 p.m.

Discussion points were related to the realignment of Bond Road; Highway 99 / 50 connector; whether there is a violation of the conditions of approval relative to solid fencing in the Van Ruiten subdivision; storm drainage adequacy; mitigation of noise in the event Grant Line Road is selected as the corridor between Highways 99 and 50; costs of future development of properties.

***Motion:*** *M/S Cooper/Leary to adopt the negative declaration. The motion was passed by the following vote: Ayes: 3; Noes: 2 (Briggs/Soares)*

**Motion:** *M/S Cooper/Leary to introduce and waive the full reading by substitution of title only, **Ordinance No. 12-2004**, an ordinance of the City Council of the City of Elk Grove amending the Elk Grove zoning code to incorporate the Elk Grove Triangle special Planning Area (SPA) and changing the zoning designation of the Elk Grove Triangle area from various zoning districts to "Triangle SPA". **The motion passed by the following vote: Ayes: 3; Noes: 2 (Briggs/Soares)***

## **REGULAR ACTION ITEMS/RECOMMENDATIONS**

**Agenda Item 7.1:** *Evaluate the zoning in the Calvine / Highway 99 Special Planning Area (SPA) to discuss the feasibility of revising the General Plan and Zoning designations of parcels not currently subdivided*

**RECOMMENDATION:** Staff is requesting guidance on whether the Council wishes to initiate an amendment to the Zoning Map and the General Plan Map to change the designations of certain parcels that are not currently entitled.

The staff report was provided by **Bill Pable**, of the Planning Department.

With no public requests to speak, **Mayor Scherman** closed the public comment opportunity.

There was a brief discussion related to the adequate provision of affordable housing.

**Motion:** *M/S Soares/Leary to direct staff to initiate an amendment to the Zoning Map and the General Plan Map to change the designations of certain parcels in the Calvine / Highway 99 SPA that are not currently entitled from their current zoning ranges to a maximum zoning of RD-5. **The motion passed by the following vote: Ayes: 5; Noes: 0***

**Agenda Item 7.2:** *Staff Informational Report on Sister Cities*

**RECOMMENDATION:** City Council to provide further direction to staff after review of the informational packet on sister cities.

The staff report was provided by **David Storer, Assistant City Manager**

There were no public requests to speak.

There was no action was taken by the Council.

**Agenda Item 7.3:** *Study session for comprehensive Zoning Code*

**RECOMMENDATION:** Consider the Zoning Code update information and provide relevant policy direction

The staff report was provided by **Pam Johns** of the Planning Department.

Discussion points were related to: allowance of manufactured homes in residential zones; regulations for stores selling discount cigarettes, liquor; building height limitations, exceptions; wireless communications regulations; expediting the update process; prioritization of selected provisions; review process.

There were no public requests to speak.

This was an Informational item only with no Council action taken.

***Agenda Item 7.4: The appointment of a hearing officer to conduct an administrative hearing officer under the City's Stormwater Management and Discharge Control Ordinance No. 22-2003 in response to a request for an administrative appeal to Notices of Non-Compliance issued to Lennar Communities, Inc. on February 13, 16, and 19, 2004.***

**City Attorney Manzanetti** provided the Council with a report on the necessity to appoint a hearing officer prior to the next regular City Council meeting in order to comply with provisions of administrative appeals.

There were no public requests to speak.

***Motion 1: M/S Briggs/Soares to determine there is a need to take immediate action and that the need for action came to the attention of the City of Elk Grove subsequent to the agenda being posed as specified in the Brown Act (GC §54954.2(b)(2)). The motion passed by the following vote: Ayes: 5; Noes: 0***

***Motion 2: M/S Briggs/Soares to adopt Resolution No. 2004-79 appointing Kent Bastian of the West Sacramento City Department of Public Works as the hearing officer to conduct an administrative hearing under the City's Storm Water Management and Discharge Control Ordinance No. 22-2003 in response to a request for an administrative appeal to Notices of Non-Compliance issued to Lennar Communities, Inc. on February 13, 16, 19, 2004.***

## **GENERAL ADMINISTRATION INFORMATION**

**City Attorney Anthony Manzanetti** announced that the Supreme Court denied the request for review made by South County Citizens for Responsible Growth to review the Court of Appeal Decision related to the Lent Ranch Mall. The matter will be returned to the Court of Appeal, which will refer the case back to the trial court for an order directing

the City to comply with the order of the Court of Appeal. He noted the expectation that the City will be able to meet compliance in a few short weeks.

a) Solid Waste Management Services Transition

**Cedar Kehoe**, Director of Solid Waste, reviewed the collaborative transition efforts made by Central Valley Waste Services and Browning Ferris. Ms. Kehoe reviewed the timeline for operational changes.

**Jerry Mayberry**, representing Browning Ferris, briefly reviewed the plan and progress on the exchange of waste containers.

## **COUNCIL COMMENTS/FUTURE AGENDA ITEMS**

### **Councilmember Cooper**

- Provided an update on the Elk Grove/Rancho Cordova/El Dorado County corridor connector. He reported on April 13, staff attended the Stakeholders Advisory Committee meeting, wherein breakout groups were created to consider possible alternative alignments for the connector. Two additional meetings will be held prior to a report being made back to the main committee. He encouraged Elk Grove residents to contact him for information on participating in the meetings. The next meeting is scheduled for May 19, 9:30 a.m. to 12:00 p.m., at the Sacramento SACOG location on "L" Street.

### **Councilmember Briggs**

- Recognized the passing of Rancho Cordova Councilmember Dave Roberts and his dedication to the City of Rancho Cordova. He offered his condolences to Mr. Roberts' family.

### **Councilmember Leary**

- Reiterated Mr. Briggs' comments and noted that Mr. Roberts was a retired Sheriff's Deputy.
- Questioned the merit of the City's future support of Measure A. Requested staff prepare a cost/benefit analysis for Council review.
- Requested a reduction of the speed limit on the street on the Auto Mall's perimeter and appropriately placed stop signs at West Stockton Blvd.

## Mayor Scherman

- Noted receiving several calls related to stacked cars exiting onto the Highway 99 / Grant Line Road off-ramp. Questioned whether warning lights might be interimly placed.
- Recognized Councilmember Leary for becoming a Paul Harris Fellow through the Rotary Club.
- Requested a moment of silence to recognize the passing of Rancho Cordova Councilmember Dave Roberts.
- Noted receipt of correspondence from Apple Computers relative to employee layoffs.

**Assistant City Manager Terry Fitzwater** announced that on May 12, 5:30 – 7:00 p.m., the Council will host “Arts and Hors D’oeuvres” to display art work recently purchased by the City. Several of the artists will be on hand.

## OPEN SESSION

### **A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to GC Sec. 54956.8

Property: 10250 Ironrock Way, Elk Grove, CA  
**and** APN 134-0630-013

Agency Negotiators: John Danielson, Anthony Manzanetti,  
Michael Kashiwagi, Bob Lee,  
Julie Cline

Negotiating parties: Scott Cable

Under negotiation: Price and terms of payment for purchase,  
sale, exchange, or lease

### **B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to GC Sec. 54956.8 and 54956.9

Property: APN 132-0030-045 owned by Dennis H.  
Buscher

Agency Negotiators: John Danielson, Anthony Manzanetti,  
Michael Kashiwagi, Bob Lee,  
Julie Cline

Negotiating parties: Dennis H. Buscher

Under negotiation: Price and terms of payment for purchase, sale, exchange, or lease

**RECOMMENDATION:** It is recommended that the City Council identify its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate and then hold a closed session with its negotiators.

### **CLOSED SESSION**

After providing an opportunity for public comment, the City Council recessed to closed session at 9:33 p.m. to hear the following items:

#### **A) CONFERENCE WITH LEGAL COUNSEL – Existing Litigation**

(7 Cases)

Pursuant to Subdivision (a) of Section 54956.9

1. Gyan Kalwani, et al v. City of Elk Grove, et al. Superior Court of California Sacramento County, Case No. 04CS00177
2. Statewide Storage Partners v. City of Elk Grove, et. al. Superior Court of California Sacramento County, Case No. 04CS00409
3. Labrasca v. City of Elk Grove et al., Sacramento Superior Court Case No. 03AS06204
4. Meyers v. City of Elk Grove et al., Sacramento Superior Court Case No. 03AS05452
5. State of California and South County Citizens for Responsible Growth v. M&H Development, City of Elk Grove. California District Appellate Report (3rd) Case No. C 042302 (Appeal from Sacramento Superior Court, J. Connelly)
6. City of Elk Grove v. State Water Resources Control Board, Sacramento Superior Court Case No. 03CS00685
7. Eminent Domain proceedings to secure real property interests from Dennis H. Buscher, APN 132-0030-045, for the construction and maintenance of Franklin Boulevard

#### **B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to GC Sec. 54956.8

1. Property: 10250 Ironrock Way, Elk Grove, CA

- and APN 134-0630-013
- Agency Negotiators: John Danielson, Anthony Manzanetti,  
Michael Kashiwagi, Bob Lee, Julie Cline
- Negotiating parties: Scott Cable
- Under negotiation: Price and terms of payment for purchase,  
sale, exchange, or lease
2. Property: APN 132-0030-045 owned by Dennis H. Buscher
- Agency Negotiators: John Danielson, Anthony Manzanetti,  
Michael Kashiwagi, Bob Lee,  
Julie Cline
- Negotiating parties: Dennis H. Buscher
- Under negotiation: Price and terms of payment for purchase,  
sale, exchange, or lease

The regular session of the City Council meeting reconvened at 10:54 p.m. **Mayor Scherman** announced that no reportable action was taken during closed session.

### **ADJOURNMENT**

With no other business for the Council to consider, the City Council meeting was adjourned at 10:55 p.m. in remembrance of Rancho Cordova Councilmember Dave Roberts.

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**PEGGY JACKSON, CITY CLERK**

**ATTEST:**

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**SOPHIA SCHERMAN, MAYOR  
CITY OF ELK GROVE**

MINUTES OF THE CITY COUNCIL  
SPECIAL MEETING  
Wednesday, November 18, 2009

**CALL TO ORDER/ROLL CALL**

Mayor Hume called the special City Council meeting of November 18, 2009 to order at 6:04 p.m.

Present: Mayor Hume, Vice Mayor Scherman, Council Members Cooper, Davis and Detrick

Absent: None.

Council Member Davis led the Pledge of Allegiance.

Mayor Hume asked that a moment of silence be observed.

**APPROVAL OF AGENDA**

***Motion: M/S Scherman/Cooper to approve the agenda as presented. The motion passed by the following vote: Ayes: 5; Noes: 0.***

**CLOSED SESSION**

None.

**PRESENTATIONS/ANNOUNCEMENTS**

- 4.1 Rita Velasquez, Interim Executive Director, Elk Grove Chamber of Commerce, provided an update on the *Holiday Shop Elk Grove* Program.
- 4.2 Youth Commissioners Salvador Rosas and Kendall Connolly provided an update on the Youth Commission.
- 4.3 Peter Evich of Van Scoyoc Associates, Inc. reported via telephone that Elk Grove has secured a grant of \$750,000 to establish an emergency operations center. It is anticipated that the contract process for the grant will be completed early next year. The federal transportation law was extended to mid-December and it will likely be extended again for another six month period. Elk Grove's two highway projects (i.e., the Kammerer Road I-5 Hood Franklin phase and the Grant Line Road phase of the Capital Southeast Connector project) were submitted to the Transportation Committee by Congressman Lundgren. The Senate Committee has not yet taken any

action on the measure. The following City priority projects have been identified:

- Grant Line Road construction funding (in addition to the existing funding request in the transportation reauthorization measure);
- City infrastructure modifications;
- Youth development initiative aimed at at-risk youth in low-income neighborhoods;
- Funding for etran replacement buses;
- Funding request related to the proposed household hazardous waste facility;
- Economic redevelopment initiative to fund the installation of a sound wall on east Stockton Boulevard; and
- Stormwater drainage management.

### **PUBLIC COMMENT**

Leo Fassler commended the City Council for its selection of appointed officials and of the officials' hiring decisions, which have resulted in an excellent management staff that has made customer service a top priority in the City.

Anthony Moseby spoke in reference to the New Parish Catholic Church project, which was considered by Council on September 9 and October 28. He stated that parishioners were led to believe the project would be approved on October 28; however, the matter is still pending and he urged Council to place it on an agenda as soon as possible for approval.

Nanette Patron spoke in reference to the New Parish Catholic Church project and recalled clear direction by Council on September 9 that the project would be approved on October 28 after concessions were made regarding fencing and lighting for the project. She felt Council's action on October 28 represented a betrayal of trust to parishioners.

Patty Suter spoke in reference to the New Parish Catholic Church project which she recalled Mayor Hume concluding on September 9 that the project was essentially approved. She mentioned Council Member Detrick having stated on September 9 that he could support the project with the reduced church size of 600 seats; however, at the October 28 meeting he did not vote and indicated opposition to the project. She urged Council to place the matter on an agenda where the full Council is present to consider the project.

Mayor Hume reported that he and Council Member Davis are serving on an Ad Hoc Committee to work with members of the rural community, church applicants, and Planning Department staff to try and find mutually agreeable conditions for the project.

Council Member Detrick corrected Ms. Suter and stated that he told her he did not vote against the project [as he did not vote]. He explained that, at the time, he did not understand that his silence would be recorded as an affirmative vote.

Dan Brennan spoke in reference to the New Parish Catholic Church project and asserted that "two opportunists" on the Council took the opportunity on October 28 to end the project because one Council Member was not present to vote.

Elizabeth Diaz introduced herself to the City Council as the new General Manager of MV Transportation.

Matt Suwa spoke in reference to the New Parish Catholic Church project on behalf of children of the parish. He stated that it was believed that the church project was approved on September 9; however, that was changed on October 28, due to another water study being requested. He urged Council to approve the project, as the new church is greatly needed in the community.

Deanna Garcia reported that she attempted three times to obtain an application from the Finance Department for a medical cannabis dispensary business; however, she was told that no such application exists. She pointed out that Ordinance 10-2004 allows one dispensary within the City of Elk Grove.

City Attorney Cochran explained that the Zoning Code was amended in 2006, which eliminated medical marijuana dispensaries as a permitted use in any zone in the city. There is currently no land use authority that would allow a medical marijuana dispensary. The Code currently states that there are no uses that are contrary to State or Federal law, and given that marijuana is a controlled substance, it would not be a permitted use.

Ray Patron spoke in reference to the New Parish Catholic Church project and pointed out that it would also serve as another meeting place for youth of the community. He asked Council to approve the project.

Gene and Betty Robinson shared persimmon cookies with Council and staff.

Mayor Hume responded to citizens who spoke in reference to the New Parish Catholic Church project and explained that, on September 9, he made comments indicating a favorable outcome of the project because four Council Members had voted in support of bringing the project back on October 28 with a revised site plan and conditions of approval. He expressed confidence that the Ad Hoc Committee that he and Council Member Davis serve on will reach an amicable resolution in which the project can move forward without the rural character of the neighborhood being diminished.

Council Member Davis acknowledged that, building consensus can take time, but the end results are more satisfactory.

In answer to Vice Mayor Scherman, Planning Director Hazen reported that the Ad Hoc Committee and staff will be meeting with three church representatives and three rural community representatives in early December. He estimated the project would return to Council for consideration between the period of January to March.

### **CONSENT CALENDAR ITEMS**

In reference to Item 6.10, Mayor Hume asked whether it was a one-time fee, to which Planning Director Hazen replied in the affirmative and explained that it is for the management of the property to ensure that it remains suitable habitat for the Swainson's hawk.

In reference to Item 6.21, Mayor Hume inquired whether the City of Davis buses would affect the item, to which Transit Manager Fink explained that the eight buses are needed in addition to the City of Davis buses.

***Motion: M/S Scherman/Cooper to approve the Consent Calendar as presented. The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 6.1:** Approved Automatic Clearing House (ACH) Nos. 616 through 622, and 624 through 645, General Warrant Nos. 49354 through 50044, and Electronic Fund Transfer (EFT) Nos. 2010036 through 2010047

**Agenda Item No. 6.2:** Approved July and August 2009 Treasurer's Reports

**Agenda Item No. 6.3:** Approved City Council Meeting Minutes: 1) October 28, 2009 Special Meeting; 2) October 28, 2009 Regular Meeting; and 3) October 29, 2009 Special Meeting

**Agenda Item No. 6.4:** Received report on City Manager approved purchases and contracts authorized by Elk Grove Municipal Code Chapter 3.42 Contracts and Purchasing, filed through November 10, 2009

**Agenda Item No. 6.5:** Received report on Requests for Proposals, Qualifications, and Bids

**Agenda Item No. 6.6:** **Resolution No. 2009-213** adopted authorizing the City Manager to implement the Local Holiday Bonus Program

**Agenda Item No. 6.7:** **Resolution No. 2009-214** adopted authorizing the City Manager to request a grantee-to-grantee transfer of ten Federal Transit Administration funded buses from Unitrans

**Agenda Item No. 6.8:**      **Resolution No. 2009-215** adopted amending Resolution No. 2008-146 to include the Yolo County Transportation District and Unitrans as approved Compressed Natural Gas vendors

**Agenda Item No. 6.9:**      **Resolution No. 2009-216** adopted approving the Fiscal Year 2008-09 Annual Development Impact Fee Report and making findings required by the Mitigation Fee Act

**Agenda Item No. 6.10:**      **Resolution No. 2009-217** adopted amending the Fiscal Year 2009-10 Budget authorizing the City Manager to transfer an endowment of \$171,099 from the Swainson's hawk Habitat Fund to The Nature Conservancy

**Agenda Item No. 6.11:**      **Resolution No. 2009-218** adopted amending the 2009-14 Capital Improvement Program and the Fiscal Year 2009-10 Budget by approving the allocation of \$187,000 of Elk Grove Roadway Fee funding for the environmental phase of the Longleaf Drive Bridge Over Elk Grove Creek Project

**Agenda Item No. 6.12:**      **Resolution No. 2009-219** adopted authorizing the City Manager to extend contracts with Network Design Associates, Interwest Consulting Group Inc., MCE Corporation, Nolte Associates Inc, Republic Electric, Willdan, Kleinfelder Inc., and PSOMAS Inc, for Public Works services for a period of up to twelve (12) months

**Agenda Item No. 6.13:**      **Resolution No. 2009-220** adopted authorizing the City Manager to execute a construction contract with Mike Brown Electric Company for the East Franklin Intelligent Transportation System and Traffic Signal Improvements and East Franklin Pedestrian Crossing Project in the amount of \$290,610 and authorizing the City Engineer to approve change orders not to exceed \$43,591.50

**Agenda Item No. 6.14:**      **Resolution No. 2009-221** adopted accepting the West Stockton Boulevard Bridge Replacement over Laguna Creek Project as complete and authorizing the City Engineer to prepare, and the City Clerk to file, the Notice of Completion with the Sacramento County Recorder

**Agenda Item No. 6.15:**      **Resolution No. 2009-222** adopted increasing the City Engineer's authority to expend supplemental and contingency funds for the Sheldon Road / State Route 99 Interchange Reconstruction Project by \$872,296 *[for a total amount not to exceed \$3,201,000]*

**Agenda Item No. 6.16:**      **Resolution No. 2009-223** adopted authorizing the Mayor to execute a Safe Harbor Agreement with the United States Fish and Wildlife Service for the Shed B Channel and Whitelock Parkway Drainage Corridor

**Agenda Item No. 6.17:**    **Resolution No. 2009-224** adopted authorizing the City Manager to accept Public Transportation Modernization, Improvement and Service Enhancement Activity (PTMISEA) grant funding for Fiscal Year 2009-10 from the California Department of Transportation (Caltrans), Office of Homeland Security (OHS) and Sacramento Area Council of Governments (SACOG) for automated fareboxes and auxiliary equipment and to apply for and accept PTMISEA funding for Corporation Yard improvements

**Agenda Item No. 6.18:**    **Resolution No. 2009-225** adopted authorizing the Transit System Manager to accept grant funding for Fiscal Year 2008-09 and Fiscal Year 2009-10 from the Federal Transit Administration for Preventative Maintenance, Americans with Disabilities Act (paratransit) activities, Transportation Enhancement Activities, and awarded Stimulus funding and authorize submittal of any necessary amendments

**Agenda Item No. 6.19:**    **Resolution No. 2009-226** adopted amending the 2009-14 Capital Improvement Program and the Fiscal Year 2009-10 Budget by approving the allocation of \$207,500 in Elk Grove Facilities Fee funding for the project development phases of the Community Design Bus Stop Shelter Program

**Agenda Item No. 6.20:**    **Resolution No. 2009-227** adopted authorizing the City Manager to execute Amendment No. 1 to the Commuter, Fixed Route, ADA Complementary Paratransit and Dial-A-Ride Operations and Maintenance Contract with MV Transportation, Inc. incorporating the service restoration of August 31, 2009

**Agenda Item No. 6.21:**    **Resolution No. 2009-228** adopted authorizing the City Manager to execute options with New Flyer of America for eight 40-foot Compressed Natural Gas transit buses in an amount not to exceed \$4 million

**Agenda Item No. 6.22:**    **Resolution No. 2009-229** adopted accepting the City Hall Tenant Improvements Construction Project as complete and authorizing the Deputy City Manager to prepare, and the City Clerk to file, the Notice of Completion with the Sacramento County Recorder

## **PUBLIC HEARINGS**

**Agenda Item No. 7.1:**        A public hearing to consider adoption of resolutions calling an election and declaring results of the special election for annexation to Community Facilities District No. 2006-1 (Maintenance Services) and introduction of an ordinance levying and apportioning the special tax to the annexing area (Annexation No. 14)

## **RECOMMENDATION**

- 1) Adopt resolution calling an election to submit the question of levying a special tax within the area proposed to be annexed to Community Facilities District No. 2006-1 (Maintenance Services) to the qualified electors;
- 2) (*Following tabulation and certification of ballot results by the City Clerk*) Adopt resolution declaring the results of the special election held on November 18, 2009 for the fourteenth annexation to Community Facilities District No. 2006-1 (Maintenance Services); and
- 3) Introduce and waive the full reading, by substitution of title only, an ordinance levying and apportioning the special tax in territory annexed to Community Facilities District No. 2006-1 (Maintenance Services) Annexation No. 14.

Andrew Keys, Finance Analyst, explained that the matter relates to the annexation of one commercial property consisting of 2.5 acres in east Elk Grove generating approximately \$1,300 a year in tax revenue for the Maintenance Services District.

Mayor Hume declared the public hearing open.

## **PUBLIC COMMENT:**

None.

Mayor Hume declared the public hearing closed.

***Motion #1: M/S Davis/Scherman to adopt Resolution No. 2009-230 calling an election to submit the question of levying a special tax within the area proposed to be annexed to Community Facilities District No. 2006-1 (Maintenance Services) to the qualified electors. The motion passed by the following vote: Ayes: 5; Noes: 0.***

City Clerk Blackston reported that, of three possible votes, three affirmative votes were cast authorizing the City of Elk Grove to levy a special tax at the rate apportioned and described. She confirmed that the measure passed with more than two-thirds of all votes cast in the election in favor of the measure.

***Motion #2: M/S Davis/Scherman to adopt Resolution No. 2009-231 declaring the results of the special election held on November 18, 2009 for the fourteenth annexation to Community Facilities District No. 2006-1 (Maintenance Services). The motion passed by the following vote: Ayes: 5; Noes: 0.***

***Motion #3: M/S Davis/Scherman to introduce and waive the full reading, by substitution of title only, Ordinance No. 22-2009 levying and apportioning the special tax in territory annexed to Community Facilities District No. 2006-1 (Maintenance Services) Annexation No. 14. The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 7.2:** A public hearing to consider resolutions approving: 1) abandonments in the vicinity of the Grant Line Road / State Route 99 Interchange of portions of East and West Stockton Boulevards, portions of CMD Court (now East Stockton Boulevard), a Slope Easement, Public Utility Easements, and an Irrevocable Offer of Dedication; 2) setting aside a portion of City-owned property for public street and public utility easement purposes; and 3) quitclaiming a portion of the aforementioned East Stockton Boulevard to Elk Grove V Partners, LLC

**RECOMMENDATION:**

- 1) Adopt resolution abandoning portions of East and West Stockton Boulevards, CMD Court (now East Stockton Boulevard), a slope easement, Public Utility Easements and an abandonment of an Irrevocable Offer of Dedication while reserving easements for public utilities; and
- 2) Adopt resolution to set-aside a portion of City owned property for Public Street and Highway Purposes and an adjacent Public Utility Easement; and
- 3) Adopt resolution quitclaiming a portion of East Stockton Boulevard to Elk Grove V Partners, LLC pursuant to City agreement C-08-304.

With the aid of an overhead presentation (filed), Julie Cline, Real Estate Director, provided an overview of the staff report and recommendation. She explained that the action is necessary to abandon portions of rights-of-way and public utilities in the vicinity of the Grant Line interchange, due to the realignment of east and west Stockton Boulevard. The first resolution would abandon portions of east and west Stockton Boulevard that are no longer in use as public roads. The abandonment involves a slope easement that is no longer needed. The City will reserve its rights for public utilities. The second resolution would set aside a portion of City owned property to create a public road and utility. She noted that the property includes the industrial building that the City purchased as part of the interchange. The third resolution involves quitclaiming a portion of property along east Stockton Boulevard.

Mayor Hume declared the public hearing open.

**PUBLIC COMMENT:**

None.

Mayor Hume declared the public hearing closed.

***Motion #1: M/S Cooper/Detrick*** to adopt **Resolution No. 2009-232** abandoning portions of East and West Stockton Boulevards, CMD Court (now East Stockton Boulevard), a slope easement, Public Utility Easements and an abandonment of an Irrevocable Offer of Dedication while reserving easements for public utilities. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #2: M/S Cooper/Detrick** to adopt **Resolution No. 2009-233** to set-aside a portion of City owned property for Public Street and Highway Purposes and an adjacent Public Utility Easement. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #3: M/S Cooper/Detrick** to adopt **Resolution No. 2009-234** quitclaiming a portion of East Stockton Boulevard to Elk Grove V Partners, LLC pursuant to City agreement C-08-304. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 7.3:** A public hearing to consider the appeal by the Old Town Elk Grove Foundation of the Planning Commission's decision on October 1, 2009 to approve the Capital Ink Tattoo and Body Piercing business located at 9044 Elk Grove Boulevard (APN: 125-0222-005; Project EG-09-049)

**RECOMMENDATION:**

The City Council may reverse, modify, or affirm the decision of the Planning Commission in whole or in part. Staff prepared alternative recommendations for Council to consider as follows:

- 1) Adopt resolution affirming the Planning Commission's approval of Capital Ink Tattoo and Body Piercing's request within the Old Town Elk Grove Special Planning Area as a Commercial – Personal Services use; or
- 2) Adopt resolution granting the Applicant's appeal of the Planning Commission's approval and denying Capital Ink Tattoo and Body Piercing's request to locate at 9044 Elk Grove Boulevard.

With the aid of an overhead presentation (filed), Mike Costa, Associate Planner, reported that a request was made to locate the business, *Capital Ink Tattoo and Body Piercing*, at 9044 Elk Grove Boulevard. On August 31 the Planning Director determined that the use was a restricted personal service use, therefore the business could not locate within the Old Town Special Planning Area (SPA). On September 9 the business filed an appeal to the Planning Commission. On October 1 the Planning Commission determined that the business was a permitted use within the Old Town SPA. On October 12 the Old Town Foundation filed an appeal of the Planning Commission decision. Section 3-7 of the Old Town SPA guidelines determines that, when a use is not specifically listed in the Old Town SPA design standards and guidelines, the Planning Director has the authority to determine whether or not the use is sufficiently similar to other uses permitted in the Old Town SPA document. Elk Grove Zoning Code Article 6 Chapter 23.98 defines tattooing and body piercing as a personal service restricted use. Article 3 states that personal service uses require the approval of a conditional use permit. The Planning Commission determined that tattoo and body piercing encourages the same pedestrian oriented traffic as other existing uses within the Old Town SPA. They also determined that tattoo and body piercing is similar to other personal services uses such as beauty and barber shops. The Planning Commission

expressed a desire for the Old Town SPA to be updated to include personal service restricted uses which would require a conditional use permit (CUP) to locate in the SPA.

In answer to Council Member Davis, Planning Director Hazen confirmed that there currently was no mechanism in the Old Town SPA to apply for a CUP.

**Applicant Presentation:**

John Lambdin, representing the Old Town Foundation, felt that the timing was not right to allow tattoo parlors in Old Town. He pointed out that, as amended by the Planning Commission, it will allow for multiple tattoo parlors to locate in Old Town. He also felt that the location was not appropriate for the establishment because of the close proximity to schools and shops geared for children. He reported that the median age for residents of zip code 95624 is 33.9 years. The percentage of the population that supports the current shops in Old Town are over 45 years. He stated that persons in the older age group are less tolerant of new types of businesses and change.

In reply to Council Member Davis, Mr. Lambdin believed that some people have preconceived notions about tattoo parlors and would be fearful of crime, etc.

Mayor Hume declared the public hearing open.

**PUBLIC COMMENT:**

Lynn Wheat stated that she was speaking as a registered school nurse and reported that the California School Nurse Organization believes that tattooing and body piercing has the potential to cause serious health risks including exposure to blood borne pathogens. She submitted an article from *Advance for Nurses* entitled, "Skin Deep" (filed). She expressed concern about the health and safety of citizens and recommended that, at a minimum, annual inspections of the business be required.

Sharon Dickson stated that she was a majority owner of the property at 9044 Elk Grove Boulevard. She noted that the Zoning Code singles out tattoo parlors as an example of blighting businesses; however, she could find no evidence to support the claim. Further, she stated that the Police Department has not found there to be any problems associated with tattoo parlors. California real estate law prohibits property owners from discriminating against potential renters. She urged Council to uphold the Planning Commission's decision.

Patrick McGuire stated that he has owned Capital Ink Tattoos, located in Old Sacramento, for the past four years and has never had any problems. He noted that all tattoo artists and body piercers must be registered with the Health Department. He maintained that tattooing has evolved tremendously over the years

and is now considered an art form. He believed that Elk Grove was losing a considerable amount of revenue by not having a tattoo business in the city.

In answer to Council Member Davis, Mr. McGuire stated that he posts signs prohibiting customers under the age of 18. The law allows body piercing at age 16 with parental consent; however, Mr. McGuire stated that he would be willing to restrict it to above 18 years of age. He stated that his customers' age ranges from 18 to 60 years and emphasized that tattoos are now widely accepted.

Deborah Baird stated that she owned a home near the proposed business. She pointed out that Old Sacramento is not surrounded by homes and schools, as is the Old Town area of Elk Grove. She believed tattoo businesses carried a negative stigma and she urged Council to approve the appeal.

Beverly Baird voiced opposition to the tattoo business being located in Old Town and believed it would have a negative effect on youth and families in the community.

Phillip Stark stated that this particular use was not part of the vision for the SPA. He urged Council to approve the appeal and allow the SPA amendment process to proceed through Planning Commission review.

Tal Crump asked how a non-permitted use could get permitted with no conditions. He believed tattoo parlors were adverse businesses that should have conditions placed on them to operate.

Damon Mireski believed the tattoo business was well operated and would bring much needed revenue to the City and new customers to the Old Town area.

Mark Forster stated that he was a property and business owner in Old Town and voiced support for the tattoo business, as he did not believe it would create any adverse effects on the area.

Connie Conley stated that she held a neutral position on the matter. Having previously worked in the area, she stated that Capital Ink in Old Sacramento is a reputable business.

Applicant Rebuttal:

Mr. Lambdin reiterated his concern that more than one tattoo business could open in Old Town if Council upholds the Planning Commission decision.

In answer to Council Member Detrick, Mr. Hazen reported that the proposed draft SPA is expected to be considered by the Planning Commission in January and will then be forwarded to the City Council in February or March. He noted that the Planning Commission preferred to have the ability to apply conditions on a case by

case basis. The proposed SPA requires tattoo and piercing businesses to require a CUP to operate in Old Town, which would be consistent with other zones in the City that require CUPs.

Council Member Cooper pointed out that tattoos are much more acceptable today than they once were. He supported the business locating in Old Town and believed it would be an asset to the area.

Council Member Davis stated that, though he believed the business would provide value to Old Town would not create undue traffic, loitering, or crime; he gives deference to community groups and therefore supports Old Town Foundation's position.

Vice Mayor Scherman stated that she received many emails, telephone calls, and text message communications regarding this matter and only one was in favor of the tattoo business locating in Old Town. She voiced support for Old Town Foundation's position.

In reply to Council inquiries, City Attorney Cochran clarified that Council cannot impose conditions; however, the applicant may be willing to agree to conditions which would be similar to a development agreement.

In response to Council Member Detrick, Mr. McGuire and Ms. Dickson expressed a willingness to comply with project conditions.

Mayor Hume voiced support for the proprietor and the business locating in Old Town. He believed it to be a mainstream business that would not attract undesirables. He acknowledged, from a planning perspective, that it is illogical to allow a business to be permitted in one area when it requires a CUP everywhere else.

**Motion: M/S Davis/Scherman** to grant the applicant's appeal of the Planning Commission's approval and denying Capital Ink Tattoo and Body Piercing's request to locate at 9044 Elk Grove Boulevard.

In answer to Council Member Detrick, Mr. Lambdin reiterated his concern that by Council allowing the tattoo business to operate with conditions it would allow other such businesses to come into the area without CUPs.

In response to Mayor Hume, Mr. Hazen explained that, even if Council approved the Capital Ink Tattoo business with conditions, if another tattoo parlor later requested to open a business in Old Town it would be considered permitted with no conditions based on Council's decision tonight.

Ms. Cochran confirmed that, if Council allows this use in this location, it would apply throughout the Old Town SPA until such time as the SPA was amended.

Mr. Hazen suggested that Council could “deny without prejudice”, which would allow the applicant to re-file for a CUP when the SPA amendment became effective.

In reply to Council Member Cooper, Ms. Cochran confirmed that Council could adopt a moratorium on tattoo parlors, at its next regularly scheduled meeting on December 9, until such time as the SPA amendment is adopted.

**Substitute Motion: M/S Hume/Scherman** to continue the public hearing to the regularly scheduled meeting of December 9, 2009 and direct staff to negotiate a development agreement with the applicant to be brought back for Council consideration at that time. ***The motion passed by the following vote: Ayes: 4; Noes: 1 (Davis).***

In response to the City Attorney, Council directed staff to also draft an ordinance placing a moratorium on tattoo parlors to be presented at the December 9 meeting.

**Agenda Item No. 7.4:** A public hearing to consider adopting the Substantial Amendment to the 2008-09 Community Development Block Grant Action Plan and the 2009-10 Community Development Block Grant Action Plan

**RECOMMENDATION:**

Adopt resolution approving the Substantial Amendment to the Fiscal Year 2008-09 Community Development Block Grant (CDBG) Action Plan and the FY 2009-10 CDBG Action Plan.

Sarah Bontrager, Grants Specialist, provided an overview of the staff report and recommendation. She recommended sidewalk construction along Williamson Drive (to improve access to the Elk grove Adult Community Training Center) be considered during the 2010-11 allocation.

Vice Mayor Scherman asked whether leftover funding from other projects that came under bid could be used for the sidewalk, to which Ms. Bontrager replied that she would look into the matter and return with findings at a future meeting.

Council Member Davis asked staff to look into developing a transit route to the Food Bank, as many of its customers use public transportation.

Mayor Hume declared the public hearing open.

**PUBLIC COMMENT:**

Pat Beal, President of the Senior Center Board of Directors, thanked the Council for its continuing support and extended an invitation to the December 5 pancake

breakfast. The grand opening of the facility following renovations will occur on January 2.

Therese Schultz, Executive Director of the Senior Center thanked the Council for its support and reported that expansion of the facility is necessary, due to increased needs in the community.

Phillip Stark expressed disappointment at how Council handled Item 7.3. He felt it was disrespectful of the Planning Director's decision and those who worked on the Old Town SPA. He stated that businesses which provide a family oriented atmosphere are desired in Old Town.

Council Member Cooper reminded Mr. Stark that Council Members represent everyone in the community and are supportive of Old Town, as well as being business friendly.

Vice Mayor Scherman agreed with Council Member Cooper's comments and recalled having heard the same arguments against the Harley Davidson store, which turned out to be unfounded.

Glenda Simas thanked the Council for its support and reported that the Food Bank would reopen in its new building on January 1.

Mayor Hume declared the public hearing closed.

***Motion: M/S Davis/Detrick*** to adopt **Resolution No. 2009-235** approving the Substantial Amendment to the Fiscal Year 2008-09 Community Development Block Grant (CDBG) Action Plan and the FY 2009-10 CDBG Action Plan. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 7.5:** A public hearing to consider adoption of a resolution declaring the necessity and authorizing the commencement of eminent domain proceedings to secure real property interests necessary to construct Civic Center Park within the Laguna Ridge Specific Plan (APN: 132-0270-022; Site Address: 9697 & 9679 Johnston Road, Elk Grove, CA)

**RECOMMENDATION:**

Adopt resolution declaring the necessity and authorizing the commencement of eminent domain proceedings to secure real property interest necessary to construct Civic Center Park (Project) within the Laguna Ridge Specific Plan Area.

With the aid of an overhead presentation (filed), City Attorney Cochran provided an overview of the staff report and recommendation. She noted that issues of compensation would be decided in the court if Council adopts the Resolution of Necessity, which requires four affirmative votes.

Mayor Hume declared the public hearing open.

Carrie Cathalifaud representing her mother, Barbara Foster, read the following statements into the record:

*Barbara and Richard Foster, seniors on a fixed income, only agreed to sell the property under the condition of being able to stay in their house and keeping a minimum of an acre. This was also based on initial plans that would have put the Fosters inside a residential neighborhood providing them with easy access to utilities such as water, sewer, etc. The City of Elk Grove not only changed the planning, but more importantly, required the developer to secure the remaining Foster property without properly notifying the Fosters. Had the Fosters been properly notified by the City, Barbara Foster would have never signed the closing papers at escrow had she known she could not keep and stay in her home. A home that she and her late husband spent a significant amount of money remodeling, ensuring a long life for the home, and a home mortgage free. Without her signature at closing the City and developer would have had to deal with securing 60 plus acres as opposed to 3 plus acres with homes. Clearly the City never intended to allow the Fosters to remain, as current zoning prevents Barbara Foster from doing what she should have a right to do on her own property. Further evidence the City never had any intention of allowing Barbara Foster to stay can easily be interpreted from the City's unwillingness to divide the property into separate lots. In addition, the former City Attorney Tony Manzanetti visited the property and informed Barbara Foster that she would not be allowed to stay and recommended she leave sooner rather than later since all the construction activities were disturbing Mrs. Foster. Since the City never had any intention to allow Barbara Foster to stay, and did not communicate this until well after escrow had closed, the City has an ethical obligation to compensate the owners of the property based on the values of the property including the value of the home, not just the acreage, at the highest of either of the following: 1) when the City signed an agreement with the developer requiring the developer to acquire the Foster property; 2) at the close of escrow when the Foster property sale was completed, or 3) at the time Barbara Foster purchased another home because the City Attorney told her she could not stay there. Further relocation costs for being forced to move when she did not want to move should also be based on the date that would provide the highest compensation. The City needs to understand that you have caused a lot of stress and fear in Barbara Foster's life, now a widow, as she was constantly worried about having her home taken. The City came to her house and told her she could not stay, but not until long after escrow on the rest of the property had closed. How convenient. The City was unaware that anyone even lived on the property. Tony Manzanetti told me when he was walking up for that meeting, he said, "I had no idea anybody lived here on this property." In my humble opinion, the Fosters would still have had the 60 plus acres on the original contract sale date*

*if the City had been honest in their decisions and the City would have been dealing for 60 plus acres at a much higher rate than the 3 plus acres the homes are left to deal with now. The City has to take responsibilities for its actions, it cannot blame the developer for any lack of communication on their part and the City should not be assigning those communications to the developer in the first place. The City was able to come to the house property after escrow was closed and several times since, but somehow no one could come out before escrow closed and knock on the door to talk to the homeowners. My mother does not own a computer; she does not go out on the internet. As far as zoning, that is not convenient at all for her. Her husband at the time had Alzheimer's, she had to deal with him and take care of him during this time as well. This indicates the City had no concern for the long time residents of Elk Grove or the many hardships that this may cause to her. The City assigned a real property manager consultant, Julie Cline, in 2006 to resolve the Foster property acquisition. Next they reassigned John Almazan. He was there from 2006 to 2009. Reassigned a couple of months ago to Rosalyn Zeigler who has since left the City as well and now the new acquisition is now again in Julie Cline's hands. I'm not sure why John Almazan was taken off the Foster property, but this changing of hands is confusing and is very hard to caption all the details expressed to John Almazan in the years the Foster's dealt with him. We've met personally several times with John Almazan. John Almazan visited my Mom's home on the property. My mother, nor I, have yet had the opportunity to meet Julie Cline. I'm not sure why the change of hands in the real property manager. We did have a good working relationship with John Almazan.*

Letter from Keith Foster to John Almazan, as read by Ms. Cathalifaud:

*It's been almost six weeks since our last meeting about our property. I'm not sure of your tenure with the City, but I believe the City and Reynen & Bardis (R&B) had an agreement in 2006 and before for R&B to acquire our property. After the planning was changed, according to a former employee of the City and R&B at the time, my understanding was that R&B agreed to acquire our property to go along with the park plan and be responsible for the cost and payment for the property in trade for other property in consideration of housing developments that the City owned. As you know, we are unable to do anything with the property except pay taxes, etc., due to zoning, planning, and other factors beyond our control or knowledge at the time. We cannot control the City's position or the current state of the economy; however, I believe that if the economy was up and the City was ready to finish the park, the City would not be sitting back asking for patience. The City is not buying residential property. They plan to use the property for a specific plan. The houses will be razed and a park for the community will be completed. R&B and the City knew this at the time that we were offered the new amount for the land. The City has the ability to change its plans, zoning, uses, etc.; we the property owners do not. If the City acquired this property at any price and changed plans or use of the property, would that make the land any less valuable? I think not. Part of the*

*problem seems to be that R&B is no longer in the position to fulfill its obligation to the City or us. We were told by R&B that splitting the property into three separate parcels and remaining residential zoning was not a problem and the City probably fulfilled its obligation to R&B. R&B and the City have put us in a position that we cannot market or put our land out for sale to the highest bidder, make improvements to the land, or enjoy the land. I feel this is very unfair of the City to use the economy, or any other reason to ask us to be patient or accept less for the property when they have the ability to buy it or let us offer it to someone else in whole or in part. I will continue to cooperate although my patience is wearing thin. You may share my thoughts with the Council at your next meeting.*

Barbara Foster recalled that she and her husband paid \$150,000 to improve their ranch home, which she intended to live in the rest of her life. Six years ago, 60 acres was sold and three acres were surveyed out for the Foster family. In a 2006 meeting, former City Attorney Tony Manzanetti informed her that she would have to leave the property because it was needed for a park. In 2006 she received an appraisal of \$700,000 for her acre of property. Ms. Foster explained that she is 9/27<sup>th</sup> owner of the Foster property and with the most recent appraisal done by the City she expected her share to be \$155,000.

**PUBLIC COMMENT:**

Damon Mireski urged Council to be fair to the Foster family.

Mayor Hume declared the public hearing closed.

In reply to Vice Mayor Scherman, Ms. Cochran explained that, if Council adopts the Resolution of Necessity, the property must be used within seven years. If the resolution were adopted, she anticipated the matter being decided within approximately one year depending upon the court's calendar.

In answer to Council Member Detrick, Ms. Cline reported that a letter to Barbara and Keith Foster dated December 28, 2006 indicated the final and best offer for the property was \$1,248,000. Three of the four Foster family members were willing to accept the offer, Barbara Foster was not.

Ms. Cathalifaud explained that the three acre property was deeded out in 27ths. Barbara Foster owns 9/27ths, Keith and Lester Foster own 12/27ths, and Bill Foster owns 6/27ths. She stated that the amount offered by R&B in 2006 would have amounted to \$410,000 for Barbara Foster. Ms. Foster paid \$525,000 for her new home and Ms. Cathalifaud felt that she should be paid that amount for relocation costs.

Ms. Cochran stated that she spoke with the attorney representing the Fosters who told her that Mr. Manzanetti did not say that Ms. Foster had to move, or move immediately.

**Motion: M/S Cooper/Scherman to waive rule of procedure not to consider new business after 10:00 p.m. and to proceed with the remainder of the agenda. *The motion passed by the following vote: Ayes: 5; Noes: 0.***

Mayor Hume stated that he did not believe in the Resolution of Necessity or that the property needs to be purchased during the worst housing market seen in a decade.

**Motion: M/S Cooper/Davis to adopt a resolution declaring the necessity and authorizing the commencement of eminent domain proceedings to secure real property interest necessary to construct Civic Center Park (Project) within the Laguna Ridge Specific Plan Area. *The motion \*FAILED by the following vote: Ayes: 3; Noes: 2 (Detrick, Hume).***  
[\*Note: Code of Civil Procedure 1245.240]

## **REGULAR AGENDA ACTION ITEMS/RECOMMENDATIONS**

**Agenda Item No. 8.1:** Fiscal Year 2009-10 First Quarter Financial and Performance Review

### **RECOMMENDATION:**

Receive and file the informational report.

Katy Baumbach, Budget Manager, reported that Fiscal Year 2008-09 ended with \$16 million in reserve. In the first quarter of 2009-10 expenses total 20% of the budget. Sales tax receipts have decreased by 29% since last year. The State legislature suspended Proposition 1A, which allowed \$1.6 million in Elk Grove property tax revenue to be borrowed; it is to be paid back in three years at 2% interest. She briefly reviewed performance measures, as were detailed in the staff report.

### **PUBLIC COMMENT:**

None.

***Note: No action was taken by the City Council on Item 8.1***

**Agenda Item No. 8.2:** Receive report on discussions with the Sacramento Regional Transit District

### **RECOMMENDATION:**

Receive a report on discussions with the Sacramento Regional Transit District. The Council may wish to provide direction to staff as deemed appropriate.

Cody Tubbs, Deputy City Manager, recalled that, at its September 23 meeting, the City Council directed staff to discuss issues of concern with Regional Transit (RT). Those discussions resulted in RT agreeing to refine a rider survey which will result in more accurate revenue reimbursement between agencies when etran riders purchase RT monthly passes. In regard to AB466, Mr. Tubbs stated that he received communication from the Chief Financial Officer of RT who stated that their staff is committed to crafting a mutually acceptable methodology to determine what ought to be the City of Elk Grove's cost going forward. Mr. Tubbs stated that monthly meetings with RT will continue until issues are resolved.

City Manager Gill stated that she will meet quarterly with RT General Manager Mike Wiley.

**PUBLIC COMMENT:**

None.

***Note: No action was taken by the City Council on Item 8.2***

**Agenda Item No. 8.3:** Introduce the Abandoned Residential Property Registry Ordinance and adopt resolution setting registration fee

***Motion: M/S Hume/Scherman*** to continue Item 8.3 to the regularly scheduled meeting of December 9, 2009. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.4:** Introduce the Rental Housing Registry Ordinance and adopt resolution setting registration fee

***Motion: M/S Hume/Scherman*** to continue Item 8.4 to the regularly scheduled meeting of December 9, 2009. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.5:** Approve resolutions: 1) certifying the Final Environmental Impact Report (FEIR) for the Transfer Station Master Plan, adopting Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program, and 2) adopting the Transfer Station Master Plan Project (SW0001)

**RECOMMENDATION:**

Adopt resolutions:

- 1) Certifying the Final Environmental Impact Report (FEIR) for the Transfer Station Master Plan, Adopting Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program; and
- 2) Approving the Transfer Station Master Plan Project.

Bob Williamson, Project Manager, briefly introduced the item.

Council Member Davis indicated a preference for site 2.

**PUBLIC COMMENT:**

None.

***Motion #1: M/S Cooper/Detrick*** to adopt **Resolution No. 2009-236** certifying the Final Environmental Impact Report (FEIR) for the Transfer Station Master Plan, Adopting Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

***Motion #2: M/S Cooper/Detrick*** to adopt **Resolution No. 2009-237** approving the Transfer Station Master Plan Project. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.6:** Receive Staff Report and Draft Memorandum of Understanding with County of Sacramento regarding the City of Elk Grove's proposed expansion of its Sphere of Influence

**RECOMMENDATION:**

Receive the staff report and Draft Memorandum of Understanding (MOU) with the County of Sacramento regarding Elk Grove's proposed expansion of its Sphere of Influence (SOI) and direct staff to initiate a public outreach plan on the Draft MOU.

With the aid of an overhead presentation (filed), Don Hazen, Planning Director, provided an overview of the staff report.

Council Member Davis indicated an interest in being provided additional information and justification for the necessity of Jurisdictional Coordination, as outlined on page 16 of the MOU.

Council indicated general support for the draft MOU.

**PUBLIC COMMENT:**

None.

***Note: No action was taken by the City Council on Item 8.6***

**Agenda Item No. 8.7:** Appointment to the Charter Commission

**RECOMMENDATION:**

Receive information from Council Member Davis on his appointment to the Elk Grove Charter Commission.

**PUBLIC COMMENT:**

None.

Council Member Davis announced his appointment of Damon Mireski to the Charter Commission.

**Agenda Item No. 8.8:** Appointment to the Trails Committee

**RECOMMENDATION:**

Receive information from Vice Mayor Scherman on her appointment to the Elk Grove Trails Committee.

**PUBLIC COMMENT:**

None.

Vice Mayor Scherman announced her appointment of Darryl Hoopes to the Trails Committee.

**GENERAL ADMINISTRATION INFORMATION**

City Manager Laura Gill reviewed the November 18, 2009 Administrative Report (filed).

**COUNCIL COMMENTS/FUTURE AGENDA ITEMS**

Reports on Regional Boards, Commissions, Committees; Travel/Training Expenditures Disclosure (*in accordance with Resolution 2006-295 and Government Code § 53232.3(d)*):

Council Member Davis encouraged participation at the November 19 Business Summit meeting being hosted by Elk Grove Community Connection.

Council Member Detrick expressed an interest in having improved coordination and representation by Council Members at community events, to which Interim Public Information Officer Angela Frost stated that, if informed, she would include the names of Council Members attending certain functions on the weekly community events calendar.

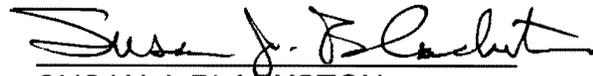
Vice Mayor Scherman asked staff to determine who owns the property in front of the cemetery on Elk Grove Boulevard and see that the weeds are abated.

Mayor Hume attended the Veterans Day Parade. He thanked Kara Reddig for coordinating the Veterans Street Naming Program and ceremony at which the first sign installed was in honor of his father. Old Town businesses have requested kiosks with maps of the Old Town area and locations of parking. He attended the Capital Southeast Connector Joint Powers Authority Board of Directors meeting on November 17 regarding the bypass for the Sheldon area. A complaint was raised

regarding the noise from truck jake breaks on Grant Line Road and he asked staff to draft an ordinance for Council consideration prohibiting the use of jake breaks within City limits.

**ADJOURNMENT**

With no additional business to conduct, the November 18, 2009 City Council meeting was adjourned at 10:45 p.m.

  
SUSAN J. BLACKSTON,  
CITY CLERK

ATTEST:

  
PATRICK HUME, MAYOR

**MINUTES OF THE CITY COUNCIL  
REGULAR MEETING  
Wednesday, December 9, 2009**

**CALL TO ORDER/ROLL CALL**

Mayor Hume called the regular City Council meeting of December 9, 2009 to order at 6:10 p.m.

Present: Mayor Hume, Vice Mayor Scherman, Council Members Davis and Detrick

Absent: Council Member Cooper

Vice Mayor Scherman led the Pledge of Allegiance.

Mayor Hume asked that a moment of silence be observed.

**APPROVAL OF AGENDA**

***Motion: M/S Scherman/Davis*** to consider Items 7.3 and 8.4 concurrently and approve the remainder of the agenda as presented. ***The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: 1 (Cooper)***

**CLOSED SESSION**

None.

**PRESENTATIONS/ANNOUNCEMENTS**

None.

**PUBLIC COMMENT**

Julie Nguyen announced that the Shen Yun Performing Arts Chinese dance performance would be held at the Sacramento Community Center Theater on January 11 and 12 and encouraged everyone to attend.

Victor Faron reported that he had been cited by Community Enhancement for a code violation. Mr. Faron claimed that he complied within three weeks as allowed; however, he was fined for two reinspection fees. He asked for assistance in resolving the matter by having the fines waived.

Marlene Sanborn, Board Chairperson for the Strauss Festival of Elk Grove presented a plaque to Mayor Hume in appreciation of the City's support of the event.

Tom Waltman submitted a 12 page document entitled, "*Submission of Charges – Ethics Violations Committed by Elk Grove City Councilman Steve Detrick*" (filed), stating that he felt it was a public duty and he believed the matter could be handled by the City Council. He characterized the process related to the New Parish Catholic Church project as "painful".

Mary Jo Columbus asked the City Council to consider the email communication she submitted regarding the New Parish Catholic Church project (filed).

Jake Allen claimed that he had been a witness to many ethics violations committed by Council Member Detrick. He alleged that Mr. Detrick had used his authority as a Council Member for personal gain and to pursue a "vendetta" against Mr. Allen's family. Further, he maintained that Mr. Detrick used his office and the resources of the City for personal political gain. He stated that Mr. Detrick forwarded a private communication between his wife and a client based on a fiduciary relationship that was confidential in nature, which resulted in an attempt by Mr. Detrick to remove him from the Charter Commission. Mr. Allen believed this was done as revenge for his wife's statement about Mr. Detrick's campaign fundraising activities. Mr. Allen declared that he would be filing a complaint with the Grand Jury about the matter.

Jimmie Johnson stated that, since Council Member Detrick was elected, he had personally witnessed him take actions in official and personal capacities which "violated the spirit, if not the letter, of the City Code of Ethics". He claimed that all of the actions were related to efforts by Council Member Detrick to pay off his campaign debt.

Elizabeth Moseby stated that she was pleased with the City government and contacts she has had with various departments. In reference to the New Parish Catholic Church project, she asked that Mr. Waltman's complaints be investigated.

Stephen Ruch expressed disappointment in how the appeal of the New Parish Catholic Church project was handled and complained of "doublespeak" by Council Members Davis and Detrick. He asserted that a good politician is decisive and defends their position.

John Milliken felt that enforcement of handicapped parking regulations should be improved by the Police Department and he suggested the use of volunteer patrols with the ability to cite violators.

*NOTE: Council Member Cooper arrived at 6:39 p.m.*

Greg Higley commended the City Council for its work during the past year. He suggested that a database of business contact information be maintained so that, in the event of a burglary, the owner could be quickly contacted. Additionally, he

recommended that bicycles be licensed and serial numbers kept on file for ease in identification.

Jake Rambo stated that he saw the email referred to earlier by Jake Allen and, in it, Council Member Detrick had asked to agendize the removal of Charter Commission Chairman Allen because of statements his wife made to her client regarding Mr. Detrick's fundraising activities. Mr. Rambo reported that, at the request of Mr. Detrick and Mr. Allen, he mediated a meeting between the two during which he alleged that Mr. Detrick stated, "I sent the email knowing the Allen's would get it." Mr. Rambo believed this comment was made because Mr. Detrick wanted the Allen's to know he was seeking to punish Ms. Allen for her statements. Mr. Rambo recommended that an independent, impartial, investigation and report be done.

Geraudo Calvillo reported that the New Parish Catholic Church ad hoc committee had been delayed because the homeowner representatives were not cooperating. He asked the City Council to intercede and ensure that three homeowner representatives are chosen and attend meetings, so the matter can be resolved.

Ray Patron expressed disappointment about Council action related to the New Parish Catholic Church project. He believed the ethics complaint should be investigated.

Dan Brennan felt that Council Member Detrick was attempting to "have it both ways" in regard to taking a position on the New Parish Catholic Church project. He spoke in support of Vice Mayor Scherman.

Paul Lindsay urged the City to conduct a thorough review of the complaints raised against Council Member Detrick. He asked that no Council Member nominate Council Member Detrick tonight for either the Mayor or Vice Mayor position and, if made, that Council Member Detrick not accept either nomination.

Council Member Davis stated that he was proud to serve with Council Member Detrick. In reference to the New Parish Catholic Church project, he noted that he and Mayor Hume were working with residents and representatives of the church to resolve the matter. He urged interested parties to focus on the issues.

Council Member Detrick maintained that he had, and would continue to, uphold every rule and regulation of the City and stand up for what he believed in. He recalled having previously admitted to making a mistake of not voting on the New Parish Catholic Church project on September 9; however, he had been clear on his deliberation of the matter. He welcomed an investigation, stating that he would accept any consequences, though he believed no wrongdoing would be found.

## **CONSENT CALENDAR ITEMS**

**Motion:** *M/S Scherman/Davis* to approve the Consent Calendar as presented.  
***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 6.1:** Approved Automatic Clearing House Nos. 646 through 676 dated November 1, 2009 through November 30, 2009, General Warrant Nos. 50045 through 50532, and Electronic Fund Transfer Nos. 2010048 through 2010061

**Agenda Item No. 6.2:** Approved September and October 2009 Treasurer's Reports

**Agenda Item No. 6.3:** Approved City Council Meeting Minutes: 1) November 18, 2009 Special Meeting (5:00 p.m.) and 2) November 18, 2009 Special Meeting (6:00 p.m.)

**Agenda Item No. 6.4:** Received report on City Manager approved purchases and contracts authorized by Elk Grove Municipal Code Chapter 3.42 Contracts and Purchasing, filed through December 2, 2009

**Agenda Item No. 6.5:** Received report on Requests for Proposals, Qualifications, and Bids

**Agenda Item No. 6.6:** **Ordinance No. 20-2009** adopted determining and declaring the need for a redevelopment agency to function in the City of Elk Grove and declaring the City Council of the City of Elk Grove to be the redevelopment agency (**Second Reading**)

**Agenda Item No. 6.7:** **Ordinance No. 22-2009** adopted levying and apportioning the special tax in territory annexed to Community Facilities District No. 2006-1 (Maintenance Services) Annexation No. 14 and amending Elk Grove Municipal Code Section 3.19.010 (**Second Reading**)

**Agenda Item No. 6.8:** **Resolution No. 2009-238** adopted establishing a policy governing the receipt and distribution of tickets and/or passes

**Agenda Item No. 6.9:** **Resolution No. 2009-239** adopted approving abandonment of a portion of a drainage easement over Lot A of Fieldstone Unit 3B

**Agenda Item No. 6.10:** **Resolution No. 2009-240** adopted approving Parcel Map No. 06-1034.00 Harbour Cove Commercial Center

**Agenda Item No. 6.11:**    **Resolution No. 2009-241** adopted accepting the Grant Line Road / State Route 99 Interchange Reconstruction Project as complete and authorizing the City Engineer to prepare, and the City Clerk to file, the Notice of Completion with the Sacramento County Recorder

**Agenda Item No. 6.12:**    **Resolution No. 2009-242** adopted authorizing the City Manager to execute a consultant contract amendment with PB Americas, Inc. for the Sheldon Road / State Route 99 Interchange Reconstruction Project to extend the term of the contract through July 31, 2010 and increase the contact by \$162,979 [for a total compensation amount not to exceed \$2,631,602]

**Agenda Item No. 6.13:**    **Resolution No. 2009-243** adopted certifying a Final Environmental Impact Report, for the Elk Grove Boulevard / State Route 99 Interchange Modifications Project, adopting Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program; and **Resolution No. 2009-244** adopted approving the Project Development of the Elk Grove Boulevard / State Route 99 Interchange Modifications Project

**Agenda Item No. 6.14:**    **Resolution No. 2009-245** adopted amending the Fiscal Year 2009-10 Budget by approving the allocation of \$836,732 in Public Transportation Modernization, Improvement and Service Enhancement Account funding for the purchase and installation of 67 automated fare boxes and ancillary equipment for the Transit fleet

**Agenda Item No. 6.15:**    **Resolution No. 2009-246** adopted transferring \$12,160 from the General Fund Contingency to the Community Grants Program for the purchase of three hydraulic lifts for Elk Grove Adult Community Training

**Agenda Item No. 6.16:**    **Resolution No. 2009-247** adopted authorizing the City Manager to waive the competitive bidding for Geographic Information System Web Hosting Services and reject all proposals received

**Agenda Item No. 6.17:**    **Resolution No. 2009-248** adopted authorizing the City Manager to execute a consultant contract with Interwest Consulting Group, Inc. to provide Building Safety and Inspection services for a three year term in the amount of 53 percent of total building permit and plan check fee revenues

**Agenda Item No. 6.18:**    **Resolution No. 2009-249** adopted authorizing the City Manager to accept two grant awards from the Office of Traffic Safety through the Regents of the University of California, Berkeley, School of Public Health in the amounts of \$21,694 and \$33,223 and increase respective revenue and expense budgets

**Agenda Item No. 6.19:**    **Resolution No. 2009-250** adopted authorizing the City Manager to execute a License Agreement with the Elk Grove Community Garden and Learning Center for the use of land as a community garden

**Agenda Item No. 6.20:**    **Resolution No. 2009-251** adopted authorizing the City Manager to amend the contract with Downtown Ford Sales of Sacramento for maintenance and repair services of the City's fleet of vehicles for one year not to exceed \$300,000

**Agenda Item No. 6.21:**    **Resolution No. 2009-252** adopted approving the City Council Chambers Use Policy

**Agenda Item No. 6.22:**    **Resolution No. 2009-253** adopted ratifying the expenditure of funds to Indoor Environmental Services for \$43,000 and amending the current maintenance contract to include repairs for Heating, Ventilation and Air Conditioning systems for City facilities in an amount not to exceed \$96,000

**Agenda Item No. 6.23:**    **Resolution No. 2009-254** adopted authorizing the City Manager to execute a consultant contract with Center for Strategic Economic Research to provide economic development analysis and market study services for the Elk Grove Market Study Project in the amount of \$100,000 and amend the Fiscal Year 2009-10 Annual Budget

## **PUBLIC HEARINGS**

**Agenda Item No. 7.1:**    A public hearing (*continued from November 18, 2009*) to consider the appeal by the Old Town Elk Grove Foundation of the Planning Commission's decision on October 1, 2009 to approve the Capital Ink Tattoo and Body Piercing business located at 9044 Elk Grove Boulevard (*APN: 125-0222-005; Project EG-09-049*); consider entering into an agreement with Capital Ink Tattoo and Body Piercing regarding conditions of operation, and adopting a moratorium on Tattoo Parlors as Permitted Uses in the Old Town Special Planning Area

## **RECOMMENDATION**

Staff recommends the City Council consider:

- 1) Adopt resolution affirming the Planning Commission's Approval of Capital Ink and Body Piercings' request to locate at 9044 Elk Grove Boulevard, within the Old Town Special Planning Area as a Commercial-Personal Services Use, and authorizing the City Manager to execute an agreement regarding conditions of operation; and
- 2) Adopt and waive the full reading, by substitution of title only, an Urgency Ordinance adopting a Moratorium on Tattoo Parlors as Permitted Uses in the Old Town Special Planning Area.

With the aid of an overhead presentation (filed), Mike Costa, Associate Planner, recalled that, on November 18, the City Council directed staff to work with the Old Town Elk Grove Foundation, the property owner, and business owner of Capital Ink Tattoo and Body Piercing. Additionally, the Council expressed a desire to have a moratorium on future development of tattoo parlors from locating within the Old Town Specific Planning Area (SPA). Both the applicant and property owner have agreed to the conditions as outlined in the staff report. He pointed out that a "green sheet" regarding modification to condition 8 had been submitted (filed). The Old Town Elk Grove Foundation does not support the proposed business without review and approval of a Conditional Use Permit. The moratorium would be effective for 45 days and its approval is contingent upon a four-fifths vote by the City Council.

Mayor Hume declared the public hearing open.

**Appellant Presentation:**

John Lambdin, President of the Old Town Elk Grove Foundation, confirmed that the Foundation was opposed to the agreement because it could not be enforced. The Foundation was also concerned that, without rules and regulations in place, this situation could reoccur.

At the request of Mayor Hume, City Attorney Cochran explained that conditional use permits (CUP) become self effectuating, i.e. the City could commence revocation proceedings if conditions were not met or if there were sustained complaints the CUP could be revoked. She noted, however, that the proposed agreement would also be a binding, enforceable agreement between the City, the property owner, and the prime tenant. She agreed that the Old Town Elk Grove Foundation could not sue under the agreement, but the City could. She mentioned that the Foundation had also expressed a concern about subtenants and she confirmed that the City would be controlling the use of the property as a whole. In reply to Mr. Lambdin's concern about the legality of limiting business hours, Ms. Cochran explained that it can legally be done through a contract, though the City could not do so through exercise of its police power.

**PUBLIC COMMENT:**

Lynn Wheat stated that tattoo and body piercing businesses are not inspected or regulated and possible risks of the procedures include HIV/AIDS, hepatitis B and C, bacterial and viral infections. She noted that there is a growing concern regarding the toxicity of certain metal and pigment in the dye of the paints used. Ms. Wheat stated that, as a nurse concerned with health risks that such businesses pose, she believed it was the City's duty to implement an educational program and suggested the following: 1) post the "*Be Smart With Body Art*" campaign questions at the business; 2) require an informed consent describing the possible health risks; 3) require the customer to show proof of current tetanus and hepatitis B vaccinations.

Patrick McGuire, owner of Capital Ink Tattoo, confirmed that tattoo businesses are regulated by the Sacramento Health Board and agency representatives annually check for employee certifications. Release forms are obtained prior to performing procedures. Customers must be over the age of 18 to get tattoos. Mr. McGuire stated that he personally ensures his employees are fully and properly trained. He noted that the six month delay in his business opening in Elk Grove amounts to a \$50,000 loss of business. Mr. McGuire confirmed his acceptance of the conditions as proposed by staff.

Geno Cassella, owner of the Brickhouse restaurant, claimed that most of the businesses in Old Town are opposed to a tattoo business operating in the area. He reported incidences of crime taking place near his restaurant in the past month and he did not believe a tattoo business would help the situation or exemplify the values of the community of Old Town Elk Grove.

Council Member Cooper disagreed with the intimation that a tattoo business would increase the crime rate. He pointed out that the vacancy rate in Old Town is high and the efforts attempted thus far to revitalize the area have not been working.

Council Member Davis commented that Elk Grove has historically been a family oriented community. He noted that the Old Town merchants do not want the tattoo business in the area and, for this reason, he could not support it.

Council Member Detrick expressed support for Planning Director Hazen's position and felt that the City Council should uphold rules and regulations that are in place. If changes are desired, then the process should be undertaken to amend the rules, rather than make exceptions.

Vice Mayor Scherman felt that the tattoo business would not be a proper fit for the Old Town area. Further, she stated that she could not support it because the merchants in Old Town were opposed to the business being located in the area.

Mayor Hume pointed out that the Planning Commission voted unanimously to allow the business to operate in Old Town. He supported the business being located in Old Town and reported that the majority of persons communicating to him about this subject were also in support. He noted that businesses rely on foot traffic and Old Town may further deteriorate if it does not attract a variety of customers to the area.

Applicant Rebuttal:

Mr. Lambdin commented that all businesses are currently struggling, due to the overall economic downturn. He reiterated that the tattoo business would not be a good fit for the Old Town area and the core issue about this matter concerns conditional use permits.

Mayor Hume declared the public hearing closed.

**Motion:** *M/S Davis/Scherman* to approve the appeal of the Old Town Elk Grove Foundation and overrule the Planning Commission's decision on October 1, 2009 to approve the Capital Ink Tattoo and Body Piercing business to be located at 9044 Elk Grove Boulevard. ***The motion passed by the following vote: Ayes: 3; Noes: 2 (Cooper, Hume).***

**Agenda Item No. 7.2:** A public hearing to consider approving the abandonment of portions of Kammerer Road and West Stockton Boulevard (formerly Kammerer Road) and adjacent Public Utility Easements and authorize the City Manager to execute a License Agreement within the Lent Ranch Marketplace Subdivision

**RECOMMENDATION:**

Adopt resolution approving the abandonment of portions of Kammerer Road and West Stockton Boulevard (formerly Kammerer Road) along with their adjacent public utility easements over Parcels I, J and K of the Lent Ranch Marketplace Subdivision and authorizing the City Manager to execute a License Agreement to allow the City to continue utilizing the property until June 1, 2010.

Public Works Director Richard Shepard briefly introduced the item.

Mayor Hume declared the public hearing open.

**PUBLIC COMMENT:**

None.

Mayor Hume declared the public hearing closed.

**Motion:** *M/S Davis/Detrick* to adopt **Resolution No. 2009-255** approving the abandonment of portions of Kammerer Road and West Stockton Boulevard (formerly Kammerer Road) along with their adjacent public utility easements over Parcels I, J and K of the Lent Ranch Marketplace Subdivision and authorizing the City Manager to execute a License Agreement to allow the City to continue utilizing the property until June 1, 2010. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

Note: Items 7.3 and 8.4 were heard concurrently.

**Agenda Item No. 7.3:** A public hearing to consider joining California Communities new CaliforniaFIRST AB 811 Statewide Financing Program

**RECOMMENDATION:**

- 1) Adopt resolution reallocating \$25,000 of Energy Efficiency and Conservation Block Grant funds to the CaliforniaFIRST AB 811 Financing Program from the Sacramento Regional Energy Alliance; and

2) Adopt resolution authorizing the City to join the CaliforniaFIRST Program.

Andrew Keys, Finance Analyst, briefly introduced the item.

Mayor Hume declared the public hearing open.

**PUBLIC COMMENT:**

Genevive Shiroma, Sacramento Municipal Utilities District Board representative, thanked the City Council for considering Items 7.3, 8.4, and 8.10, noting that they will provide more options for homeowners to invest in renewable energy and energy efficiency.

Wayne Bartholomew asked that a full presentation be provided by staff on this item. In reference to Item 7.1, Mr. Bartholomew reported that he received interest from 40 individuals regarding a vacancy in Old Town; therefore, he felt it still remains a viable, attractive area for new businesses to locate.

Mr. Keys reported that the program applies to all property types. Commercial projects can access financing if the owner chooses to do energy, water efficiency, or renewable energy generation upgrades on their property.

Mayor Hume declared the public hearing closed.

With the aid of an overhead presentation (filed), Mr. Keys explained that AB 811 is a program that allows property owners to finance energy efficiency and renewable energy generation on their home. It is a statewide program administered by a joint powers authority. No local government funds are required beyond the initial application fee. Mr. Key's explained that a portion of the \$25,000 be used to develop a coordinated regional marketing effort with Sacramento Regional Energy Alliance, which includes the Sacramento Municipal Utilities District, the County of Sacramento, and all cities within the county.

Council Member Detrick stated that it should remain a voluntary program.

**Motion #1: M/S Scherman/Davis to adopt **Resolution No. 2009-256** reallocating \$25,000 of Energy Efficiency and Conservation Block Grant funds to the CaliforniaFIRST AB 811 Financing Program from the Sacramento Regional Energy Alliance. ***The motion passed by the following vote: Ayes: 5; Noes: 0.*****

**Motion #2: M/S Scherman/Davis to adopt **Resolution No. 2009-257** authorizing the City to join the CaliforniaFIRST Program. ***The motion passed by the following vote: Ayes: 5; Noes: 0.*****

## **REGULAR AGENDA ACTION ITEMS/RECOMMENDATIONS**

**Note: The items below were heard out of order as indicated.**

Note: Items 7.3 and 8.4 were heard concurrently.

**Agenda Item No. 8.4:** Consider support of two complimentary applications to the California Energy Commission's State Energy Program to be submitted by Sacramento Municipal Utilities District and the County of Sacramento

### **RECOMMENDATION:**

- 1) Adopt resolution authorizing the Sacramento Municipal Utility District (SMUD) to apply for State Energy Program Funds from the California Energy Commission (CEC) on behalf of the City and its residents;
- 2) Adopt resolution authorizing the City Manager to execute a Memorandum of Understanding between the City of Elk Grove and SMUD regarding the proposed State Energy Program application;
- 3) Adopt resolution authorizing the County of Sacramento to apply for State Energy Program funds from the CEC on behalf of the City and its residents; and
- 4) Adopt resolution authorizing the Mayor to sign letters of commitment to both SMUD and the County of Sacramento for both agencies' applications to the California Energy Commission for receipt of State Energy Program Grants.

Andrew Keys, Finance Analyst, briefly introduced the item.

### **PUBLIC COMMENT:**

None.

**Motion #1:** *M/S Scherman/Davis* to adopt **Resolution No. 2009-258** authorizing the Sacramento Municipal Utility District (SMUD) to apply for State Energy Program Funds from the California Energy Commission (CEC) on behalf of the City and its residents. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #2:** *M/S Scherman/Davis* to adopt **Resolution No. 2009-259** authorizing the City Manager to execute a Memorandum of Understanding between the City of Elk Grove and SMUD regarding the proposed State Energy Program application. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #3:** *M/S Scherman/Davis* to adopt **Resolution No. 2009-260** authorizing the County of Sacramento to apply for State Energy Program funds from the CEC on behalf of the City and its residents. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #4:** *M/S Scherman/Davis* to adopt **Resolution No. 2009-261** authorizing the Mayor to sign letters of commitment to both SMUD and the County of Sacramento for both agencies' applications to the California Energy Commission for receipt of State Energy Program Grants. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.1:** Receive Quarterly Report by Chairman Jake Allen and provide direction regarding the Charter Commission

**RECOMMENDATION:**

Receive quarterly report from Chair Allen and provide direction as deemed appropriate.

Jake Rambo, Charter Commissioner, reported that the Commission realized, early on, that community outreach and education would be an important element in the process. With this in mind, it searched for organizations to partner with on a larger scale, as well as smaller clubs and groups that coalesce around common ideas or activities. In an effort to reach citizens that do not typically attend meetings, an informational flier and survey was designed to be inserted in the City's newsletter, which is sent to all households. Unfortunately, the Commission was not able to seek funding approval from the Council in time to meet the deadline for the most recent newsletter. Another option would be to place an insert in utility bills. Additionally, the Commission would like to have a telephone poll survey conducted. Mr. Rambo noted that a common response about the charter from the public is that it is too lengthy.

In answer to Mayor Hume, Commissioner Rambo believed that results from a telephone survey would exemplify the opinion of the "silent majority" and be of value to the City Council in analyzing what the community wants and the general level of understanding about the charter.

**PUBLIC COMMENT:**

Constance Conley reported that the only meetings which included the entire citizenry were the two meetings hosted and organized by Elk Grove Community Connection. She spoke of low voter turnout during elections and expressed concern that many people may not vote on the charter measure if it is not easily understood.

In reply to Council Member Davis, City Attorney Cochran recalled that the original intent was for the Charter Commission to be involved in public outreach after the charter measure was placed on the ballot and up until the election was held.

Mayor Hume supported the concept of utilizing the Charter Commission during the January to June outreach to educate and raise awareness of the charter measure.

Council Member Cooper pointed out that, according to the public outreach listing prepared by the Charter Commission, only 300 people have been reached since January 2009. He believed this was unsatisfactory and recommended that the City Council take over the charter process at this time. He was opposed to spending funds on a telephone survey.

Following discussion, Council concurred that the Charter Commission would be disbanded after its final submittal of the draft charter, which would occur at the regularly scheduled City Council meeting on January 13, 2010.

**Agenda Item No. 8.2:** Adopt resolution authorizing the City Manager to execute the second contract amendment with HDR/The Hoyt Company for public outreach services for the Charter Commission

**RECOMMENDATION:**

Adopt resolution authorizing the City Manager to execute the second contract amendment with HDR/The Hoyt Company for public outreach services for the Charter Commission in an amount not to exceed \$49,500.

Susan Cochran, City Attorney, provided an overview of the staff report and recommendation. She noted that approximately half of the requested \$49,500 would go toward the telephone poll.

In response to Council Member Cooper's comments, Commissioner Rambo explained that the Commission did not track attendance at all its meetings and he estimated that 2,000 to 3,000 people have been reached through Charter Commission outreach since its inception. He stated that the Charter Commission would prefer to be disbanded after the charter measure is placed on the ballot, so that its members would have the freedom to advocate for the measure.

Council Member Cooper expressed disappointment in the inaccuracy of the information presented by the Commission regarding the number of people reached through its public outreach efforts. Further, he reported that City Council Members have received complaints that the Commission was meeting only with select groups. He suggested that City Council meetings be held in every district on the subject of the charter, noting that this would reach more residents and also be much more cost effective than conducting a telephone poll.

Commissioner Rambo countered that all the Charter Commission meetings were open to the public and at each of its meetings, Commissioners reported upcoming individual meetings scheduled with various community groups. The Commission also offered an open invitation to any group in the community that wanted to have a Charter Commissioner speak at their meeting.

Council Member Davis believed that an insert in the utility bills would be a good way to reach everyone in the community; however, he was opposed to conducting the telephone survey because it would represent the opinion of only 400 to 500 residents.

Vice Mayor Scherman and Council Member Detrick voiced agreement that the City Council should take over the public outreach process after the Charter Commission submits the draft charter on January 13.

Mayor Hume felt that conducting a telephone poll could provide useful information about what elements of the charter are favorable to the voters and the overall likelihood of its success. He recalled there being an error in an informational handout that was distributed at a public meeting regarding the charter and, for this reason, he questioned the contract amendment.

City Manager Gill noted that a portion of the requested funding would be needed in order to place an insert in utility bills and/or the City newsletter.

**PUBLIC COMMENT:**

None.

***Motion: M/S Davis/Scherman*** to adopt **Resolution No. 2009-262** authorizing the City Manager to execute the second contract amendment with HDR/The Hoyt Company for public outreach services for the Charter Commission in an amount not to exceed \$27,000. ***The motion passed by the following vote: Ayes: 4; Noes: 1 (Detrick).***

**Agenda Item No. 8.3:** Receive status report and consider direction to staff to continue with the completion of draft documents for the South Sacramento Habitat Conservation Plan and Regional Programmatic Approach for Clean Water Act Permitting

**RECOMMENDATION:**

Adopt resolution receiving status report and directing staff to continue with the completion of draft documents for the South Sacramento Habitat Conservation Plan and regional programmatic approach for Clean Water Act permitting.

With the aid of an overhead presentation (filed), Stuart Somach of *Somach Simmons & Dunn* reported that the South Sacramento Habitat Conservation Plan (HCP) is being developed by project partners that include the Cities of Rancho Cordova, Elk Grove, Galt, County of Sacramento, Sacramento County Water Agency, and the Regional Sanitation District. The Freeport Regional Water Project Endangered Species Act required a biological opinion for the HCP to cover various aspects regarding new hookups associated with Freeport Project. Additionally, bonded indebtedness will start to come due when the Freeport Project comes on line in January 2011. Because of this, the HCP is also scheduled to be completed in January 2011. He noted that the HCP had been in development for 12 years preceding the Freeport Project. For the past few months, work has been done to harmonize the January 2011 Freeport Project date with the process of preparing documents for the HCP. The HCP goal is to create a regional strategy for conservation and development areas within the south part of the county, create a predictable streamlined permitting process, define mitigation requirements, and move forward with drafting various documents in a cooperative manner. The underlying conservation strategy is preservation of species, which depend on

certain habitats. The key element of the HCP is conservation of adequate amounts of various types of habitats associated with 40 target species. It must be determined what amount of habitat needs to be conserved or mitigated in order to facilitate the take of habitat in other parts of the county. Currently, there are preliminary drafts of all chapters of the HCP. A programmatic approach to permitting is being considered that would include a wetlands ordinance adopted by the land use jurisdictions. Such an ordinance would be applicable for lower threshold acreages. Larger acreage would require more notice to be provided to State and Federal agencies prior to the time a City could issue a general permit. Mr. Somach reported that Elk Grove's current sphere of influence had been included in the urban development area and the plan's calculation of take. He explained that, if other areas annex into the cities, then it would be covered in the urban development area and would be permitted under the HCP. Mr. Somach reviewed meetings that have taken place thus far and next steps in the process.

**PUBLIC COMMENT:**

Elizabeth Moseby urged Council to be cautious and consider language carefully so that Elk Grove does not lose its influence over Cosumnes River water rights.

**Motion:** *M/S Davis/Scherman* to adopt **Resolution No. 2009-263** receiving status report and directing staff to continue with the completion of draft documents for the South Sacramento Habitat Conservation Plan and regional programmatic approach for Clean Water Act permitting. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.5:** State Legislative Ad Hoc Committee Conceptual Economic Development State Office Building Incentive Program

**RECOMMENDATION:**

Adopt resolution establishing a conceptual Economic Development State Office Building Incentive Program (Program) and direct the City Manager to negotiate the amount of the incentive; review, consider and select all proposals received for the Program; and determine and implement all necessary Program steps. Additionally, prior to finalization, direct the City Manager to return with specific Program packages to be approved by the City Council.

Kara Reddig, Assistant to the City Manager, briefly introduced the item.

**PUBLIC COMMENT:**

Steve Czarniecki, Executive Director of the Elk Grove Economic Development Corporation (EDC), noted that, one of the priorities of the EDC, is to bring State office jobs to Elk Grove, which has 12,600 residents who are State employees. He urged Council to support the program.

**Motion: M/S Cooper/Scherman** to adopt **Resolution No. 2009-264** establishing a conceptual Economic Development State Office Building Incentive Program (Program) and direct the City Manager to negotiate the amount of the incentive; review, consider and select all proposals received for the Program; and determine and implement all necessary Program steps. Additionally, prior to finalization, direct the City Manager to return with specific Program packages to be approved by the City Council. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.6:** Establish an Employee Compensation Step Plan and assign pay bands to job classifications; amend the Retiree Healthcare Benefit Plan description; and amend the Fiscal Year 2009-10 annual budget

**RECOMMENDATION:**

- 1) Adopt resolution establishing an Employee Compensation Step Plan and assign a pay band to each job classification;
- 2) Adopt resolution amending Resolution No. 2007-191 to revise the Retiree Healthcare Benefit Plan; and
- 3) Adopt resolution amending the Fiscal Year 2009-10 annual budget to provide funding for the revised Retiree Healthcare Benefit Plan.

With the aid of an overhead presentation (filed), Rebecca Craig, Finance Director, explained that the proposal would assist the City Manager in efforts toward employee retention, morale, and recruitment. She recalled that, on November 18, the City Council adopted the City's first Memorandum of Understanding (MOU) with the Police Officers Association bargaining unit. The MOU provided for compensation and benefits. In an effort to be equitable amongst the remainder of the organization, staff requests Council consider adoption of the proposed resolutions related to the Retiree Health Program and compensation model for City employees.

**PUBLIC COMMENT:**

None.

**Motion: M/S Scherman/Hume** to adopt 1) **Resolution No. 2009-265** establishing an Employee Compensation Step Plan and assign a pay band to each job classification; 2) **Resolution No. 2009-266** amending Resolution No. 2007-191 to revise the Retiree Healthcare Benefit Plan, and 3) **Resolution No. 2009-267** amending the Fiscal Year 2009-10 annual budget to provide funding for the revised Retiree Healthcare Benefit Plan. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.7:** Adopt Ordinance No. 21-2009 authorizing the Mayor to amend the contract between the City Council of the City of Elk Grove and the Board of Administration of the California Public Employees' Retirement System (**Second Reading**)

**RECOMMENDATION:**

Adopt Ordinance No. 21-2009 authorizing the Mayor to amend the contract between the City Council of the City of Elk Grove and the Board of Administration of the California Public Employees' Retirement System.

Council waived the verbal staff report.

**PUBLIC COMMENT:**

None.

***Motion: M/S Detrick/Scherman*** to adopt and waive the full reading, by substitution of title only, **Ordinance No. 21-2009** authorizing the Mayor to amend the contract between the City Council of the City of Elk Grove and the Board of Administration of the California Public Employees' Retirement System. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

*Note: Items 8.8 and 8.9 were heard and considered concurrently.*

**Agenda Item No. 8.8:** Introduce the Abandoned Residential Property Registry Ordinance and adopt resolution setting registration fee

**RECOMMENDATION:**

- 1) Introduce and waive the full reading, by substitution of title only, an ordinance enacting Elk Grove Municipal Code Chapter 16.17 entitled Abandoned Residential Property Registration; and
- 2) Adopt resolution setting fees associated with the Abandoned Residential Property Registry.

With the aid of an overhead presentation (filed), Shane Diller, Community Enhancement Manager, provided an overview of the staff report and recommendation.

Council Member Davis mentioned that the idea for the concepts behind items 8.8 and 8.9 originally were brought forward by the Franklin Reserve Neighborhood Association.

At the request of Council Member Cooper, Captain Risedorph confirmed that the Police Department was in support of the programs. He explained that, when properties are victimized, it is necessary to notify the property owners and these programs will provide a valuable tool in order to reach them in an efficient manner.

**PUBLIC COMMENT:**

None.

**Motion #1:** *M/S Scherman/Detrick* to introduce and waive the full reading, by substitution of title only, **Ordinance No. 23-2009** enacting Elk Grove Municipal Code Chapter 16.17 entitled Abandoned Residential Property Registration. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #2:** *M/S Scherman/Detrick* to adopt **Resolution No. 2009-268** setting fees associated with the Abandoned Residential Property Registry. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

*Note: Items 8.8 and 8.9 were heard and considered concurrently.*

**Agenda Item No. 8.9:** Introduce the Rental Housing Registry Ordinance and adopt resolution setting registration fee

**RECOMMENDATION:**

- 1) Introduce and waive the full reading, by substitution of title only, an ordinance amending Elk Grove Municipal Code Chapter 16.20 to add Article XII regarding the Rental Housing Registration Program; and
- 2) Adopt resolution setting fees associated with the Rental Housing Registry.

With the aid of an overhead presentation (filed), Shane Diller, Community Enhancement Manager, provided an overview of the staff report and recommendation.

**PUBLIC COMMENT:**

None.

**Motion #1:** *M/S Detrick/Scherman* to introduce and waive the full reading, by substitution of title only, **Ordinance No. 24-2009** amending Elk Grove Municipal Code Chapter 16.20 to add Article XII regarding the Rental Housing Registration Program. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #2:** *M/S Detrick/Scherman* to adopt **Resolution No. 2009-269** setting fees associated with the Rental Housing Registry. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.10:** Introduction of an Ordinance amending Section 16.90.030 of the Elk Grove Municipal Code regarding waiver of permit fees for residential photovoltaic solar system installation

**RECOMMENDATION:**

Introduce and waive the full reading, by substitution of title only, an ordinance amending Elk Grove Municipal Code Section 16.90.030 regarding waiver of permit fees for residential photovoltaic solar system installation.

Richard Renfro, Chief Building Official, provided an overview of the staff report and recommendation.

**PUBLIC COMMENT:**

None.

***Motion:*** ***M/S Scherman/Davis*** to introduce and waive the full reading, by substitution of title only, **Ordinance No. 25-2009** amending Elk Grove Municipal Code Section 16.90.030 regarding waiver of permit fees for residential photovoltaic solar system installation. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.11:** Adopt Urgency Ordinance adopting a moratorium on Medical Marijuana Dispensaries, adopt an Urgency Ordinance repealing Elk Grove Municipal Code Chapter 4.16; and introduce an Ordinance repealing Elk Grove Municipal Code Chapter 4.16

**RECOMMENDATION:**

Staff recommends that the City Council take three separate actions:

- 1) Adopt and waive the full reading, by substitution of title only, an Urgency Ordinance Adopting a Moratorium on Medical Marijuana Dispensaries;
- 2) Adopt and waive the full reading, by substitution of title only, an Urgency Ordinance Repealing Elk Grove Municipal Code Chapter 4.16, "Medical Cannabis Dispensaries"; and
- 3) Introduce and waive the full reading, by substitution of title only, an Ordinance Repealing Elk Grove Municipal Code Chapter 4.16, "Medical Cannabis Dispensaries".

City Attorney Susan Cochran explained that the proposed ordinance would preclude in the Zoning Code any type of use related to a medical marijuana dispensary in the City of Elk Grove. The Municipal Code includes provisions in the business license section, which also appears to allow such uses; therefore, an ordinance is being proposed to immediately repeal that section.

**PUBLIC COMMENT:**

Terryl Wheat stated that an "uneducated stigma" is attached to medical marijuana clinics. She asked Council to consider the fiscal and social benefits of welcoming such facilities into the Elk Grove community and noted that medical marijuana patients are protected by California State law.

Council Member Cooper stated that the law, as currently written, allows for abuse, to which Mayor Hume and Council Member Davis voiced agreement.

**Motion #1:** *M/S Davis/Detrick* to adopt and waive the full reading, by substitution of title only, **Urgency Ordinance No. 26-2009** adopting a Moratorium on Medical Marijuana Dispensaries. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #2:** *M/S Davis/Detrick* to adopt and waive the full reading, by substitution of title only, **Urgency Ordinance No. 27-2009** repealing Elk Grove Municipal Code Chapter 4.16, "Medical Cannabis Dispensaries". ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion #3:** *M/S Davis/Detrick* to introduce and waive the full reading, by substitution of title only, **Ordinance No. 28-2009** repealing Elk Grove Municipal Code Chapter 4.16, "Medical Cannabis Dispensaries". ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Motion:** *M/S Scherman/Davis* to waive rule of procedure not to consider new business after 10:00 p.m. and to proceed with the remainder of the agenda. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 8.12:** Reorganization of the Elk Grove City Council

**RECOMMENDATION:**

Reorganize the Elk Grove City Council:

- 1) By motion select the Mayor
- 2) By motion select the Vice Mayor

City Clerk Susan Blackston briefly introduced the item.

**PUBLIC COMMENT:**

Connie Conley implored Council not to make decisions based on allegations.

Jake Rambo recalled that, at the October 6 Charter Commission meeting, Council Member Detrick called for the resignation of Mayor Hume's Charter Commission appointee. Mr. Rambo stated that this recommendation was based on an allegation of the individual having violated the City's Code of Ethics. Mr. Rambo believed there would be an appearance of impropriety if Council Member Detrick were serving in the capacity of Mayor or Vice Mayor while an investigation was being undertaken and he urged him to recuse himself from serving in either position until the matter has been resolved.

Tim Murphy asked Council Member Detrick to decline a nomination for Mayor, stating that the integrity of the Council needed to be upheld and the investigation borne out before any advancement occurred.

Dan Brennan stated that Council Member Detrick should not accept a nomination for Mayor or Vice Mayor. He spoke in support of Sophia Scherman for Mayor.

Paul Lindsay reiterated his earlier request that a thorough examination and investigation be done regarding the charges brought against Council Member Detrick. He asked that Council Member Detrick not be nominated for, or accept, the position of Mayor or Vice Mayor.

Norm DeYoung urged Council to "stand up for what is right" and asked that no action be taken that would result in a negative image for the City.

Mayor Hume recalled that, in 2006, he addressed the fact that the current process of selecting a mayor creates uncertainty and ambiguity. He had hoped that, by this time, Elk Grove's mayor would be an elected position. During the interim period, he suggested that order of succession be used.

Council Member Detrick stated that he respected everyone's opinion; however, he believed the comments made against him this evening were a calculated endeavor by those he had stood up to in the past. Mr. Detrick stated that he stood behind every decision he has made since being elected and he would respect whatever decision was made by the City Council.

***Motion #1: M/S Hume/Cooper to appoint Sophia Scherman as Mayor effective immediately. The motion passed by the following vote: Ayes: 4; Noes: 1 (Detrick).***

***Motion #2: M/S Cooper/Scherman to appoint Steven Detrick as Vice Mayor effective immediately. The motion passed by the following vote: Ayes: 5; Noes: 0.***

#### **GENERAL ADMINISTRATION INFORMATION**

City Manager Laura Gill reviewed the December 9, 2009 Administrative Report (filed).

City Clerk Susan Blackston congratulated Assistant City Clerk Jason Lindgren on recently being awarded the designation of Certified Municipal Clerk by the *International Institute of Municipal Clerks*. She mentioned that Mr. Lindgren had worked diligently over the past two years to complete the educational and experience requirements to earn the designation and believed him to be a great asset to the Office of the City Clerk and to the City in general.

City Manager Gill announced that Assistant City Manager Patrick Blacklock had accepted the position of Chief Administrative Officer for Yolo County and would begin on January 4. She mentioned that Mr. Blacklock had been instrumental in economic development projects, implementing the Sinclair & Associates Development Services Delivery Review recommendations, and hiring new department heads. Ms. Gill also announced that Finance Director Rebecca Craig

had agreed to serve in an interim capacity as Assistant City Manager, effective December 21.

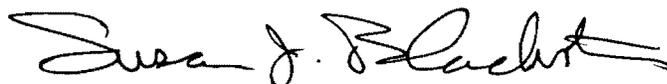
**COUNCIL COMMENTS/FUTURE AGENDA ITEMS**

Reports on Regional Boards, Commissions, Committees; Travel/Training Expenditures Disclosure (*in accordance with Resolution 2006-295 and Government Code § 53232.3(d)*):

None.

**ADJOURNMENT**

With no additional business to conduct, the December 9, 2009 City Council meeting was adjourned at 10:32 p.m.



SUSAN J. BLACKSTON,  
CITY CLERK

ATTEST:



PATRICK HUME, MAYOR

Susan Cochran  
8380 Laguna Palms Way  
Elk Grove, CA 95758

RECEIVED  
OFFICE OF THE CITY CLERK  
2013 JUN 17 AM 11:56

Re: Access to Public Records

Dear Elk Grove City Attorney Susan Cochran,

I am attorney Omar Figueroa. This letter is to request access to records in your possession for the purpose of inspection and copying pursuant to the California Public Records Act (Government Code Section 6250 et seq.).

The information that I ask to inspect is as follows:

**Any and all documents or information concerning medical marijuana, Proposition 215 (codified as Health and Safety Code § 11362.5) and/or Senate Bill 420 (codified as Health and Safety Code §§ 11362.7-11362.83), including, but not limited to, any and all guidelines, bulletins, orders, directives, policies, and/or protocols. Please provide any and all documents or information concerning medical marijuana doctors, patients, caregivers, dispensaries, collectives, cooperatives and/or associations.**

This request reasonably describes identifiable records or information produced therefrom, and I believe that there exists no express provision of law exempting the records from disclosure. Pursuant to Government Code § 6253(b), I ask that you make the record(s) "promptly available", for inspection and copying, based on my payment of "fees covering direct costs of duplication, or statutory fee, if applicable." Accordingly, I hereby authorize up to \$20 for reasonable fees and kindly request that you mail me the documents directed to: Law Offices of Omar Figueroa, 7770 Healdsburg Ave., Ste. A, Sebastopol, CA 95472-3352. Because the Law Offices of Omar Figueroa intend on making these materials available to the public without charge on the Internet, I respectfully request a fee waiver if available.

If a portion of the information I have requested is exempt from disclosure by express provisions of law, Government Code section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released. If you determine that an express provision of law exists to exempt from disclosure all or a portion of the material I have requested, Government Code § 6253(c) requires notification to me of the reasons for the determination not later than 10 days from your receipt of this request. Government Code § 6253(c) prohibits the use of the 10 day period, or any provisions of the Public Records Act "to delay access for purposes of inspecting public records."

Thank you for your timely attention to my request.

Sincerely,

*1/9/ Omar Figueroa*

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## Medical Marijuana

### 452.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for handling and distinguishing between claims of medical marijuana use under California's Compassionate Use Act (Health & Safety Code § 11362.5) and criminal narcotics violations.

### 452.2 ENFORCEMENT

Although federal law does not currently permit possession of marijuana for medical use, California has created a limited defense (i.e. no penalty) for certain qualified individuals possessing small quantities of marijuana for medical use under strict conditions.

- (a) Notwithstanding California Medical Marijuana laws:
  1. California does not provide any exception for individuals driving under the influence of marijuana. All such cases should be handled with appropriate enforcement action (e.g., Vehicle Code § 23152, et seq.).
  2. Medical marijuana may not be smoked outside of a residence within 1000 feet of a school, recreation center, youth center or in a vehicle or boat (Health & Safety Code § 11362.79).
  3. No probationer or parolee may possess medical marijuana unless such possession is authorized in writing by court order or parole conditions (Health & Safety Code § 11362.795).
- (b) Possession, cultivation and sales of marijuana in quantities beyond that which might reasonably be construed as for personal use should be handled as criminal cases with appropriate enforcement action taken pursuant to Health & Safety Code §§ 11357, 11358 and 11359.
  1. The amount of marijuana possessed must be consistent with the medical needs of the qualified patient or person with valid ID card.
  2. The quantity and form of marijuana must also be reasonably related to the patient's current medical needs.
    - (a) Absent a verifiable doctor's recommendation to exceed allotted quantities, a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient, or;
    - (b) Maintain no more than six mature, or twelve immature marijuana plants per qualified patient (Health & Safety Code § 11362.77(a)(b)).
- (c) In any case involving the possession or cultivation of marijuana, the handling officer should inquire whether the individual is claiming that the marijuana is for medicinal purposes.
  1. If no such claim is made, the officer should proceed with normal enforcement action.
  2. If a claim of medicinal use is made, the officer should proceed as outlined below.

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#### **452.3 MEDICINAL USE CLAIMS**

In order to qualify for a medicinal marijuana defense, any individual making such a claim must affirmatively establish the following information. If the individual cannot or will not provide all of the required information, the officer should note such fact in any related report and proceed with appropriate enforcement action.

##### **452.3.1 PATIENTS**

- (a) An individual may establish his/her status as a qualified patient by presenting a current and valid state issued identification card issued by the Department of Health (Health & Safety Code § 11362.735). Such identification cards shall contain the following information:
1. A unique serial number.
  2. An expiration date.
  3. The name and telephone number of the county health department approving the application.
  4. A 24-hour toll-free number for law enforcement to verify the validity of the card (Verification can be checked at www.calmmp.ca.gov).
  5. A photograph of the cardholder.

No officer shall refuse to accept a properly issued identification card unless the officer has reasonable cause to believe that the information contained in the card is false or that the card is being used fraudulently (Health & Safety Code § 11362.78).

- (b) If the individual does not possess a valid state issued identification card, the individual claiming status as a qualified patient must minimally provide the following information:
1. Satisfactory identification establishing current residency in California.
  2. A current and valid medical marijuana ID card from a local governmental agency (e.g., county) or a current and verifiable, written recommendation for marijuana from a California licensed physician.
  3. In the absence of a valid identification card, the handling officer should also obtain a written waiver from the involved individual authorizing the release of all related medical records.

##### **452.3.2 PRIMARY CAREGIVERS**

Primary caregivers are subject to the following requirements (Health & Safety Code 11362.765):

- (a) A primary caregiver is not authorized to use, sell, or possess marijuana for sale.
- (b) A primary caregiver must provide sufficient proof that he/she is responsible for the patient's housing, health and/or safety.
- (c) A primary caregiver must provide sufficient proof of personal knowledge of the patient's medical needs and the details of the attending physician's recommendation.
- (d) Upon proof that a qualified primary caregiver is caring for more than one qualified patient, he/she may aggregate possession and cultivation limits. For example, a primary caregiver caring for three qualified patients may possess 24 ounces (eight ounces per patient) of marijuana (Health & Safety Code § 11362.7(d)(2)).
- (e) While qualified patients and primary caregivers may be permitted to collectively or cooperatively associate to cultivate medical marijuana, such individuals must strictly

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adhere to all non-profit and local business requirements (Health & Safety Code § 11362.775).

#### **452.3.3 CLAIM REQUIREMENTS MET**

Once the handling officer is satisfied that the individual making a medicinal marijuana use claim meets the above requirements, the officer should proceed as follows:

- (a) Any allowable amount of marijuana left in possession of a qualified individual for the limited purpose of medicinal use should be described and noted in the related report.
- (b) If the handling officer has already taken the individual into custody (vs. detention only) prior to establishing qualification for a potential medicinal use defense and there are no other criminal charges pending or being investigated, the individual should be released pursuant to Penal Code § 849(b).
- (c) If the individual remains in custody on any charge(s), the individual will not be permitted to use marijuana while being detained or held in jail or other law enforcement facility (Health & Safety Code § 11362.785(c)).
- (d) In the event an individual has met the claim requirements to include being within the allowable quantities, but is taken into custody on unrelated charges, the marijuana should be booked as safekeeping since it will not be accepted into personal property at the jail. Safekeeping marijuana should be handled in accordance with the provisions of California Civil Code § 2080.10.

#### **452.4 CLAIM REQUIREMENTS NOT MET**

(a) The marijuana should be seized and booked as evidence, and the officer should proceed with normal enforcement action.

(b) The handling officer shall complete a timely report which will be submitted to the District Attorney with all of the aforementioned documentation for a determination of whether the medicinal marijuana defense will apply.

#### **452.5 RETURN OF MARIJUANA**

(a) Regardless of the prosecution status or disposition of any related criminal case, this department will not be responsible for the return of any marijuana seized as evidence except as may be required by a valid court order (Cal. Health and Safety Code § 11473.5 and 21 U.S.C. § 885(d)).

(b) Marijuana booked as safekeeping that is documented to meet the claim requirements may be released without a court order upon satisfactory identification establishing current residency in California