A G E N D A

Meeting of the
Scotts Valley City Council

Date: July 15, 2015
Time: 6:00 p.m.

CITY OF SCOTTS VALLEY	**MEETING LOCATION**	**POSTING**: The agenda was posted
1 Civic Center Drive Scotts Valley, CA 95066 (831) 440-5602	City Council Chambers 1 Civic Center Drive Scotts Valley, CA 95066	7-10-15 at City Hall, SV Senior Center, SV Library and on the Internet at www.scottsvalley.org.

Elected Officials	**City Staff Members**
Dene Bustichi, Mayor Donna Lind, Vice Mayor Stephany E. Aguilar, Council Member Randy Johnson, Council Member Jim Reed, Council Member	Steve Ando, City Manager Kirsten Powell, City Attorney Corrie Kates, Community Dev Dir/Deputy City Mgr Scott Hamby, Public Works Director John Weiss, Chief of Police Tracy Ferrara, City Clerk

Notice regarding City Council Meetings:
The City Council meets regularly on the 1st and 3rd Wednesday of each month at 6:00 pm in the City Hall Council Chambers located at 1 Civic Center Drive, Scotts Valley, CA 95066.

Agenda and Agenda Packet Materials:
The City Council agenda and the complete agenda packet are available for review by 5:00 pm the Friday before the Wednesday meeting on the Internet at the City's website: www.scottsvalley.org and in the lobby of City Hall at 1 Civic Center Drive, Scotts Valley, CA. Pursuant to Government Code §54957.5, materials related to an agenda item, submitted after distribution of the agenda packet, are available for public inspection in the lobby of City Hall during normal business hours, Monday-Friday, 8am-12 pm and 1-5 pm. In accordance with AB 1344, such documents will be posted on the City's website at www.scottsvalley.org.

Televised Meetings:
City Council meetings are cablecast "Live" on Community Television of Santa Cruz County on Comcast Channel 25.

CALL TO ORDER 6:00 p.m.

PLEDGE OF ALLEGIANCE and MOMENT OF SILENCE

ROLL CALL

COMMITTEE REPORTS

(Council members are appointed to committees which are either City committees or committees dealing with other jurisdictions. This portion of the agenda allows the committee member to present oral or written reports to the Council regarding their committee assignments. It also allows the Council to make comments and give the committee member direction, as required.)

Interjurisdictional Committees:

✓	Criminal Justice Council	(Lind/Johnson)
✓	Transportation Commission	(Johnson/Lind)
✓	Metro Transit District Board	(Bustichi)
✓	County Integrated Waste Mgmt Local Task Force	(Lind/Hamby)
✓	City/School District Joint Committee	(Reed/Johnson)
✓	AMBAG	(Aguilar/Lind)
✓	LAFCO	(Lind)
✓	City Selection Committee	(Mayor)
✓	League of California Cities Delegate Program	(Aguilar)
✓	Hazardous Materials Advisory Commission	(Ron Whittle)
✓	Cultural Council	(Lind)
✓	Seniors Advisory Council	(Lind)
✓	Santa Margarita Ground Water Basin Advisory Committee	(Lind /Aguilar)
✓	Library Financing Authority/Joint Powers Boards	(Reed/Johnson)

Standing Local Committees:

✓	Traffic Safety Committee	(Lind/Aguilar)
✓	Economic Development	(Johnson/Bustichi)
✓	Affordable Housing	(Aguilar/Bustichi)
✓	Water Subcommittee	(Bustichi/Lind)
✓	Budget Subcommittee	(Mayor/Vice Mayor)
✓	Sign Subcommittee	(Aguilar/Reed)
✓	Green Building Permit Process Subcommittee	(Lind/Reed)
✓	ADA Accessibility Subcommittee	(Aguilar)

Project Specific Committees:

✓	Skypark Subcommittee	(Johnson/Bustichi)
✓	Gateway South Commercial	(Reed/Johnson)
✓	Library Construction Subcommittee	(Bustichi/Reed)
✓	Glenwood Trails Subcommittee	(Aguilar/Reed)

CITY MANAGER REPORT

PUBLIC COMMENT TIME

(This is the opportunity for individuals to make and/or submit written or oral comments to the Council on any items within the purview of the Council, which are **NOT** part of the Agenda. No action on the item may be taken, but the Council may request the matter be placed on a future agenda.

ALTERATIONS TO CONSENT AGENDA
(Council can remove or add items to the Consent Agenda.)

CONSENT AGENDA
(The Consent Agenda is comprised of items which appear to be non-controversial. Persons wishing to speak on any item may do so by raising their hand to be recognized by the Mayor.)

A. Approve check register – 7-2-15, 6-30-15

B. Approve Resolution No. 1596.39 authorizing the levy of the annual special tax roll for Scotts Valley Drive for the Community Facilities District 97-1 for the fiscal year 2015/2016

C. Approve second reading and adoption of Ordinance No. 16-133.3 amending Section 17.04.180 (definitions of "O" terms), Section 17.04.220 (definitions of "S" terms), 17.20.030 (conditional uses in the C-S zone), 17.26.030 (conditional uses in the I-L zone), 17.20.040 (development standards in the C-S zone), 17.26.040 (development standards in the I-L zone), and adding Section 17.20.035 (prohibited uses in the C-S zone) of Title 17, Zoning, of the Scotts Valley Municipal Code, to prohibit outdoor storage uses on Scotts Valley Drive no matter the zone, to allow outdoor storage uses in the C-S zone as conditional uses only and to establish development standards for screening outdoor storage in the I-L and C-S zones; Zoning Ordinance Amendment AZO15-001

D. Approve second reading and adoption of Ordinance No. 16-136 amending Title 17, Zoning, of the Scotts Valley Municipal Code regarding density bonus

E. Approve second reading and adoption of Ordinance No. 16-137 amending Title 17, Zoning, of the Scotts Valley Municipal Code to adopt the City's reasonable accommodation procedures

F. Approve second reading and adoption of Ordinance No. 16-138 amending Title 17, Zoning, of the Scotts Valley Municipal Code to adopt the City's regulatory provisions for emergency shelters and transitional and supportive housing

G. Approve the improvement agreement for the realignment of Bethany Drive between the City of Scotts Valley and 1440 DEVCO LLC

H. Approve and ratify Council Member Jim Reed’s appointment of Lori Gentile to the Parks & Recreation Commission to replace Marci-Beth Maple

I. Approve and ratify the following appointments to the newly reorganized ADA Accessibility Committee:
   (1) Mayor Bustichi has requested the appointment of Robert White
   (2) Vice Mayor Lind has requested the appointment of Tom Pohle
   (3) Council Member Aguilar has requested the appointment of Ellen Buckingham

ALTERATIONS TO REGULAR AGENDA
(Council can remove or add items to the Regular Agenda.)

REGULAR AGENDA
(Persons wishing to speak on any item may do so by raising their hand to be recognized by the Mayor.)

1. Consider adding Chapter 5.22 to the Scotts Valley Municipal Code Regarding Tobacco Retail License (TRL) (Police/Milroy)

2. Future Council agenda items
(This portion of the Regular Agenda allows the Council to determine items to be placed on a future agenda and to choose a date, if so desired.)

CONVENE TO CLOSED SESSION

CLOSED SESSION

SUBJECT: Conference with labor negotiator re employee negotiations with SEIU, Mid Management Group, Management Group, Scotts Valley Police Bargaining Unit, Scotts Valley Police Supervisors Association

Legal Authority:	Govt Code section 54957.6
Name of Case:	N/A
Staff Present:	City Manager, City Attorney, Community Development Director/Deputy City Manager, Police Chief

RECONVENE TO OPEN SESSION

REPORT ON ACTION TAKEN DURING CLOSED SESSION

ADJOURNMENT

The City of Scotts Valley does not discriminate against persons with disabilities. The City Council Chambers is an accessible facility. If you wish to attend a City Council meeting and require assistance such as sign language, a translator, or other special assistance or devices in order to attend and participate at the meeting, please call the City Clerk's office at (831) 440-5602 five to seven days in advance of the meeting to make arrangements for assistance. If you require the agenda of a City Council meeting be available in an alternative format consistent with a specific disability, please call the City Clerk's Office. The California State Relay Service (TTY/VCO/HCO to Voice: English 1-800-735-2929, Spanish 1-800-855-3000; or, Voice to TTY/VCO/HCO: English 1-800-735-2922, Spanish 1-800-855-3000), provides Telecommunications Devices for the Deaf and Disabled and will provide a link between the TDD caller and users of telephone equipment.

PROCEDURAL INFORMATION FOR THE PUBLIC

THE FOLLOWING IS THE PROCEDURE COUNCIL SHOULD TAKE IN APPROVAL OF A RESOLUTION:

1. Move the Resolution number for approval.
2. Second the motion.
3. Vote by body, a roll call vote is not required.

THE FOLLOWING IS THE PROCEDURE COUNCIL SHOULD TAKE IN INTRODUCTION/ADOPTION OF AN ORDINANCE:

1. Move the Ordinance number for introduction (or adoption).
2. Move the Ordinance be introduced by title only and waive the reading of the text.
3. Read the Ordinance title.
4. Second the motion.
5. Vote by body, a roll call vote is not required.

THE FOLLOWING IS THE PROCEDURE COUNCIL SHOULD TAKE IN PUBLIC COMMENT/PUBLIC HEARINGS:

Unless otherwise determined by the presiding officer of the meeting:
1. Three minutes allowed per individual to speak.
2. Five minutes allowed per individual representing a group of three or more.

❖❖❖❖❖❖❖❖

The City of Scotts Valley does not discriminate against persons with disabilities. The City Council Chambers is an accessible facility. If you wish to attend a City Council meeting and require assistance such as sign language, a translator, or other special assistance or devices in order to attend and participate at the meeting, please call the City Clerk's office at (831) 440-5602 five to seven days in advance of the meeting to make arrangements for assistance. If you require the agenda of a City Council meeting be available in an alternative format consistent with a specific disability, please call the City Clerk's Office. The California State Relay Service (TTY/VCO/HCO to Voice: English 1-800-735-2929, Spanish 1-800-855-3000; Voice to TTY/VCO/HCO: English 1-800-735-2922, Spanish 1-800-855-3000; or, from or to Speech-to-Speech, English & Spanish 1-800-854-7787), provides Telecommunications Devices for the Deaf and Disabled and will provide a link between the TDD caller and users of telephone equipment.

SCOTTS VALLEY ACCOUNTS PAYABLE
CITY OF SCOTTS VALLEY
07/02/2015 13:22:48 Check Register
GL540R-V07.27 PAGE 1

CONSENT AGENDA ITEM A
DATE: 7-15-2015

BANK	VENDOR	CHECK#	DATE	AMOUNT	
BA GENERAL	CHECKING ACCOUNT				
001097	ACORN COURT APARTMENTS	104725	07/02/15	3,523.52	
001818	ALLIANT INSURANCE SERVIC	104726	07/02/15	4,974.00	
000009	AMBAG	104727	07/02/15	3,653.00	
000565	BANK OF NEW YORK MELLON/	104728	07/02/15	11,000.00	
001373	BAY TREE, LLC	104729	07/02/15	3,620.38	
001566	BUSINESS WITH PLEASURE	104730	07/02/15	92.44	
001015	CALIFORNIA POLICE CHIEF'	104731	07/02/15	399.00	
001956	CENTRAL COAST CISM TEAM	104732	07/02/15	200.00	
002091	COMCAST	104733	07/02/15	138.73	
001591	MARKELL/ROD	104734	07/02/15	1,974.00	
000323	NBS GOVERNMENT FINANCE G	104735	07/02/15	2,347.57	
000134	S.V. WATER DISTRICT	104736	07/02/15	8,300.00	
.14912	SCOTTS VALLEY THEATRE GU	104737	07/02/15	1,000.00	
000882	SUPERIOR ALARM COMPANY	104738	07/02/15	444.00	
GENERAL	CHECKING ACCOUNT			41,666.64	***

Check Register

GL540R

FUND RECAP:

FUND	DESCRIPTION	DISBURSEMENTS
001	GENERAL	18,525.00
004	RECREATION	210.73
010	WASTEWATER OPERATIONS	2,323.00
019	AFFORDABLE HOUSING	1,974.00
023	SVRDA SUCCESSOR AGENCY	10,793.90
025	GENERAL TRUST	92.44
026	PERS TRUST	1,500.00
090	SV DRIVE A REDEMPTION	6,247.57
TOTAL ALL FUNDS		41,666.64

BANK RECAP:

BANK	NAME	DISBURSEMENTS
BA	GENERAL CHECKING ACCOUNT	41,666.64
TOTAL ALL BANKS		41,666.64

Check Register

BANK	VENDOR		CHECK#	DATE	AMOUNT
BA	GENERAL CHECKING ACCOUNT				
	000182	A SIGN ASAP	104615	06/30/15	424.34
	000705	ADVOCACY, INC	104616	06/30/15	1,500.00
	001219	ALHAMBRA	104617	06/30/15	37.50
	001219	ALHAMBRA	104618	06/30/15	94.76
	000644	ALLEGRI ELECTRIC/PHIL	104619	06/30/15	90.00
	000789	ALLEN & ASSOCIATES/JAMES	104620	06/30/15	1,700.00
	000620	ALVAREZ/TONY	104621	06/30/15	119.34
	000563	APPI	104622	06/30/15	775.56
	001009	ARD/KRISTIN	104623	06/30/15	30.00
	003319	ARMSTRONG/KILEY	104624	06/30/15	105.00
	000998	ASSOCIATED SERVICES CO.	104625	06/30/15	98.61
	001232	AVERY ASSOCIATES, INC.	104626	06/30/15	1,500.00
	003416	BALBOA CAPITAL	104627	06/30/15	284.36
	000614	BATTERIES PLUS	104628	06/30/15	16.30
	001822	BC LABORATORIES INC.	104629	06/30/15	192.00
	001786	BECWICK/KENNETH	104630	06/30/15	360.00
	001477	BLISS/MARCIA	104631	06/30/15	55.48
	000500	BOLANOS/DORENE	104632	06/30/15	20.00
	003237	BOWEN/TIMOTHY D	104633	06/30/15	1,753.50
	000021	BOWMAN & WILLIAMS	104634	06/30/15	1,072.50
	000018	BRINK'S TROPHY SHOPPE	104635	06/30/15	112.83
	001566	BUSINESS WITH PLEASURE	104636	06/30/15	46.22
	001017	C.W.E.A.	104637	06/30/15	156.00
	001633	CAL-WEST LIGHTING & SIGN	104638	06/30/15	2,510.22
	000435	CATTERA/MARK F.	104639	06/30/15	75.00
	000773	CENTRAL COAST LANDSCAPE	104640	06/30/15	383.00
	000773	CENTRAL COAST LANDSCAPE	104641	06/30/15	2,198.00
	000226	COAST PAPER & SUPPLY INC	104642	06/30/15	65.25
	002091	COMCAST	104643	06/30/15	267.80
	002091	COMCAST	104644	06/30/15	153.02
	002091	COMCAST	104645	06/30/15	233.99
	003043	CSG CONSULTANTS, INC	104646	06/30/15	2,762.50
	001627	DITTRICH DDS/RUDOLPH	104647	06/30/15	204.00
	000738	DOMINGOS/TED	104648	06/30/15	498.54
	003354	ELITE MARTIAL ARTS, INC	104649	06/30/15	73.50
	003286	ENCOMPASS YOUTH SERVICES	104650	06/30/15	667.00
	000054	EWING IRRIGATION PRODUCT	104651	06/30/15	1,047.01
	003352	FERNANDEZ DDS/PABLO	104652	06/30/15	308.80
	003253	FIRST ALARM	104653	06/30/15	110.67
	000051	FISHER SCIENTIFIC	104654	06/30/15	231.04
	001597	FLEMING/JOSEPHINE	104655	06/30/15	18,431.21
	003083	FONG/MICHAEL	104656	06/30/15	50.00
	003194	GILROY GARDEN	104657	06/30/15	551.00
	001657	GOLDEN GATE TRUCK CENTER	104658	06/30/15	445.65
	001828	GONZALES/GABE	104659	06/30/15	20.00
	001881	GRAINGER	104660	06/30/15	2,632.78
	003438	HOFFMAN/ROBERT B	104661	06/30/15	200.00
	000615	HOHMANN/PATRICK J.	104662	06/30/15	20.00

Check Register

BANK	VENDOR		CHECK#	DATE	AMOUNT
BA	GENERAL CHECKING ACCOUNT				
	000666	HOUSING AUTHORITY OF SC	104663	06/30/15	3,752.00
	000430	INTERSTATE BATTERIES	104664	06/30/15	325.05
	001903	JONES/KIMARIE	104665	06/30/15	20.00
	003142	KELLY-MOORE PAINT CO INC	104666	06/30/15	151.11
	001859	KEMIRA WATER SOLUTIONS,	104667	06/30/15	5,712.42
	003292	KIMLEY-HORN & ASSOCIATES	104668	06/30/15	15,793.25
	003292	KIMLEY-HORN & ASSOCIATES	104669	06/30/15	11,036.90
	001660	KING/KATI	104670	06/30/15	323.68
	000066	KING'S PAINT & PAPER	104671	06/30/15	98.67
	001824	KOENIG/WES	104672	06/30/15	780.00
	001992	KOSMONT COMPANIES, INC	104673	06/30/15	4,638.40
	.14910	LEIVA/DIEGO	104674	06/30/15	200.00
	.14911	LIFESAVER TOWING	104675	06/30/15	250.00
	000284	LOGAN & POWELL, LLP	104676	06/30/15	12,782.46
	003321	LOPEZ/RENE	104677	06/30/15	20.00
	003403	MAR-KEN INTERNATIONAL PO	104678	06/30/15	260.00
	001815	MC GRATH/TRISH	104679	06/30/15	143.18
	000218	MID VALLEY SUPPLY	104680	06/30/15	1,340.21
	000967	MONTEREY BAY SYSTEMS	104681	06/30/15	82.54
	001418	MONTEREY REGIONAL	104682	06/30/15	10,184.10
	001971	MONTEREY REGIONAL WATER	104683	06/30/15	585.00
	003019	MOTOR COP SHOP, INC	104684	06/30/15	866.00
	001575	MULLIGAN/MARY	104685	06/30/15	371.70
	003192	MYSTERY SPOT/THE	104686	06/30/15	84.00
	003442	NETMOTION	104687	06/30/15	3,000.00
	000088	NORTH BAY FORD-LINCOLN-	104688	06/30/15	132.00
	001802	ONTRAC	104689	06/30/15	64.10
	000101	PACIFIC GAS & ELECTRIC C	104690	06/30/15	175.73
	000101	PACIFIC GAS & ELECTRIC C	104691	06/30/15	25.36
	003440	PACIFIC PINBALL MUSEUM	104692	06/30/15	165.00
	003443	PAPE' MACHINERY EXCHANGE	104693	06/30/15	790.16
	001890	PARKSON CORPORATION	104694	06/30/15	1,795.93
	003152	PETERSON POWER SYSTEMS,	104695	06/30/15	1,554.93
	003165	PHENOVA	104696	06/30/15	96.88
	001857	PHOENIX GROUP	104697	06/30/15	5.80
	000723	PIED PIPER INC./THE	104698	06/30/15	111.00
	003323	POMPETTE/NICOLE	104699	06/30/15	20.00
	001917	PURE VALLEY WATER, INC	104700	06/30/15	331.21
	000929	RAGING WATERS	104701	06/30/15	626.30
	.14909	REYES/BELEN	104702	06/30/15	200.00
	001533	SANTA CRUZ COUNTY BANK	104703	06/30/15	3,119.92
	000319	SCOTTS VALLEY CAR WASH	104704	06/30/15	14.99
	000133	SCOTTS VALLEY SPRINKLER	104705	06/30/15	29.63
	003312	SLAKEY BROS INC	104706	06/30/15	268.89
	000228	SOIL CONTROL LAB	104707	06/30/15	534.00
	000143	SUMMIT UNIFORMS	104708	06/30/15	555.73
	001244	SUSSMAN/HEIDI	104709	06/30/15	2,302.00
	001933	THURINGER/JOE	104710	06/30/15	143.00

Check Register

BANK	VENDOR	CHECK#	DATE	AMOUNT	
BA	GENERAL CHECKING ACCOUNT				
.14908	TOP A LOT YOGURT	104711	06/30/15	110.00	
001497	TURF & INDUSTRIAL EQUIP.	104712	06/30/15	1,036.15	
001366	U.S. BANCORP OFFICE	104713	06/30/15	656.52	
000754	UPS STORE/THE	104714	06/30/15	50.00	
001106	VERIZON WIRELESS	104715	06/30/15	909.64	
001342	WELCH/JAMES	104716	06/30/15	20.00	
003392	WENGER PAVING INC	104717	06/30/15	8,865.00	
003008	WILLIAMS/JESSE	104718	06/30/15	20.00	
003166	WISDOM/ANGIE	104719	06/30/15	595.00	
001784	WRA	104720	06/30/15	59.00	
001287	YAHYA/IB	104721	06/30/15	62.00	
001370	ZELLER APPRAISAL SERVICE	104722	06/30/15	900.00	
002021	ZOOM	104723	06/30/15	586.21	
003439	ZURC ATNAS PRINTING	104724	06/30/15	2,572.50	
	GENERAL CHECKING ACCOUNT			146,989.53	***

Check Register

BANK	VENDOR	CHECK#	DATE	AMOUNT
REPORT TOTALS:				146,989.53

RECORDS PRINTED - 000191

Check Register

GL540R

FUND RECAP:

FUND	DESCRIPTION	DISBURSEMENTS
001	GENERAL	49,145.90
002	RECYCLING/ENVIRONMENTAL	3,878.75
003	GAS TAX - SPECIAL STATE TRST	8,865.00
004	RECREATION	12,242.37
008	TRAFFIC IMPACT MITIGATION	17,439.58
010	WASTEWATER OPERATIONS	18,718.57
011	TERTIARY TREATMENT PLANT	6,135.46
012	WASTEWATER CAPITAL RESERVE	22.20
019	AFFORDABLE HOUSING	900.00
023	SVRDA SUCCESSOR AGENCY	10,731.90
025	GENERAL TRUST	2,420.00
028	SENIOR CENTER	450.47
033	TREE REPLACEMENT FUND	200.00
035	GREEN BUILDING FUNDING	1,609.81
050	PINEWOOD EST LNDSCP MAINT DT	2,581.00
112	DENTAL INS INTERNAL SERV	512.80
123	COMMUNITY FACILITY CENTER	295.96
150	GENERAL CAPITAL IMPROVEMENTS	7,839.76
306	SUPPL LAW ENFORCEMENT SRVS	3,000.00
TOTAL ALL FUNDS		146,989.53

BANK RECAP:

BANK	NAME	DISBURSEMENTS
BA	GENERAL CHECKING ACCOUNT	146,989.53
TOTAL ALL BANKS		146,989.53

Agenda No. B
Date: July 15, 2015

City of Scotts Valley
INTEROFFICE MEMORANDUM

DATE: July 15, 2015

TO: Honorable Mayor and City Council

FROM: Steve Ando, City Manager

SUBJECT: **RESOLUTION NO. 1596.39 AUTHORIZING THE LEVY OF THE ANNUAL SPECIAL TAX ROLL FOR SCOTTS VALLEY DRIVE FOR COMMUNITY FACILITIES DISTRICT 97-1 FOR THE FISCAL YEAR 2015/2016**

SUMMARY OF ISSUE

The special tax formula for Community Facilities District 97-1, adopted as part of Resolution No. 1596.1, prescribes how the Scotts Valley Drive taxes are calculated for all properties in the City of Scotts Valley. The 2015/2016 tax for every property in the District has been calculated and is shown on the "City of Scotts Valley Community Facilities District No. 97-1 Fiscal Year 2015/16 Preliminary Annual Report" which is on file in the office of the Finance Department.

FISCAL IMPACT

The special taxes total $418,767.84 for 2015/2016. This amount is sufficient to cover debt service in 2015/2016. The amount for each parcel is approximately 82% of the maximum annual tax. For instance, single family homes will be taxed at $32.13, which is approximately 82% of the annual maximum tax rate of $39.

STAFF RECOMMENDATION

It is recommended that the City Council Adopt Resolution No. 1596.39 authorizing the levy of the annual special tax roll for Community Facilities District 97-1 for fiscal year 2015/2016.

TABLE OF CONTENTS — PAGE

RESOLUTION NO. 1596.39

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY AUTHORIZING THE LEVY OF THE ANNUAL SPECIAL TAX FOR THE CITY OF SCOTTS VALLEY COMMUNITY FACILITIES DISTRICT NO. 97-1 FISCAL YEAR 2015/16

WHEREAS, the City Council of the City of Scotts Valley, California, (hereinafter referred to as the "legislative body"), has initiated proceedings, held a public hearing, conducted an election and received a favorable vote from the qualified electors relating to the levy of a special tax in a community facilities district, all as authorized pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982"; being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California. This Community Facilities District shall hereinafter be referred to as "District" and,

WHEREAS, this legislative body, by Ordinance as authorized by Section 53340 of the Government Code of the State of California, has authorized the levy of a special tax to pay the costs and expenses related to said Community Facilities Districts, and this legislative body is desirous to establish the specific rate of the special tax to be collected for the next fiscal year.

NOW THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That the specific rate and amount of the special tax to be collected to pay the costs and expenses for the next fiscal year (2015/16) for the referenced District is hereby determined and established as set forth in the referenced and incorporated "City of Scotts Valley Community Facilities District No. 97-1 Fiscal Year 2015/16 Preliminary Annual Report".

SECTION 3. That the rate as set forth above does not exceed the amount as previously authorized by Ordinance of this legislative body, and is not in excess of that as previously approved by the qualified electors of the District.

SECTION 4. That the proceeds of the special tax shall be used to pay, in whole or in part, the costs of the following:

A. Payment of principal and interest on any outstanding authorized bonded indebtedness and contractual obligations of the CFD on an annual basis;

B. Necessary replenishment of bond reserve funds or other reserve funds;

C. Payment of costs of acquisition and construction of the Scotts Valley Drive project;

D. Repayment of advances and loans, if appropriate;

E. Payment of District administrative expenses up to a maximum of $25,000 per year;

F. Anticipated delinquencies in the payment of the Special Tax.

The proceeds of the special taxes shall be used as set forth above, and shall not be used for any other purpose.

SECTION 5. The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected, and shall be subject to the same penalties and same procedure and sale in cases of any delinquency for ad valorem taxes, and the Tax Collector is hereby authorized to deduct reasonable administrative costs incurred in collecting any said special tax.

SECTION 6. All monies above collected shall be paid into the Community Facilities District fund, including any bond fund and reserve fund.

SECTION 7. The Auditor of the County is hereby directed to enter in the next County assessment roll on which taxes will become due, opposite each lot or parcel of land effected in a space marked “public improvements, special tax” or by any other suitable designation, the installment of the special tax, and for the exact rate and amount of said tax, reference is made to the referenced and incorporated “City of Scotts Valley Community Facilities District No. 97-1 Fiscal Year 2015/16 Preliminary Annual Report”.

SECTION 8. The County Auditor shall then, at the close of the tax collection period, promptly render to this Agency a detailed report showing the amount and/or amounts of such special tax installments, interest, penalties and percentages so collected and from what property collected, and also provide a statement of any percentages retained for the expense of making any such collection.

Adopted by the City Council of the City of Scotts Valley at an adjourned regular meeting of said Council held on July 15, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved: ________________________________
Dene Bustichi, Mayor
City of Scotts Valley

ATTEST: ________________________________
Tracy A. Ferrara, City Clerk
City of Scotts Valley

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Scotts Valley at an adjourned regular meeting held on July 15, 2015.

____
Tracy A. Ferrara, City Cler

CONSENT AGENDA ITEM C
DATE: 7-15-2015

ORDINANCE NO. 16-133.3

AN ORDINANCE OF THE CITY OF SCOTTS VALLEY AMENDING SECTION 17.04.180 (DEFINITIONS OF "O" TERMS), SECTION 17.04.220 (DEFINITIONS OF "S" TERMS), 17.20.030 (CONDITIONAL USES IN THE C-S ZONE), 17.26.030 (CONDITIONAL USES IN THE I-L ZONE), 17.20.040 (DEVELOPMENT STANDARDS IN THE C-S ZONE), 17.26.040 (DEVELOPMENT STANDARDS IN THE I-L ZONE), AND ADDING SECTION 17.20.035 (PROHIBITED USES IN THE C-S ZONE) OF TITLE 17, ZONING, OF THE SCOTTS VALLEY MUNICIPAL CODE, TO PROHIBIT OUTDOOR STORAGE USES ON SCOTTS VALLEY DRIVE NO MATTER THE ZONE, TO ALLOW OUTDOOR STORAGE USES IN THE C-S ZONE AS CONDITIONAL USES ONLY AND TO ESTABLISH DEVELOPMENT STANDARDS FOR SCREENING OUTDOOR STORAGE IN THE I-L AND C-S ZONES; ZONING ORDINANCE AMENDMENT AZO15-001

BE IT ORDAINED by the City Council of the City of Scotts Valley as follows:

Title 17 of the Scotts Valley Municipal Code is hereby amended to add the following Sections:

<u>**Section 1.**</u> Section 17.04.180, Definition of "O" terms, is hereby amended by adding the following definition:

"17.04.180 Definition of "O" terms.

Outdoor storage uses are prohibited in the C-S zone <u>on Scotts Valley Drive</u> and on all properties located on ~~Mt. Hermon Road and~~ Scotts Valley Drive, no matter the zone. <u>On all other properties zoned C-S, outdoor storage uses are conditional uses.</u> Outdoor Storage shall mean a space or place for storing items in the open air, not inside a completely enclosed building for a continuous period longer than twenty-four hours. A completely enclosed building is four or more walls with a roof but not a carport or porch. Items considered as outdoor storage shall include any of the following items, but not limited to, as determined by the community development director:

1. ***Appliances and furniture which are clearly not intended for outdoor use on the property;***
2. ***Building materials that are not part of a current project under construction;***
3. ***Commercial vehicles;***
4. ***Contractor's storage yard;***
5. ***Inoperable vehicles;***
6. ***Junkyards, see existing definition in this Title;***
7. ***Machinery and equipment;***
8. ***Portable outdoor storage containers, roll-off bins, shipping cargo containers;***

9. *Recreational vehicles;*
10. *Trailers;*
11. *Watercraft; and,*
12. *Other similar items as determined by the community development director to be inconsistent with the purpose and objectives of the applicable zoning district.*

Permitted outdoor storage uses may remain in place until their individual use permits expire, or in accordance with Chapter 17.48, Nonconforming Uses and Structures, of this Title. Unpermitted outdoor storage uses shall vacate the subject properties by July 1, 2016.

This definition shall not apply to:

13. *Auto rental businesses;*
14. *Auto repair shops;*
15. *Christmas tree sales;*
16. *Construction sites with an active building permit for new development which involve storing construction materials that are intended to be used within 60 days on the subject property;*
17. *Garden shops;*
18. *Gasoline service stations;*
19. *Merchandise associated with a retail or other permitted use which is displayed outdoors during the day and brought indoors at the end of the business day unless otherwise approved for merchandise to remain outdoors;*
20. *Occasional sidewalk sales;*
21. *Off-street parking and loading areas;*
22. *Open-air markets;*
23. *Outdoor garden shops;*
24. *Outdoor theatrical activities;*
25. *Sale of nursery products; and,*
26. *Vehicle sales, in accordance with this Title."*

Section 2. Section 17.04.220, Definition of "S" terms, is hereby amended by adding the following definition:

"17.04.220 Definition of "S" terms.

Screening shall mean a visual buffer consisting of wood, masonry, dense evergreen hedge, or other plant material, or a combination of these elements, or other material approved by the community development director, to reduce visual unsightliness of uses and/or items stored on the subject property."

Section 3. Chapter 17.20 is hereby amended by deleting Section 17.20.030, Conditional uses. "J. Outdoor storage;"

"17.20.030 - Conditional uses.

The following conditional uses may be permitted upon the granting of a use permit in accordance with the provisions of Section 17.50.020 of this title:

A. Animal hospitals;"

B. Automobile sales, including sale of used cars in conjunction with the sale of new cars;

C. Automotive repair and related services (such as auto supply and detail shops) in an enclosed building. This conditional use category excludes auto body repair and auto painting as well as any other use that is incompatible with surrounding uses or that may be detrimental to the health, safety and welfare of the surrounding neighbors;

D. Automotive service stations;

E. Carwash;

F. Coin-operated laundries;

G. Commercial recreation;

H. Equipment rental yards;

I. Hotels and motels;

1. Multiple-family dwellings located either above the ground-level commercial use or at ground level at the rear of a commercial space;

~~J. Outdoor storage;~~ ***J. Outdoor Storage;***

K. Public utility service yards;

L. Recreational vehicle sales, including boat sales;

M. Restaurants and bars;

N. Wholesale establishments;

O. Service shops, including printing, photographic, cabinet repair, electrical repair, heating and ventilating shops, and catering services;

P. Social halls, lodges, fraternal organizations and clubs;

Q. Churches, synagogues and other places of worship;

R. Other uses the planning commission finds to be of a similar nature to those listed above, subject to the requirements of Section 17.50.020 of this title;

S. Transitional housing: No person shall operate a transitional housing facility without obtaining a conditional use permit in compliance with Section 17.50.020. In addition the applicant will supply the following information.

a. A letter or certification of final approval from the state or county licensing authority,

b. A site plan of the property showing parking, outdoor exercise area, and fencing.

c. A letter from the fire department approving the safety of the structure for the use,

d. A letter of application describing the type of use, number of residents, age of residents, any special resident care that is provided, and a daily work schedule showing the number of employees at the facility, and

e. Landscaping and other information as required by the community development director.

f. One parking space for each single resident and/or one space for each family unit living in the facility.

<u>Section 4.</u> Chapter 17.20 is hereby amended by adding Section 17.20.035, Prohibited uses.,

"Section 17.20.035 Prohibited uses.

Outdoor storage uses are prohibited in the C-S zone <u>on Scotts Valley Drive</u> and on all properties located on ~~Mt. Hermon Road and~~ Scotts Valley Drive, no matter the zone. <u>On all other properties zoned C-S, outdoor storage uses are conditional uses.</u> Permitted outdoor storage uses may remain in place until their individual use permits expire, or in accordance with Chapter 17.48, Nonconforming Uses and Structures, of this Title. Unpermitted outdoor storage uses shall vacate the properties by July 1, 2016. Every person violating any provision of this section shall be guilty of a misdemeanor and subject to Title 4 of the Municipal Code."

<u>Section 5.</u> Chapter 17.20 is hereby amended by deleting and adding text in Section 17.20.040, Development standards.;

Section 17.20.040. Development standards., shall be amended as follows:

~~"I. Outdoor storage areas for materials and equipment shall be surrounded and screened by appropriate materials subject to the approval of the design review board. The public works department shall review the plans for adequacy of access;~~

~~J.~~***I.*** Not less than ten percent of the total site area shall be landscaped and permanently maintained;

~~K.~~***J.*** Not less than ten feet of a required yard adjoining a street shall be landscaped and permanently maintained;

~~L.~~***K.*** Trash disposal: Each parcel shall provide adequate and accessible trash disposal areas. Such disposal areas shall be screened from public view by masonry or solid wood fencing of at least six feet in height;

~~M.~~***L.*** All business, services and processes shall be conducted entirely within a completely enclosed structure, except for off-street parking and loading areas, gasoline service stations, garden shops, Christmas tree sales, open-air markets, outdoor theatrical activities and the sale of nursery products;

~~N. All sorted heavy equipment shall be parked and/or stored on the rear half of the project site and visually screened by screening materials approved by the design review board;~~

~~O.~~***M.*** Hours of Operation. All commercial activity located on the same site as multiple-family dwellings shall be limited to the hours of operation between seven a.m. and nine p.m., Monday through Friday, and between nine a.m. and six p.m. on Saturdays and Sundays;

~~P.~~***N.*** Outdoor seating at restaurants will be allowed by permit issued by the planning department under the following conditions:

1. A site plan shall be submitted to the planning department for review and approval;

2. The plan shall be reviewed and approved by the building department, fire district and police department to insure compliance with federal, state and local laws;
3. All seating shall be confined to a specific area; and
4. Failure to maintain the seating within the identified area or interference with the free flow of pedestrians shall be sufficient grounds for revocation of the outdoor seating permit."

O. Outdoor Storage:

1. Location. Outdoor storage uses are prohibited next to housing;

2. Development standards. To ensure adequate screening of new outdoor storage uses, design review approval by the planning commission shall be required and processed with the required use permit application. Screening of outdoor storage shall meet the following standards:

a. Permanent screening from any adjacent public and private right-of-ways and/or adjacent property;

b. Solid or semi-solid fence of brick, stone, tile, masonry units, or wood at least eight (8) feet tall. Chain-link fence may not be acceptable;

c. Stored materials not to project above the wall or fence, unless approved;

d. Public works department review for adequacy of access;

e. Gates securely locked when not in use; and,

f. Any other requirements deemed appropriate by the community development director.

3. Maintenance: All required screening shall be regularly well-maintained in a good and upright condition and shall be repaired or replaced to the original required state if damaged, destroyed, or in need of repair. Screening shall remain in place for as long as the use is allowed on the property."

Section 6. Chapter 17.26 is hereby amended by adding text in Section 17.20.030, Conditional uses.

Section 17.26.030. Conditional uses., shall be amended as follows:

"J. Automobile body shop~~.~~***;***
M. Outdoor storage, in accordance with this title."

Section 7. Chapter 17.26 is hereby amended by deleting and adding text to Section 17.26.040., Development standards.;

Section 17.26.040. Development standards., shall be amended as follows:

"~~J. Outside storage areas for materials and equipment shall be surrounded and screened by appropriate materials subject to the approval of the design review process;~~
~~K.~~***J.*** Not less than ten feet of a required yard adjoining a street shall be landscaped and permanently maintained;
~~L.~~***K.*** A minimum of ten percent of the total site area shall be landscaped and permanently maintained;

~~M. All stored heavy equipment shall be parked and/or stored on the rear half of the project site and visually screened by fencing material approved by the design review process;~~

~~N.~~***L.*** Off-street parking and loading facilities shall be provided as prescribed in Section 17.44.030 of this title. A maximum of two loading spaces shall be permitted on the street side of any building within sixty-five feet of the street right-of-way. There are no restrictions on the number of loading spaces located more than sixty-five feet from the street right-of-way. Loading areas shall be designed so as not to interfere with required parking, access and circulation;

~~O.~~***M.*** Trash disposal: Each parcel shall provide adequate and accessible trash disposal areas in compliance with Section 17.44.020

N. Outdoor Storage:

2. Location. Outdoor storage uses are prohibited next to housing;

2. Development standards. To ensure adequate screening of new outdoor storage uses, design review approval by the planning commission shall be required and processed with the required use permit application. Screening of outdoor storage shall meet the following standards:

a. Permanent screening from any adjacent public and private right-of-ways and/or adjacent property;

b. Solid or semi-solid fence of brick, stone, tile, masonry units, or wood at least eight (8) feet tall. Chain-link fence may not be acceptable;

c. Stored materials not to project above the wall or fence, unless approved;

d. Public works department review for adequacy of access;

e. Gates securely locked when not in use; and,

f. Any other requirements deemed appropriate by the community development director.

3. Maintenance: All required screening shall be regularly well-maintained in a good and upright condition and shall be repaired or replaced to the original required state if damaged, destroyed, or in need of repair. Screening shall remain in place for as long as the use is allowed on the property."

Section 8. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after the date of its adoption. Prior to the expiration of fifteen days from the date of adoption, this Ordinance shall be published in three public places within the City.

Section 9. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

Section 10. CEQA COMPLIANCE. Negative Declaration ND15-001 was prepared and distributed for a 20-day public review and comment period from May 22, 2015, through June 10, 2015. The Negative Declaration concluded that the outdoor storage ordinance will not have a significant negative impact on the environment. The City Council finds that the enactment of this Ordinance has complied with the California Environmental Quality Act ("CEQA;" Cal. Pub. Resources Code §§ 21000 et seq.) under the State CEQA Guidelines, and that the project will not have a significant negative impact on the environment.

This Ordinance, Number 16-133.3, was introduced on the 1st day of July, 2015, and passed and adopted on the 15th day of July, 2015, at a duly held meeting of the City Council of the City of Scotts Valley by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

Approved: ______________________________
Donna Lind, Vice-Mayor

ATTEST:

____
Tracy Ferrara, City Clerk

APPROVED AS TO FORM:

____
Kirsten Powell, City Attorney

CONSENT AGENDA ITEM D
DATE: 7-15-2015

ORDINANCE NO. 16-136

AN ORDINANCE OF THE CITY OF SCOTTS VALLEY AMENDING TITLE 17, ZONING, OF THE SCOTTS VALLEY MUNICIPAL CODE REGARDING DENSITY BONUS

WHEREAS, the City of Scotts Valley endures to find opportunities for housing for its residents; and

WHEREAS, the City of Scotts seeks to facilitate the development of affordable housing consistent with the goals, objectives and policies of the Scotts Valley General Plan; and

WHEREAS, State Density Bonus Law (Government Code Section 65915) was first adopted by the legislature in 1979, providing the opportunity for developers to receive a density bonus above what the zoning ordinance permits in exchange for the provision of affordable units.

WHEREAS, the State of California passed Senate Bill 1818, effective in January 2005, which significantly amended the provisions of Government Code Section 65915; and

WHEREAS, the State of California passed Assembly Bill 2222, effective September 2014 which made further amendments to Government Code Section 65915; and

WHEREAS, the City of Scotts Valley desires to comply with the provisions of Government Code Section 65915 and establish procedures for implementing those provisions; and

WHEREAS, the adoption of this Ordinance is exempt from California Environmental Quality Act (CEQA) review per State CEQA Guidelines Section 15305, Class 5, Minor Alterations to Land Use Limitations and do not trigger any exceptions to exemptions per Section 15300.2; and Section 15061(b)(3), general rule which states that CEQA only applies to projects which have potential to cause a significant effect on the environment; and, a Notice of Exemption shall be filed upon adoption of this Ordinance;

WHEREAS, after notice thereof having been duly, regularly and lawfully given, a public hearing on the proposed ordinance was held by the Planning Commission on June 11, 2015, where all interested persons might appear and be heard;

WHEREAS, the Planning Commission considered the ordinance changes on June 11, 2015, and recommended that the City Council adopt the proposed ordinance, via Resolution #1687;

WHEREAS, the City Council held a duly noticed and regularly and lawfully given public hearing on July 1, 2015, to consider the proposed ordinance and hear public input;

NOW, THEREFORE, the City of Scotts Valley City Council does herby ordain as follows:

Title 17 of the Scotts Valley Municipal Code is hereby amended to add the following Chapter:

Chapter 17.62 Density Bonus

17.62.010 – Intent and Purpose

This Density Bonus Ordinance is intended to provide incentives for the production of affordable housing, senior housing and the development of child care facilities. In offering these incentives, this Chapter is intended to implement the goals, objectives, and policies of the city's General Plan and to further implement and be subject to the requirements of state law (Government Code Sections 65302, 65913, and 65915-65918 et seq.). In the event that any provision in this chapter conflicts with state law, state law shall prevail.

17.62.020 – Definitions

The following terms used in the section shall be defined as follows:

"Affordable housing/affordable housing unit" means a housing unit which is available for sale to Moderate Income Households or for rent to Low and/or Very Low Income Households, as those terms are defined in this section.

"Affordable rent" means a monthly rent charged to Low and Very Low Income Households for housing units as calculated in accordance with Section 50053 of the Health and Safety Code.

"Child care facility" means a facility that provides non-medical care and supervision of minor children for periods of less than 24 hours and is licensed by the California State Department of Social Services, further subject to the definition in California Government Code Section 65915(h)(4).

"Condominium" means a form of housing tenure and other real property where a specified part of real estate, usually of an apartment house, is individually owned. Use of land access to common facilities in the piece such hallways, heating system, elevators, and exterior areas are executed under legal rights associated with the individual ownership. These rights are controlled by the association of owners that jointly represent ownership of the whole piece.

“Density bonus” means a density increase for residential units over the otherwise allowed residential density under the applicable zoning and land use designation on the date an application is deemed complete.

“Density bonus housing agreement” means a legally binding agreement between a developer and the city to ensure that continued affordability of the Affordable Housing Units required by this chapter persists and the units are maintained in accordance with this chapter.

“Density bonus units” means those additional residential units granted pursuant to the provisions of this chapter.

“Housing authority” means an appointed body of the city of Scotts Valley authorized to engage in or assist in the development or operation of affordable housing.

“Housing development” means a development project for five or more residential units. Within this Chapter, it shall also include a subdivision or common interest development, a project which rehabilitates and converts a commercial building to a residential use and a condominium conversion of an existing multi-family building.

“Incentives or concessions” means regulatory concessions which include, but are not limited to, the reduction of site development standards or zoning code requirements, approval of mixed-use zoning in conjunction with the Housing Development, or any other regulatory incentive which would result in identifiable, financially sufficient, and actual cost reductions that are offered in addition to a Density Bonus.

“Initial subsidy” means the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value. (e.g., X (fair market value of the home to be purchased) - Y (the price the moderate income family paid for the home) + Z (amount of any down payment assistance) = Initial Subsidy).

“Low income household” means a household whose income does not exceed 80 percent of the area median income for Santa Cruz County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

“Moderate income household” means a household whose gross income does not exceed 120 percent of the area median income for Santa Cruz County as published and periodically updated by the State Department of Housing and Community Development pursuant to Sections 50079.5 and 50052.5 of the California Health and Safety Code.

“Proportionate share of appreciation” means the ratio of the local government's Initial Subsidy as defined above to the fair market value of the home at the time of initial sale. (e.g. X (initial subsidy) /Y (fair market value) = Proportionate Share of Appreciation).

"Senior citizen housing development" means a residential development developed, substantially rehabilitated or renovated, and having at least 35 dwelling units for senior citizens in compliance with the requirements of Section 51.3 and 51.12 of the California Civil Code, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

"Very Low Income Household" means a household whose income does not exceed 50 percent of the area median income for Santa Cruz County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

17.62.030 – Types of Bonuses and Incentives Allowed

A. **Very Low- and Low-Income Housing and Senior Citizen Housing**. Upon written request to the city, an applicant for a housing development is eligible for one (1) density bonus of at least twenty percent (20%), but no more than thirty-five percent (35%) over the maximum residential density (except in the case of senior citizen housing, as provided below), provided that the applicant agrees to construct the housing development in accordance with one of the following criteria:

    1. **Very Low-Income Households**: Five percent (5%) of the total dwelling units, excluding any units permitted by the density bonus, are provided at affordable rent or ownership costs to very low-income households; or

    2. **Low-Income Households**: Ten percent (10%) of the total dwelling units, excluding any units permitted by the density bonus, are provided at affordable rent or ownership costs to low-income households; or

    3. **Senior Citizen Housing Development**: For senior citizen housing developments, the density bonus shall be twenty percent (20%) of the number of senior housing units provided. For "congregate senior housing facilities" (as defined in Section 17.44.100.B. of the Scotts Valley Municipal Code), refer to Section 17.44.100.C for specific density bonus provisions.

B. **Moderate-Income Housing**. Upon written request to the city, an applicant for a housing development is eligible for one (1) density bonus of five percent (5%) over the maximum residential density if the applicant agrees to construct the housing development in accordable with all of the following criteria:

    1. At least ten percent (10%) of the total dwelling units, excluding any units permitted by the density bonus, are provided at affordable ownership costs to moderate-income households; and

    2. The housing development is common interest project as defined by Section 1351 of the California Civil Code; and

    3. All of the dwelling units in the housing development are offered for sale to the public.

C. **Higher Density Bonus for Greater Contribution of Affordable Units**. Upon written request to the city, an applicant for a housing development that is eligible for a density bonus based upon the contribution of affordable units, may receive a higher amount of density bonus if the percentage of very low-, low-, and moderate-income housing units exceeds the base percentage established in Subsection A or B of this Section, as follows:

1. **Very Low-Income Units**. For each one percent (1%) increase above five percent (5%) in affordable units for very low-income households, the density bonus shall be increased by two and one-half percent (2.5%) up to a maximum of thirty-five percent (35%), as specified in Table 17.62.030.C.1, below

Table 17.62.030.C.1 Percent of Density Bonus For Greater Contribution of Very Low-Income Units	
Percentage of Very Low-Income Units	**Percentage of Density Bonus**
5%	20%
6%	22.5%
7%	25%
8%	27.5%
9%	30%
10%	32.5%
11%	35%

2. **Low-Income Units**. For each one percent (1%) increase above ten percent (10%) in the affordable units for low-income households, the density bonus shall be increased by one and one and one-half percent (1.5%) up to a maximum of thirty-five percent (35%), as specified in Table 17.62.030.C.2, below:

Table 17.62.030.C.2 Percent of Density Bonus For Greater Contribution of Low-Income Units	
Percentage of Low-Income Units	**Percentage of Density Bonus**
10%	20%
11%	21.5%
12%	23%
13%	24.5%
14%	26%
15%	27.5%
16%	29%
17%	30.5%
18%	32%
19%	33.5%
20%	35%

3. **Moderate-Income Units**. For each one percent (1%) increase above ten percent (10%) in affordable units offered for sale to moderate-income households, the density bonus shall be increased by one percent (1%) up to maximum thirty-five percent (35%), as specified in Table 17.62.030.C.3, below:

Table 17.62.030.C.3 Percent of Density Bonus For Greater Contribution of Moderate-Income Units	
Percentage of Moderate-Income Units	**Percentage of Density Bonus**
10%	5%
11%	6%
12%	7%
13%	8%
14%	9%
15%	10%
16%	11%
17%	12%
18%	13%
19%	14%
20%	15%
21%	16%
22%	17%
23%	18%
24%	19%
25%	20%
26%	21%
27%	22%
28%	23%
29%	24%
30%	25%
31%	26%
32%	27%
33%	28%
34%	29%
35%	30%
36%	31%
37%	32%
38%	33%
39%	34%
40%	35%

D. **Continued Affordability**. Affordable units qualifying a housing development for a density bonus shall remain affordable as follows:

1. Very low-income and low-income household units shall remain affordable to the designated income group for a minimum of fifty-five (55) years, or for a longer period of time if required by any construction or mortgage financing assistance

program, mortgage insurance program, or rental subsidy program applicable to the dwelling units.

2. Moderate-income household units shall remain affordable for a minimum of fifty-five (55) years, or for a longer period of time if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the dwelling units.

E. **Specification of Basis for Density Bonus**. Each applicant who requests a density bonus pursuant to this Section shall elect whether the bonus will be awarded on the basis of Subsection A1, A2, A3, or B of this Section. Each housing development is entitled to only one density bonus, which may be selected based on the percentage of very low-income affordable housing units, low-income affordable housing units, moderate-income affordable housing units, or the development's status as a senior citizen housing development. Density bonuses from more than one of these categories may not be combined.

F. **Provisions for Resale of Units**. An applicant shall agree to, and the city shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost if defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce any equity sharing agreement, unless it is in conflict with the requirement of another public funding source or law. The following apply to the equity sharing agreement:

1. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciate. The city shall recapture any initial subsidy and its proportionate share of appreciation, which amount shall be used within five (5) years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

2. For purposes of this Subsection, the city's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the ***<u>very low, low,</u>*** moderate-income household, plus the amount of any down payment assistance of mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

3. For purposes of this Subsection, the city's proportionate share of appreciation shall be equal to the ratio of the city's initial subsidy to the fair market value of the home at the time of initial sale.

17.62.040 – Density Bonus for Donations of Land

A. **Land Suitability**. Upon written request, when an applicant for a tentative map, subdivision map, parcel map, or other residential development donates developable land to the city in accordance with this section, the applicant shall be entitled to a density bonus. Applicants donating developable land to the city shall be eligible for a fifteen percent (15%) density bonus at the site of the housing development if the donated land is suitable for the construction of very low-income units equaling at least ten percent (10%) of the market rate units being constructed for the project. For each one percent increase above the minimum ten percent (10%), the density bonus shall be increased by one percent (1%), up to a maximum of thirty-five percent (35%). This increase shall be in addition to any increase in density mandated by Section 17.62.030, up to a maximum combined mandated density increase of thirty-five percent (35%) if an applicant seeks both the increase required pursuant to this Section and Section 17.62.030.

B. **Qualification Criteria**. To qualify for the additional density bonus described in Subsection A of this Section, the donation of developable land must meet all the following criteria:

1. The tentative map, subdivision map, parcel map, or other residential development must otherwise be subject to a density bonus pursuant to Section 17.62.030 of this Chapter; and

2. The land must be transferred no later than the date of the approval of the final subdivision map, parcel map, or housing development application; and

3. The developable acreage and zoning classification of the land being transferred must be sufficient to permit construction of dwelling units affordable to very low-income households in an amount not less than ten percent (10%) of the total number of market rate dwelling units in the proposed development (i.e., the proposed development before the addition of any density bonus); and

4. The donated land is at least one acre in size or is large enough to permit development of at least forty (40) units, has the appropriate general plan land use designation, has the appropriate zoning and development standards for affordable housing and, at the time of project approval is, or at the time of construction will be, served by adequate public facilities and infrastructure; and

5. No later than the date of approval of the final map, parcel map, or other development application for the housing development, the donated land must have all of the applicable permits and approvals (other than building permits) necessary for the development of the very low income housing units on the donated land, except that the city may subject the proposed housing development to subsequent design review to the extent authorized by California Government Code Section 65583.2 Subsection (i) if the design is not reviewed by the city prior to the time of transfer; and

6. The donated land is subject to a deed restriction ensuring continued affordability of the very low income units consistent with Subsection 17.62.030.D of this article, which deed restriction shall be recorded upon the donated property at the time of its transfer; and

7. The land will be transferred to the city or to a housing developer approved by the city. The city reserves the right to require the applicant to identify a developer and to require that the land be transferred to the developer; and

8. The land is within the boundary of the proposed housing development or within one-fourth (1/4) mile of the boundary of the proposed housing development; and,

9. No later than the date of approval of the final map, parcel map, or other development application for the housing development, a proposed source of funding for the construction of the very low-income housing units shall be identified.

C. **Density Bonus Based on Greater Suitability of Land for Very Low-Income Housing**. For each one percent (1%) increased above the minimum ten percent (10%) in the number of very low-income housing units that can be accommodated on the donated land, the maximum density bonus shall be increased by one percent (1%), up to a maximum of thirty-five percent (35%), as specified in Table 17.62.040.C, below:

Table 17.62.040.C Percent of Additional Density Bonus for Additional Very Low-Income Units on Donated Land	
Percentage of Very Low-Income Units that can be Accommodated on Donated Land	**Percentage of Additional Density Bonus**
10%	15%
11%	16%
12%	17%
13%	18%
14%	19%
15%	20%
16%	21%
17%	22%
18%	23%
19%	24%
20%	25%
21%	26%
22%	27%
23%	28%
24%	29%
25%	30%
26%	31%
27%	32%
28%	33%
29%	34%
30%	35%

17.62.050 – Condominium Conversions

A. Applicable requirements and procedures for the review and approval or disapproval of the conversion of existing multi-family rental housing to residential condominiums are provided in Section 17.44.060, Condominium Conversions and Condominiums, of the Scotts Valley Municipal Code.

B. An applicant for a conversion of existing rental apartments to condominiums is eligible for either a density bonus or other incentives of equivalent financial value, at the option of the city, if the applicant agrees to provide: 1) at least thirty-three percent (33%) of the total units of the proposed condominium project to persons and families of low- or moderate-income as defined in Section 50093 of the Health and Safety Code, or 2) at least fifteen percent (15%) of the total units of the proposed condominium project to low-income households as defined in Section 50079.5 of the Health and Safety Code, and 3) the applicant agrees to pay for the reasonably necessary administrative costs incurred by the city pursuant to this Section.

C. Condominium conversions qualified under Subsection A of this Section, may receive one of the following, at the city's option:

    1. A flat density bonus of twenty-five percent (25%) to be provided within the existing structure or structures proposed for conversion, excepting that a condominium conversion is ineligible for this bonus if the apartments to be converted originally received a density bonus or incentives pursuant to any other provisions of this article or pursuant to California Government Code Section 65915. An applicant may choose to implement a lower density bonus.

    2. Incentives of equivalent financial value in the form of a reduction or waiver of requirements or fees which the city might otherwise apply as conditions of conversion approval. "Other incentives of equivalent financial value" shall not be construed to require the city to provide cash transfer payments or other monetary compensation to the condominium conversion project or its applicant.

D. The city reserves the right to place such reasonable conditions of the granting of a density bonus or other incentives of equivalent financial value pursuant to this Section as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchases who are persons and families of low- and moderate-income or lower income households.

E. Condominium conversions are eligible only for the granting of a density bonus or incentive of equivalent value pursuant to this section, which bonus or incentive may not be granted in addition to, or combined with, any other incentives, concessions, density bonuses or waivers and reductions of development standards pursuant to other sections of this article. Nothing in this Section shall be construed to require the city to approve a proposal to convert rental apartments into condominiums.

F. An applicant shall be ineligible for a density bonus or any other incentives or concessions if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low-income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low-income households, unless the proposed condominium project replaces those units, as defined in Subsection 17.62.070.G, and either of the following applies:

1. The proposed condominium project, inclusive of the units replaced, contains affordable units at the percentages set forth in Subsection 17.62.050.A.

2. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low-income household.

G. Subsection 17.62.050.F does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by the city before January 1, 2015.

17.62.060 – Childcare Facilities

A. A housing development that is eligible for a density bonus pursuant to Section 17.62.030 of this article, and also includes a childcare facility qualified under this Section is eligible for either of the following, at the option of the city, if requested in writing by the applicant:

1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility; or

2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

B. A childcare facility will only qualify the housing development for an additional density bonus or incentive or concession if it is: 1) located on the premises of, as part of, or adjacent to the housing development, and 2) the housing development is otherwise eligible for a density bonus pursuant to Section 17.62.030 of this article. As a condition of approving the additional density bonus for the housing development, the childcare facility must meet all of the following criteria:

1. The childcare facility may be used only for childcare for a period of time that is as long as or longer than the period of time during which the affordable units are required to remain affordable as stated in deed restrictions and pursuant to Subsection 17.62.030.D of this article; and

2. Of the children who attend the childcare facility, the percentage of children of very low- income households, low- income households, or moderate-income households shall be equal to or greater than the percentage of dwelling units that are proposed to be affordable to very low-income households, low-income households, or moderate-income households pursuant to Section 17.62.030 of this article.

C. Notwithstanding any requirement of this Section, the city shall not be required to provide a density bonus or concession or incentive for a childcare facility if it makes a written finding, based upon substantial evidence, that the community already has adequate childcare facilities.

17.62.070 – General Provisions Governing Density Bonus Calculations

A. For the purposes of any provisions in this article, an applicant may elect to accept a lesser percentage of density bonus than that to which the housing development is eligible.

B. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded up to the next larger whole number.

C. For the purpose of calculating a density bonus, the dwelling units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the affordable units are located.

D. For the purposes of this article, the "total units" or "total dwelling units" in a housing development does not include those units added by any density bonus.

E. Regardless of the number or extent of affordable units, senior housing, land dedication, childcare facilities or other qualifications for a density bonus provided in any single housing development, no housing development may be entitled to a total density bonus of more than thirty-five percent (35%). Table 16.62.070.E provides a summary of density bonus by type of affordable housing unit.

Table 16.62.070.E Density Bonus Summary				
Types of Affordable Units Providing Eligibility for a Density Bonus	**Minimum Percent**	**Bonus Granted**	**Additional Bonus for Each 1% Increase in Affordable Units**	**Percent of Affordable Units Required for Maximum 35% Bonus**
Affordable Housing Type:				
Very Low-Income	5%	20%	2.5%	11%
Low-Income	10%	20%	1.5%	20%
Moderate-Income	10%	5%	1%	40%
Senior Citizen Housing	Qualified Development	20% of the units	-	-
Land Donation for Very Low-Income Housing:				
Land Donation for Very Low-Income Housing	Land donated can accommodate 10% of market rate units, plus housing development qualified for density bonus as an affordable or senior project	15%	1%	30% of market rate units (assuming housing development provides 5% very low-income units)
Condominium Conversions:				
Low-Income	15%	25% [1]	-	-
Low/Moderate-Income	33%	25%[1]	-	-
Childcare Facility:				
Childcare Facility	Housing Development qualifies for density bonus as an affordable or senior project	Square feet in childcare facility[1]	-	-
Note: (1) Maximum of 25 percent (25%) bonus for condominium conversions, or an incentive or equal value, at the city's option				

F. An applicant shall be ineligible for a density bonus or any other incentives or concessions if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

1. The proposed housing development, inclusive of the units replaced pursuant to this Section, contains affordable units at the percentages set forth in Section 17.62.030.

2. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

G. For the purposes of this paragraph, "replace" shall mean either of the following:

1. If any dwelling units described in Subsection 17.62.030.F, above, are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those household in occupancy. For unoccupied dwelling units in a development with occupied units, the proposed housing development shall provide units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category in the same proportion of affordability as the occupied units. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to Subsection 17.62.030.F, above.

2. If all dwelling units have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, then one-half of the required units shall be made available at affordable rent or affordable housing cost to, and occupied by, very low-income persons and families and one-half of the required units shall be made available for rent at affordable housing costs to, and occupied by, low-income persons and families. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restrictions for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to Subsection 17.62.020.F.

H. Subsection 17.62.030.F does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by the city before January 1, 2015.

17.62.080 – Incentives and Concessions for Affordable Housing

A. **Definition of a Qualified Incentive or Concession**. A qualifying project shall be entitled to at least one (1) but no more than three (3) of the following incentives identified by state law:

   1. A reduction in the parcel development standards (e.g. coverage, setback, zero lot line and/or reduced parcel sizes, architectural design requirements and/or parking requirements). Development standard means any ordinance, general plan element, specific plan, condition, law, policy, resolution, or regulation. In no case may the city apply a development standard that will have the effect of precluding the construction of affordable units. A waiver or modification to development standards may be requested by the applicant, and shall be approved unless such waiver or modification creates an adverse impact as described in Subsection C2, below.

   2. Approval of mixed use zoning in conjunction with the housing project if nonresidential land uses will reduce the cost of the housing project, and the nonresidential land uses are compatible with the housing project and existing or planned development in the area where the proposed development will be located.

   3. Other regulatory incentives or concessions proposed by the applicant or the city that will result in identifiable, financially sufficient and actual cost reductions.

B. **Number of Incentives.** The number of incentives shall be based on the percentage of affordable units in the project as follows, and summarized in Table 17.62.080.B, below:

   1. One (1) incentive or concession shall be entitled for projects where at least five percent (5%) of the total units are for very low-income households, ten percent (10%) of the total units are for low-income households, or ten percent (10%) of the total units in a common interest development are sold to moderate-income households.

   2. Two (2) incentives or concessions shall be entitled for projects where at least ten percent (10%) of the total units are for very low-income households, twenty percent (20%) of the total units are for low-income households, or at least twenty percent (20%) of the total units in a common interest development are sold to moderate-income households.

   3. Three (3) incentives or concessions shall be entitled for projects where at least fifteen percent (15%) of the total units are for very low-income households, thirty percent (30%) of the total units are for low-income households, or thirty percent (30%) of the total units in a common interest development are sold to moderate-income households.

Table 17.60.080.B Density Bonus Incentives and Concessions Summary			
Affordable Units of Category	Percent of Affordable Units		
Affordable Housing Types:			
Very Low-Income	5%	10%	15%
Low-Income	10%	20%	30%
Moderate-Income	10%	20%	30%
Maximum incentive(s)/concession(s)[1,2,3]	1	2	3
Notes 1. An incentive or concession may be requested only if an application is also made for a density bonus. 2. Incentives or concessions may be selected from only 1 category (very low-, low-, or moderate). 3. No incentives or concessions are available for land donation.			

C. **Findings to Deny Incentive or Concession**. The city shall grant the incentive or concession requested by the applicant unless the city makes a written finding based upon substantial evidence of any of the following:

1. The incentive or concession is not required in order to provide for affordable housing costs or for affordable rents for the restricted units; or

2. The concession or incentive would have a specific adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse without rendering the development unaffordable to low- and moderate-income households. A specific adverse impact means a significant, unavoidable impact, as provided in written standards, policies, or conditions; or,

3. The incentive or concession would be contrary to state or federal law.

D. **Exceptions**. This section does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city or the waiver of fees or dedication requirements. Nor does any provision of this Section require the city to grant an incentive or concession found to have a specific adverse impact.

E. Amendment, Zone Change. The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.62.090 – Waivers and Modifications of Development Standards

A. Applicants granted a density bonus pursuant to Section 17.62.030 of this article may, by written proposal, seek a waiver, modification or reduction of development standards that would otherwise have the effect of physically precluding the construction of the housing development at the densities or with the concessions or incentives permitted pursuant to this article. The applicant may also request a meeting with the city to discuss such request for waiver and modifications.

B. In order to obtain a waiver or modification of development standards, the applicant shall show that the development standards will have the effect of precluding the construction of a housing development meeting the criteria of Section 17.62.030 of this article, at the densities or with the concessions or incentives permitted by this article.

C. A proposal for the waiver or reduction of development standards pursuant to this section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 17.62.080 of this article.

D. The city may deny a request for any waiver, modification or reduction of development standards if the wavier, modification or reduction would have a specific adverse impact.

17.62.100 – Parking Incentives

Upon the written request of the applicant for a housing development meeting the criteria for a density bonus under Section 17.62.030 of this article, the city shall not require a vehicular parking ratio that exceeds the following:

A. Zero to one bedroom units: One (1) onsite parking space.

B. Two (2) to three (3) bedroom units: Two (2) onsite parking spaces.

C. Four (4) and more bedroom units: Two and one-half (2 1/2) parking spaces.

Guest parking and handicapped parking shall be included within the maximum number of spaces that may be required. If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this Section, a housing development may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking. For purposes of this article, the parking ratios set forth in this Section shall be deemed a concession or incentive available to the applicant under Section 17.62.080 of this article.

17.62.110 – Standards for Density Bonus Housing Developments

A. Affordable units qualifying a housing development for a density bonus shall be reasonably dispersed throughout the housing development and compatible with the design of market rate units in terms of appearance, materials, and finished quality. The applicant may reduce the interior amenities and square footage of inclusionary units, provided all units conform to all other requirements of this Municipal Code.

B. For developments with multiple market rate units containing differing numbers of bedrooms, affordable units qualifying a housing development for a density bonus shall be representative of the market rate unit mix.

C. All building permits for affordable units qualifying a housing development for a density bonus shall be issued concurrently with, or prior to, issuance of building permits for the market rate units, and the affordable units shall be constructed concurrently with, or prior to, construction of the market rate units. Occupancy permits and final inspections for affordable units qualifying a housing development for a density bonus shall be approved concurrently with, or prior to, approval of occupancy permits and final inspections for the market rate units.

17.62.120 – Application Requirements

A. An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this Section shall be submitted with the first approval of the housing development and processed concurrently with all other applications required for the housing development.

B. For affordable units qualifying the housing development for a density bonus, the application shall include the following information:

  1. A site plan identifying the base project without the density bonus, number and location of all inclusionary units, affordable units qualifying for the project for a density bonus, and proposed density bonus units; and

  2. Proposed category(ies) qualifying the housing development for a density bonus; and

  3. Level of affordability of all affordable and inclusionary units and proposals for ensuring affordability, if applicable; and,

  4. A description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards.

  5. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in Section 17.62.040 of this article can be made.

  6. If the density bonus or incentives of equivalent financial value are based upon a condominium conversion with affordable units or senior citizen housing, the application shall demonstrate that the project meets the qualifications and findings stated in Section 17.62.050 of this article.

  7. If a density bonus or concession is requested for a childcare facility, the application shall show the location and square footage of the childcare facility and provide evidence that the findings included in Section 17.62.060 of this article can be made.

C. Upon submission of the application to the city, the community development director or designee shall determine if the application is complete and conforms to the provisions of this article. No application for a first approval for a housing development requesting a density bonus, incentives, concessions, or waivers may be deemed complete unless an affordable housing plan is submitted conforming to the provisions of this article.

D. A request for a minor modification of an approved application may be granted by the city Manager or designee if the modification is substantially in compliance with the original application and the conditions of approval. Other modifications to the affordable housing plan shall be processed in the same manner as the original application.

17.62.130 – Application Review

A. An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this article shall be reviewed as part of the first approval of the housing development by the approval body with authority to approve the housing development, unless additional review by the planning commission or city council is required. An applicant proposing a housing development pursuant to this article may submit a preliminary application prior to the submittal of any formal request for approval of a housing development.

B. Within ninety (90) days of receipt of the preliminary application the city shall provide to an applicant, a letter which identifies project issues of concern (the maximum financial assistance that the community development director can support when making a recommendation to the city council), and the procedures for compliance with this article. The community development director shall inform the applicant that the requested additional incentives shall be recommended for consideration with the proposed housing development, or that alternative or modified additional incentives pursuant to Section 17.62.080 of this article shall be recommended for consideration in lieu of the requested incentives. If alternative or modified incentives are recommended by the community development director, the recommendation shall establish how the alternative or modified incentives can be expected to have an equivalent affordability effect as the requested incentives.

C. Before approving an application for a density bonus, incentive, concession, waiver, or modification, the approval body shall make the following findings:

   1. The housing development is: a) eligible for a density bonus, and/or b) any concessions, incentives, waivers, modifications, or reduced parking standards requested conform to all requirements of this article, and c) supported by a financing mechanism for all implementation and monitoring costs.

   2. If the density bonus is based all or in part on dedication of land, the application meets the qualifications and findings stated in Section 17.62.040 of this article.

   3. If the density bonus or incentives of equivalent financial value are based upon a condominium conversion with affordable units or senior citizen housing, that the application meets the qualifications and findings stated in Section 17.62.050 of this article.

   4. If the density bonus, incentive, or concession is based all or in part on the inclusion of a childcare facility, the application meets the qualifications and findings stated in Section 17.62.060 of this article

   5. If a waiver or modification is requested, the applicant has shown that the waiver, modification or reduction of development standards meets the qualifications and findings stated in Section 17.62.090 of this article.

D. If the findings stated in Subsection C of this Section can be made, and a request for an incentive or concession is otherwise consistent with this article, the approval body may deny a concession or incentive based upon written findings of any of the factors stated in Section 17.62.080 of this article for the denial or disqualification of a concession or incentive.

E. If the required findings stated in Section 17.62.080.C can be made, and a request for a waiver or modification is otherwise consistent with this article, the approval body may deny the requested waiver or modification based upon written findings of any of the factors stated in Section 17.62.090 of this article for the denial or disqualification of a waiver or modification.

F. Nothing in this section shall be interpreted to require the city to grant an incentive or concession or to waive or reduce development standards if that incentive, concession, waiver, or reduction has a specific adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

G. Any decision regarding a density bonus, incentive, concession, waiver, modification, or revised parking standard may be appealed pursuant to Chapter 17.50 of the Scotts Valley Municipal Code. In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.62.140 – Developer Affordable Housing Agreement

A. Applications requesting a density bonus shall agree to enter into a density bonus housing agreement with the city. The terms of the draft agreement shall be reviewed and revised as appropriate by the community development director, who shall formulate a recommendation to the planning commission for final approval. A density bonus housing agreement shall be made a condition of the discretionary planning permits for all housing developments pursuant to this article and shall be recorded as a restriction on any parcels on which the affordable units or density bonus units will be constructed.

B. The density bonus housing agreement shall be recorded prior to final or parcel map approval, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The density bonus housing agreement shall run with the land and bind future owners and successors in interest.

Section 1. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after the date of its adoption. Prior to the expiration of fifteen days from the date of adoption, this Ordinance shall be published in three public places within the City.

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

Section 3. REPEALS CONFLICTING ORDINANCES. All other ordinances of the City of Scotts Valley or provisions of the Scotts Valley Municipal Code which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

This Ordinance was introduced on the 1st day of July, 2015, and passed and adopted on the 15th day of July, 2015, at a duly held meeting of the City Council of the City of Scotts Valley by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved:______________________________
Dene Bustichi, Mayor

ATTEST:

____
Tracy Ferrara, City Clerk

APPROVED AS TO FORM:

____
Kirsten Powell, City Attorney

ORDINANCE NO. 16-137

AN ORDINANCE OF THE CITY OF SCOTTS VALLEY AMENDING TITLE 17, ZONING, OF THE SCOTTS VALLEY MUNICIPAL CODE TO ADOPT THE CITY'S REASONABLE ACCOMMODATION PROCEDURES

WHEREAS, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act prohibit discrimination in housing against individuals with disabilities and require that municipal agencies take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities;

WHEREAS, fair housing laws require that cities provide individuals with disabilities or their representatives flexibility when applying adopted land use and zoning regulations;

WHEREAS, California municipal agencies are required to identify constraints that may inhibit a person with disabilities access to housing and develop strategies to remove constraints or provide reasonable accommodation for such housing;

WHEREAS, California municipal agencies should adopt Reasonable Accommodation Procedures to provide flexibility when applying adopted land use and zoning regulations;

WHEREAS, the City of Scotts Valley 2009-2014 Housing Element Goal #3 reflects the City's desire to expand and protect a range of housing opportunities for all demographic, economic, and special needs groups in the community;

WHEREAS, Government Code section 65583 requires local governments to remove constraints to housing for persons with disabilities or provide reasonable accommodation to housing for persons with disabilities;

WHEREAS, the adoption of this Ordinance is exempt from California Environmental Quality Act (CEQA) review per State CEQA Guidelines Section 15305, Class 5, Minor Alterations to Land Use Limitations and do not trigger any exceptions to exemptions per Section 15300.2; and Section 15061(b)(3), general rule which states that CEQA only applies to projects which have potential to cause a significant effect on the environment; and, a Notice of Exemption shall be filed upon adoption of this Ordinance;

WHEREAS, after notice thereof having been duly, regularly and lawfully given, a public hearing on the proposed ordinance was held by the Planning Commission on June 11, 2015, where all interested persons might appear and be heard; and,

WHEREAS, the Planning Commission considered the Ordinance on June 11, 2015, and recommended that the City Council adopt the proposed ordinance, via Resolution #1687;

WHEREAS, the City Council held a duly noticed and regularly and lawfully given public hearing on July 1, 2015, to consider the proposed ordinance and hear public input;

NOW, THEREFORE, the City Council of the City of Scotts Valley does ordain as follows:

Title 17 of the Scotts Valley Municipal Code is hereby amended to add the following Chapter:

Chapter 17.60 Requests for Reasonable Accommodation

17.60.010 Purpose and Intent
17.60.020 Definitions
17.60.030 Review Authority
17.60.040 Noticing
17.60.050 Application and Submittal Procedures
17.60.060 Standards
17.60.070 Decisions
17.60.090 Appeals

17.60.010 Purpose and Intent

In accordance with federal and state fair housing laws, it is the purpose of this Chapter to provide reasonable accommodations in the city's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability equal opportunity to use and enjoy a dwelling.

In order to make specific housing available to an individual with a disability, any person may request a modification or exception to the rules, standards, practices, and land use regulations, and policies for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a persons with a disability equal opportunity to housing of their choice.

A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. This Chapter applies only to those persons who are defined as disabled under the Acts.

17.60.020 Definitions

For the purposes of this Chapter, the following definitions shall apply:

"Disabled person" means a person who has a medical, physical or mental condition that limits a major life activity, as those terms are defined in California Government Code section 12926, anyone who is regarded as having such a condition or anyone who has a record of having such a condition. It includes a person or persons, or an authorized representative of a disabled person. The term disabled person does not include a person who is currently using illegal substances, unless he or she has a separate disability. (42 U.S.C. 3602(h).)

"*Fair housing laws*" or *"the Acts"* means (1) the federal Fair Housing Act (42 U.S.C. §3601 and following) and (2) the California Fair Employment and Housing Act (Gov't. Code §12955 and following), including amendments thereto.

"Reasonable accommodation" means providing disabled persons flexibility in the application of land use and zoning regulations and procedures, or even waiving certain requirements, when necessary to eliminate barriers to housing opportunities. It may include such things as yard area modifications for ramps, handrail s or other such accessibility improvements; hardscape additions, such as widened driveways, parking area or walkways; building additions for accessibility; tree removal; or reduced off-street parking where the disability clearly limits the number of people operating vehicles. *Reasonable accommodation* does not include an accommodation which would (1) impose an undue financial or administrative burden on the city or (2) require a fundamental alteration in the nature of the city's land use and zoning program.

17.60.030 Review Authority

A. Community Development Director or Designee - The community development director or Designee has the authority to review and decide upon requests for reasonable accommodation, including whether the applicant is a disabled person within the meaning of this chapter. The community development director or designee may refer the matter to the planning commission, at his or her discretion, when a reasonable accommodation request includes the following items, but not limited to: any encroachment into the setback areas, results in a building size increase above what is permitted in the applicable zoning district with respect to height, lot coverage, or whenever a reduction in required parking is requested.

B. Planning Commission - The planning commission has the authority to review and decide upon requests for reasonable accommodation, including whether the applicant is a disabled person within the meaning of this chapter, when referred by the community development director.

17.60.040 Noticing

A public hearing is not required for a reasonable accommodation request reviewed and decided upon by the community development director. Upon deeming the application complete, the planning department shall send a notice to the applicant, property owner, the owners and tenants of property of the five parcels located closest to the subject property, and to all members of the planning commission. The notice shall indicate the date upon which the community development director will act on the permit and the intended action to be taken by the community development director. Such notices shall be mailed, via first class mail, a minimum of fifteen days prior to date that action is to be taken. Requests for reasonable accommodation subject to review and decision by the planning commission shall require a public hearing pursuant to the advance noticing requirements of Chapter 17.50 of the Scotts Valley Municipal Code.

17.60.050 Application and Submittal Requirements

A. Application. The applicant shall submit a request for reasonable accommodation on a form provided by the city of Scotts Valley planning department. The application shall include the following information, and shall be filed with the planning department, accompanied by any required fee:

1. The applicant's name, address and telephone number ;
2. Address of the property for which the request is being made;
3. The name and address of the property owner, and the owner's written consent to the application;
4. The current use and/or activity of the property;
5. A description of the basis that the individual is considered disabled under the fair housing laws: identification and description of the disability which is the basis for the request for accommodation, including current, written medical certification and description of disability and any effects on the person 's medical, physical or mental limitations;
6. The policy, program, regulation or standard adopted by the city of Scotts Valley applicable to the request for accommodation, including the development standard or regulation from which reasonable accommodation is being requested;
7. A description of the specific accommodation request;
8. A description of the basis by which the accommodation is reasonable and necessary for the needs of the affected disabled person(s);
9. Copies of plans, drawings, pictures, and/ other supporting data that provide sufficient information to render a decision (plans and drawings will be to standard scale);
10. Other reasonable requests for information requested by the city to facilitate the rendering of a decision, consistent with fair housing laws.

B. Review with other Related Applications. If the development, project or proposal for which the reasonable accommodation is being requested also requires some other discretionary approval (such as conditional use permit and/or design review), then the applicant shall submit the reasonable accommodation application for a determination by the community development director, at the same time with the other applications.

C. Required Fees. Any fee required for an application for reasonable accommodation shall be set by resolution of the city council.

17.60.060 Standards

The decision to approve, approve with conditions, or deny an application for reasonable accommodation shall be based on a finding of consistency within the meaning of this Chapter and shall take into consideration all of the following factors:

A. Required Findings

1. The housing or housing related facilities will be used by an individual with a disability under the Acts;
2. The requested accommodation is necessary to make specific housing available to an individual with a disability under the Act;
3. The requested accommodation would impose an undue financial or administrative burden on the city; and
4. The requested accommodation does not negatively affect the character of the zoning district and intent of adopted city, policies, regulations, programs or laws.

B. Development Standards and Conditions

1. An approved request for reasonable accommodation is subject to the applicant's compliance with all other applicable zoning regulations.
2. An approved reasonable accommodation request under this Chapter is considered a personal request for accommodation by the applicant and shall not run with the land. The reasonable accommodation shall terminate upon any sale, transfer, lease or other conveyance of the property.
3. Where appropriate, the applicable reviewing authority may condition its approval on any or all of following:
   a. Periodic inspection of the location, as specified in the application, to verify continued compliance with the provisions of this section and any conditions of approval;
   b. Prior to any sale, transfer, lease or other conveyance of the property, or at the time the need for the reasonable accommodation is no longer necessary, the owner of the property shall bring the property into conformance with the city’s Zoning Code to the extent that relief was provided under the Zoning Code as part of the request for reasonable accommodation ;
   c. Time limits and/or expiration of the approval if it can be determined that the Applicant’s reasons for approving the accommodation no longer exists;

d. Recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;
e. Methods, design considerations and features that reduce the impact on surrounding uses;
f. Methods, design considerations and features the preserve the integrity of the property and structures;
g. Other reasonable accommodations providing an equivalent level of benefit they will not result in an encroachment into required setbacks, permitted excedance of height limits, lot coverage or floor area ratio requirements specified for the applicable zoning district; and,
h. Other conditions necessary to protect the public health, safety and welfare of Scotts Valley residents.

17.60.070 Decisions

A. Decision by Community Development Director

The community development director shall render a decision (or refer the matter to the planning commission) within 30 days after the planning department determines the application is complete, per application requirements set forth in Section 17.60.050.A. of this Chapter. The application shall be approved, approved with conditions, or denied, based on the findings set forth in Section 17.60.060. The city shall notify the applicant of the decision. The written decision shall explain in detail the basis of the decision, including the community development director's finding on the factors stated in Section 17.60.060.

B. Decision by Planning Commission

If the application for reasonable accommodation is referred to, or reviewed by, the planning commission, a decision to approve, approve with conditions or deny the application shall be decided at the scheduled public hearing, based on the findings set forth in Section 17.60.060.

17.60.080 Appeals

Any decision on an application under this Chapter shall be subject to appeal pursuant to Chapter 17.50.060 (Appeals) of the Scotts Valley Municipal Code.

Section 1. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after the date of its adoption. Prior to the expiration of fifteen days from the date of adoption, this Ordinance shall be published in three public places within the City.

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

Section 3. REPEALS CONFLICTING ORDINANCES. All other ordinances of the City of Scotts Valley or provisions of the Scotts Valley Municipal Code which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

This Ordinance was introduced on the 1st day of July, 2015, and passed and adopted on the 15th day of July, 2015, at a duly held meeting of the City Council of the City of Scotts Valley by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: ________________________________
Dene Bustichi, Mayor

ATTEST:

____
Tracy Ferrara, City Clerk

APPROVED AS TO FORM:

____
Kirsten Powell, City Attorney

ORDINANCE NO. 16-138

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY SCOTTS VALLEY AMENDING TITLE 17, ZONING, OF THE SCOTTS VALLEY MUNICIPAL CODE TO ADOPT THE CITY'S REGULATORY PROVISIONS FOR EMERGENCY SHELTERS AND TRANSITIONAL AND SUPPORTIVE HOUSING

WHEREAS, Senate Bill 2 (SB 2) generally requires that at least one zone in a local jurisdiction be identified where "emergency shelters" are a permitted use without a conditional use or other discretionary permit, subject to development and management standards permitted under Government Code Sections 65582, 65583, and 65589.5; and

WHEREAS, Senate Bill 2 requires that "supportive housing" and "transitional housing" be considered a residential use of property, subject to the same standards as other residential uses of the same type in the same zone. Therefore, transitional and supportive housing shall be permitted in all residential zones; and

WHEREAS, Program 2 of the Housing Element, adopted in December 2, 2009, calls for the City to review and amend the Zoning Code to implement state requirements to remove barriers to the development of special needs housing, including emergency shelters and transitional and supportive housing, consistent with the requirements of Senate Bill 2 of 2007; and

WHEREAS, the City of Scotts Valley seeks to be in compliance with the State of California's regulations for the allowance of emergency shelters, transitional and supportive housing as required by state Senate Bill 2; and

WHEREAS, the City of Scotts Valley currently allows as a permitted use emergency shelters in its C-SC (Shopping Center Commercial), C-S (Service Commercial), and P (Public/Quasi-Public) zoning district regulations and will continue to do so with adoption of this ordinance; and

WHEREAS, the City of Scotts Valley currently allows as a conditional use transitional housing in its I-L (Light Industrial) and C-S (Service Commercial) zoning district regulations and will continue to do so with adoption of this ordinance; and

WHEREAS, the adoption of this Ordinance is exempt from California Environmental Quality Act (CEQA) review per State CEQA Guidelines Section 15305, Class 5, Minor Alterations to Land Use Limitations and do not trigger any exceptions to exemptions per Section 15300.2; and Section 15061(b)(3), general rule which states that CEQA only applies to projects which have potential to cause a significant effect on the environment; and, a Notice of Exemption shall be filed upon adoption of this Ordinance; and

WHEREAS, after notice thereof having been duly, regularly and lawfully given, a public hearing on the proposed ordinance was held by the Planning Commission on June 11, 2015, where all interested persons might appear and be heard; and

WHEREAS, the Planning Commission considered the ordinance changes on June 11, 2015, and recommended that the City Council adopt the proposed ordinance, via Resolution #1687; and

WHEREAS, the City Council held a duly noticed and regularly and lawfully given public hearing on July 1, 2015, to consider the proposed ordinance and hear public input; and

NOW, THEREFORE, the Planning Commission of the City of Scotts Valley does ordain as follows:

Section 1. Section 17.04.080, Definition of "E" terms is hereby amended to modify the definition of "emergency shelters" to read as follows:

> "Emergency shelters" means ~~buildings that are used to provide an immediate short-term solution to homelessness and limited supplemental health, nutrition and sanitary services, during a time when an emergency has been declared by the Scotts Valley City Council~~ housing with minimal supportive services that is limited to occupancy of six months or less. No individual or household may be denied emergency shelter because of an inability to pay; as defined and used in Section 50801(e) of the California Health and Safety Code. However, emergency shelter providers are not obligated to accept individuals if the shelter is at it approved capacity.

Section 2. Section 17.04.220, Definition of "S" terms is hereby amended to add the definition of "supportive housing" to read as follows:

> "Supportive housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community; as defined by Section 50675 of the California Health and Safety Code.

Section 3. Section 17.04.230, Definition of "T" terms is hereby amended to add the definition of "target population" and modify the definition of "transitional housing" to read as follows:

> "Target population" means adults with low-income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may, among other populations, include families with children, elderly persons, young adults aging out of the foster

care system, individuals exiting from institutional settings, veterans, or homeless people; as defined in Section 50675.14of the California Health and Safety Code.

"Transitional housing" ~~is temporary housing with supportive services, limited occupancy of up to two years and designed for the recently homeless with the ultimate goal of moving them to permanent housing as quickly as possible~~ means temporary rental housing intended for occupancy by target populations transitioning to permanent housing that is operated under program requirements calling for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months as defined in Section 50675.2 of the California Health and Safety Code.

Section 4. Section 17.44, General and Special Provisions is hereby amended to add Section 17.44.110 to read as follows:

Chapter 17.44.110 Emergency Shelters.

A. **Purpose.** The purpose of these regulations is to provide operational and management standards for emergency shelters. The regulations contained herein are intended to establish compatibility with surrounding uses.

B. **Operational standards and management standards for emergency shelters.** Emergency shelters shall be subject to and comply with the following standards and regulations:

1. **Limited terms of stay.** The facility shall operate on a first come, first serve basis with clients only permitted on-site and admitted to the facility between 6:00pm and 7:00am (PDT), and 5:00pm and 7:00am (PST). Clients must vacate the facility by 8:00am and have no guaranteed bed for the next night. A curfew of 10:00pm (or earlier) shall be established and strictly enforced. Clients shall not be admitted after the curfew.

2. **Siting.** To avoid over concentration of emergency shelter facilities, a minimum distance of 300 feet shall be maintained from any other emergency shelter, as measured from the property line.

3. **Restroom Facilities.** Service providers shall provide sufficient numbers of male and female toilets/restrooms for clients and prospective clients to have access to use on a 24-hour basis. For group housing and other similar shelter programs, adequate private male and female showers shall be provided along with lockers for clients to temporarily store their belongings.

4. **Outdoor Storage.** Any outdoor storage, including but not limited to, items brought on-site by clients for overnight stays, shall be screened from public view by a minimum six (6)-foot tall decorative wall or fence. Shopping carts are not permitted on site.

5. **Waiting Areas.** Adequate waiting areas must be provided within the premises for clients and prospective clients including ten (10) square feet per bed, minimum 100 square feet to ensure that public sidewalks or private walkways are not used as queuing or waiting areas. Facility improvements shall comply with the Scotts Valley Municipal Code and the most current adopted Building and Safety Code, specific to the establishment of dormitories.

6. **Off-Street Parking.** An emergency shelter facility shall provide off-street parking at the ratio of one (1) space per three (3) beds, and/or 1.0 per bedroom designated as a family unit with children, plus one (1) space per staff member. Service providers are responsible to provide and maintain adequate parking and freight loading facilities for employees, clients, and other visitors who drive to the premises.

7. **Bicycle Parking.** Secure bicycle rack parking shall be provided at the facility at a rate of one space per three beds.

8. **Lighting.** Adequate external lighting shall be provided for security purposes. The lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of intensity compatible with the neighborhood.

9. **Additional Service Areas.** The facility may provide the following services in a designated area separate from sleeping areas:

    a. A recreation area inside the shelter or in an outdoor area visually separated from public view by a minimum six (6)-foot tall visually screening decorative wall or fence.

    b. A counseling center for job placement, education, health care, legal services, or mental health services.

    c. Kitchen and dining area.

    d. Client storage area.

10. **Outdoor Activity.** For the purpose of noise abatement, organized outdoor activities may only be conducted between the hours of 9:00am and 10:00pm (PDT and PST)

11. **Refuse.** Emergency shelters shall provide a refuse storage area that is in accordance with the requirements of the public works department.

12. **Business License.** Emergency shelter operators shall obtain a City business license.

13. **Shelter Management Plan.** A shelter management plan shall be submitted as part of the permit application, which addresses all the following:

a. <u>All graffiti on the premises shall be removed by the shelter operator within 24 hours.</u>

b. <u>Installation of anti-loitering signs.</u>

c. <u>Service providers shall maintain sufficient monetary resources to enable them to operate the facility per the shelter management plan, and shall demonstrate to the City prior to approval of the permit application that such funds shall be available for use upon first occupancy of the proposed shelter and shall reasonably be expected to be available for the life of the project.</u>

d. <u>A minimum one (1) staff member per 15 beds shall be awake and on-duty when the facility is open. Facility staff shall be trained in operating procedures, safety plans, and assisting clients. The facility shall not employ staff members who have been convicted of a felony or who are required to register as a sex registrant under Penal Code 290.</u>

e. <u>Service providers shall maintain up-to-date information and referral sheets to give clients and other persons who, for any reason, cannot be served by the emergency shelter.</u>

f. <u>Service providers shall provide criteria to screen clients for admittance eligibility, with the objective to provide first service to individuals with connections to Scotts Valley.</u>

g. <u>Service providers shall continuously monitor waiting areas to inform prospective clients whether they can be served within a reasonable time. If they cannot be served by the provider because of time or resource constraints, the monitor shall inform the client of alternative programs and locations where he or she may seek similar service.</u>

h. <u>Service providers will educate on-site staff to provide adequate knowledge and skills to assist clients in obtaining permanent shelter and income, including referrals to outside assistance agencies. An annual report on this activity will be provided to the City.</u>

i. <u>Service providers shall provide the timely removal of litter attributable to clients within the vicinity of the facility every 24-hour period.</u>

j. <u>Service providers will maintain good communication and have procedures in place to respond to operational issues which may arise from the neighborhood, City staff, or the general public.</u>

k. <u>Service providers shall establish standards for responding to emergencies and incidents expelling clients from the facility. Re-admittance policies for</u>

clients who have previously been expelled from the facility shall be established.

l. Alcohol and illegal drug use is prohibited on-site. Service providers shall expel clients from the facility if found to be using alcohol or illegal drugs.

m. The facility shall implement other conditions and/or measures as determined by the City, in consultation with other City/County agencies necessary to ensure that management and/or clients of the emergency shelter maintain the quiet, safety, and cleanliness of the premises and the vicinity of the use.

14. The facility shall comply with all other laws, rules, and regulations that apply including, but not limited to, Building and Fire Codes. The facility shall be subject to City inspections prior to the commencement of operation. In addition, the City may inspect the facility at any time for compliance with the facility's Management Plan and other applicable laws and standards.

The following applies to the C-S (Service Commercial) Zoning District

Section 5. Section 17.20.020, Permitted Uses, is hereby amended to read as follows:

D. Emergency shelters (≤25 occupants), subject to compliance with Section 17.44.110

Section 6. 17.20.030, Conditional Uses, is hereby amended to read as follows:

T. Emergency shelters (>25 occupants), subject to compliance with Section 17.44.110

The following applies to the C-SC (Shopping Center Commercial) Zoning District

Section 7. Section 17.22.020, Permitted Uses, is hereby amended to read as follows:

C. Emergency shelters (≤25 occupants), subject to compliance with Section 17.44.110

Section 8. Section 17.22.030, Conditional Uses, is hereby amended to read as follows:

K. Emergency shelters (>25 occupants), subject to compliance with Section 17.44.110

The following applies to the P (Public/Quasi-Public) Zoning District

Section 9. Section 17.30.020, Permitted Uses, is hereby amended to read as follows:

C. Emergency shelters (≤25 occupants), subject to compliance with Section 17.44.110

Section 10. Section 17.30.030, Conditional Uses, is hereby amended to read as follows:

M. Emergency shelters (>25 occupants), subject to compliance with Section 17.44.110

The following applies to the I-L (Light Industrial) Zoning District

Section 11. Section 17.26.035, Transitional housing is hereby amended to delete the following:

Chapter 17.26.035 Transitional Housing

No person shall operate a transitional housing facility without obtaining a conditional use permit in accordance with Section 17.50.020 and subject to requirements of Section 17.44.170 of this title. ~~In addition the applicant will supply the following information:~~

~~a. A letter of certification of final approval from the state or county licensing authority,~~
- ~~b. A site plan of the property showing parking, outdoor exercise area, and fencing,~~
- ~~c. A letter from the fire department approving the safety of the structure for the use,~~
- ~~d. A letter application describing the type of use, number of residents, age of residents, any special resident care that is provided, and a daily work schedule showing the number of employees at the facility, and~~
- ~~e. Landscaping and other information as required by the community development director.~~
- ~~f. Show that there is one parking space for each single resident and/or one space for each family unit living in the facility.~~

The following applies to the C-S (Service Commercial) Zoning District.

Section 12. Section 17.20.030, Conditional uses is hereby amended to delete the following:

S. Transitional Housing. No person shall operate a transitional housing facility without obtaining a conditional use permit in accordance with Section 17.50.020 and subject to the requirements of Section 17.44.170 of this title. ~~In addition the applicant will supply the following information.~~

~~a. A letter of certification of final approval from the state or county licensing authority,~~
~~b. A site plan of the property showing parking, outdoor exercise area, and fencing,~~
~~c. A letter from the fire department approving the safety of the structure for the use,~~
~~d. A letter application describing the type of use, number of residents, age of residents, any special resident care that is provided, and a daily work schedule showing the number of employees at the facility, and~~
~~e. Landscaping and other information as required by the community development director.~~
f. ~~Show that there is one parking space for each single resident and/or one space for each family unit living in the facility.~~

Section 13. Section 17.44, General and Special Provisions is hereby amended to add Section 17.44.170, Transitional Housing, to read as follows:

Section 17.44.170, Transitional Housing

A. No person shall operate a transitional housing facility without obtaining a conditional use permit in accordance with Section 17.50.020. In addition the applicant will supply the following information:

1. A letter of certification of final approval from the state or county licensing authority,

2. A site plan of the property showing parking, outdoor exercise area, and fencing,

3. A letter from the fire department approving the safety of the structure for the use,

4. A letter application describing the type of use, number of residents, age of residents, any special resident care that is provided, and a daily work schedule showing the number of employees at the facility, and

5. Landscaping and other information as required by the community development director.

6. Show that there is one parking space for each single resident and/or one space for each family unit living in the facility.

The following applies to the R-VH (Very High-Density Residential) Zoning District

Section 14. Section 17.09.020, Permitted Uses, is hereby amended to add subsection E to read as follows:

E. Transitional housing and supportive housing

The following applies to the R-H (High-Density Residential) Zoning District

Section 15. Section 17.10.020, Permitted Uses, is hereby amended to add subsection G to read as follows:

G. Transitional housing and supportive housing

The following applies to the R-M-6 and R-M-8 (Multiple Residential) Zoning District

Section 16. Section 17.12.020, Permitted Uses, is hereby amended to read as follows:

G. Transitional housing and supportive housing

The following applies to the R-1 (Single-Family Residential) Zoning District

Section 17. Section 17.14.020, Permitted Uses, is hereby amended to read as follows:

H. Transitional housing and supportive housing

The following applies to the R-R-2.5 (Residential Rural) Zoning District

Section 18. Section 17.16.020, Permitted Uses, is hereby amended to read as follows:

H. Transitional housing and supportive housing

The following applies to the R-MT-5 (Residential-Mountain) Zoning District

Section 19. Section 17.18.020, Permitted Uses, is hereby amended to read as follows:

I. Transitional housing and supportive housing

Section 20. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after the date of its adoption. Prior to the expiration of fifteen days from the date of adoption, this Ordinance shall be published in three public places within the City.

Section 21. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

Section 22. REPEALS CONFLICTING ORDINANCES. All other ordinances of the City of Scotts Valley or provisions of the Scotts Valley Municipal Code which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

This Ordinance was introduced on the 1st day of July, 2015, and passed and adopted on the 15th day of July, 2015, at a duly held meeting of the City Council of the City of Scotts Valley by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: ________________________________
Dene Bustichi, Mayor

ATTEST:

____
Tracy Ferrara, City Clerk

APPROVED AS TO FORM:

____
Kirsten Powell, City Attorney

Agenda No. G
Date: July 15, 2015

City of Scotts Valley
CITY COUNCIL STAFF REPORT

DATE: July 15, 2015

TO: Honorable Mayor and City Council

FROM: Kimarie Jones, Engineering Technician

SUBJECT: **IMPROVEMENT AGREEMENT FOR BETHANY DRIVE**

SUMMARY OF ISSUE

On October 15, 2014, the City Council approved the redevelopment of the former Bethany campus. As part of the project approval, Bethany Drive will be realigned. In order to assure the completion of the realignment, the applicant is required to enter into an Improvement Agreement and post a security for the proposed work.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

City Council approve Resolution, 1895.5, approving an Improvement Agreement for Bethany Drive.

TABLE OF CONTENTS PAGE

J:\MyFiles\Res-Ord.forms\ImprovementAgreement.1440.wpd

When Recorded Mail to:
City of Scotts Valley
Office of the City Clerk
1 Civic Center Drive
Scotts Valley, CA 95066

No recording fee per Gov't Code §27383

RESOLUTION NO. 1895.5

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SCOTTS VALLEY
APPROVING THE IMPROVEMENT AGREEMENT
FOR THE REALIGNMENT OF BETHANY DRIVE**

WHEREAS, on October 14, 2015, the City Council of the City of Scotts Valley approved the redevelopment of the former Bethany University Campus; and

WHEREAS, the redevelopment includes the realignment of Bethany Drive and associated public improvements; and

WHEREAS, the City Engineer has approved the plans for the realignment and public improvements; and

WHERES, the applicant has submitted adequate security for the improvements as required by the Scotts Valley Municipal Code; property owner has asked that the current road be vacated and put in a location that better suits the new development, and

WHEREAS, the City Engineer endorses said Bethany Drive Improvement Plans.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Scotts Valley hereby finds that said Agreement and Surety are adequate to defer and ensure future construction of permanent improvements described within said Agreement.

The above and foregoing Resolution was duly and regularly adopted by the City Council of the City of Scotts Valley at a regular meeting held on the 15th day of July, 2015 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: ______________________________
Dene Bustichi, Mayor

Attest:____________________________
Tracy A. Ferrara, City Clerk

J:\MyFiles\Res-Ord.forms\ImprovementAgreement.1440.wpd

SET ASIDE AGREEMENT TO SECURE
PERFORMANCE OF CONTRACT

THIS SET ASIDE AGREEMENT is made as of July 10,_2015 by and between 1440 Devco LLC, a California limited liability company, hereinafter called "Owner", and Constellation Wealth Advisors, LLC, a Delaware limited liability company, hereinafter called "Bank".

I
RECITALS

1.1 Owner has secured a permit ("Development Permit") to apply to develop its property located in the City of Scotts Valley, Santa Cruz County, California; APN 023-031-19 as such "Property" is described in Exhibit "A".

1.2 As a condition of approval of the Development Permit, the Owner is required to construct and install certain roadway improvements per the Improvement Agreement – Roadway attached hereto as Exhibit "B" ("Roadway Improvement Agreement").

1.3 Owner desires to pledge to the Bank, upon terms and conditions set forth herein, for improvement security, the amount required by the City to assure completion of the works of the roadway improvement as required by the Roadway Improvement Agreement.

II

COVENANTS

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties agree as follows:

2.1 Bank agrees to hold the sum of: $2,190,000 for performance and payment, which comprises a total amount of $2,190,000 (hereafter "fund") for the account of Owner for the purpose of assuring that Owner fully performs all the works of improvement required by the Roadway Improvement Agreement.

2.2 Bank agrees that none of the funds will be paid out or released unless and until the Bank has received written authorization to do so from the Director of Public Works Department of the City of Scotts Valley. When all of the required conditions have been satisfactorily completed, the amount of said funds then remaining in possession of the Bank may be released to the Owner upon written authorization from the Director of Public Works.

2.3 In the event that Owner fails to perform each and every item of work required by the Roadway Improvement Agreement within eighteen (18) month after the execution of the Roadway Improvement Agreement or such other time as set forth in the Roadway Improvement Agreement, then the entire fund, or any portion thereof demanded by the Director of Public Works, shall be paid over to the City of Scotts Valley upon written demand and notice from the Director that Owner has failed to perform the terms of the Roadway Improvement Agreement. Bank shall give Owner ten (10) days written notice that the City has notified Bank of a default of performance and demanded payment from Bank to City.

2.4 This Set Aside Agreement is entered into not only for the use and benefit of Owner and Bank, but for the use and benefit of the City of Scotts Valley which is a third party beneficiary of this Set Aside Agreement.

2.5 It is further agreed by the parties hereto that in the event it is necessary for either party, or the City of Scotts Valley, as the third party beneficiary, to maintain any judicial action to secure performance of any obligation arising under this Set Aside Agreement, the prevailing party shall be entitled to reasonable attorney's fees, as well as costs of suit.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first hereinabove written.

"Owner"
1440 Devco LLC,
a California limited liability company

By: ____________________

Its: MANAGER

"Bank"

Constellation Wealth Advisors, LLC,
a Delaware limited liability company

By: ____________________

Its: ____________________

By: ____________________

Its: ____________________

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT - CIVIL CODE SECTION 1189

A notary public or other officer completing the certificate verifies only the identity of the individual who signed the document to which the certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On 10th. July, 2015 before me, MURSHAD BOBBY KHAN NOTARY public personally appeared KENNETH MELVIN BAKER who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

(SEAL)

MURSHAD BOBBY KHAN
COMM. # 1975609
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
MY COMM. EXPIRES MAY 17, 2016

Exhibit "A"

The Property

APN 023-031-19

Exhibit “B” (“Roadway Improvement Agreement”).

IMPROVEMENT AGREEMENT – ROADWAY IMPROVEMENTS FOR BETHANY DRIVE

This Agreement, made and entered as of July 15, 2015, by and between the CITY OF SCOTTS VALLEY a municipal corporation ("CITY"), and 1440 DEVCO LLC, a California limited liability company ("1440 DEVCO").

WITNESSETH:

WHEREAS, 1440 DEVCO is possessed of a tract of land lying in the City of Scotts Valley, Santa Cruz County, State of California more particularly described in Exhibit "A" attached hereto (the "Property"); and

WHEREAS, 1440 DEVCO desires and intends to make certain roadway improvements described on Exhibit "B" attached hereto (the "Roadway Improvements") within the Property as approved by the CITY in the area[s] described on Exhibit "C" attached hereto (the "Roadway Area") and dedicate the completed Roadway Improvements to the CITY for public road purposes in exchange for the vacation by the CITY of certain existing roadway improvements elsewhere on the Property; and

WHEREAS, the CITY as part of such approvals of the Roadway Improvements requires that 1440 DEVCO shall execute and file an agreement between itself and CITY relating to the Roadway Improvements prior to the CITY issuing final permits to 1440 DEVCO for the construction of the Roadway Improvements.

NOW, THEREFORE, the parties agree as follows:

1. IMPROVEMENTS—TIME LIMIT. 1440 DEVCO agrees to cause all of the Roadway Improvements to be made and constructed to fully comply with the improvement plans for the Roadway Improvements approved by the City Engineer and including any changes or alterations in such Roadway Improvements work required by the City Engineer ("the Roadway Improvements Work"). 1440 DEVCO agrees to pay for any materials, provisions, provender or other supplies used in, upon, for or about the performance of the Roadway Improvements Work, or for any work or labor done of any kind, or for any amounts due under the Unemployment Insurance Act with respect to such work or labor.

2. 1440 DEVCO agrees to complete the Roadway Improvements Work on or before eighteen (18) months from the date of this Agreement; provided, however, that the City Manager of CITY is hereby authorized to extend the time within which the Roadway Improvements Work shall be completed for an additional period not to exceed six (6) months, in his sole discretion, if he is of the opinion that granting the extension will not be detrimental to the public welfare. No such extension shall be made except upon the basis of a written application made by 1440 DEVCO, stating fully the grounds of the application and the facts relied upon for such an extension.

3. In the event that 1440 DEVCO shall fail to complete the Roadway Improvements Work within the time provided by this Agreement, CITY may, in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Property and complete the Roadway Improvements Work and recover the full cost and expense of such construction

from 1440 DEVCO, 1440 DEVCO's successors and assigns, or from the then owner of the Property, and/or place a lien upon the Property for such cost and expense. CITY shall have the right to pursue its rights under the Security provided to the CITY under Paragraph 6 of this Agreement.

4. If and to the extent that any of the Roadway Improvements Work is located within a right of way of the CITY, the CITY agrees to provide 1440 DEVCO with an encroachment agreement for undertaking such portion of the Roadway Improvements Work.

5. **INSPECTION FEES AND COSTS**. The City Engineer shall inspect all of the Roadway Improvements Work to determine if such Roadway Improvements Work complies with CITY's approvals for such Roadway Improvements Work. 1440 DEVCO shall deposit the estimated inspection fee and reimburse CITY for the cost of such inspections in accordance with Scotts Valley Municipal Code section 16.48.010.

6. SECURITY.

(a) 1440 DEVCO shall file with this Agreement two (2) improvement securities as set forth in Scotts Valley Municipal Code Section 16.52.030. Each security shall be in the amount of 100% of the total estimated cost of the Roadway Improvements as determined by the City Engineer which amount is the sum of $2,190,000.00. One improvement security shall secure faithful performance of this Agreement as required by section 66499.3, subdivision (a) of the Government Code of the State of California (the "faithful performance" security). The second improvement security shall, as required by section 66499.3, subdivision (b) of the Government Code of the State of California, secure the obligations set forth in Title 15 (commencing with section 3082) of Part 4 of Division 3 of the Civil Code of the State of California for payment to the contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to them for the Work (the "payment security").

(b) 1440 DEVCO shall also file with this Agreement a "guarantee and warranty security" in the amount of ten percent (10%) of the City Engineer's estimated cost of the Work as set forth in Section 16.52.030 of the Scotts Valley Municipal Code to guarantee and warrant the Work for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by section 66499, subdivision (a)(5) of the Government Code of the State of California.

(c) 1440 DEVCO shall also file with this Agreement a "monument security" in the amount of one hundred percent (100%) of the City Engineer's estimate of the cost of the installation of any survey monuments required for the Roadway Improvements Work, to guarantee and secure the placement of such monuments as provided by section 66496 of the Government Code of the State of California.

(d) Any bonds submitted as security pursuant to this section shall be executed by a surety company authorized to transact a surety business in the State of California. All required securities shall be in a form approved by the City Attorney of CITY.

(e) As an alternative, 1440 DEVCO may satisfy its obligations under this Paragraph 6 by furnishing to the CITY a Set Aside Agreement in form and content approved by the City Attorney of CITY pursuant to which 1440 DEVCO provides funds in the amount required by the

CITY to be held by a bank authorized by the CITY to assure the obligations of 1440 DEVCO under this Paragraph 6.

7. SUCCESSORS AND ASSIGNS—COVENANT RUNNING WITH THE LAND. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties. It shall be recorded in the Office of the Recorder of Santa Cruz County upon its execution by the parties, and shall constitute a covenant running with the land and an equitable servitude upon the Property.

8. ACCEPTANCE OF IMPROVEMENTS UPON COMPLETION. Upon satisfactory completion of the Roadway Improvements Work, in accordance with this Agreement, CITY agrees to accept for maintenance the Roadway Improvements Work and its improvements and any off-site easements granted, excluding any maintenance of nonstandard roadway improvements that is required to be undertaken by 1440 DEVCO.

9. NOTICE REGARDING CONSTRUCTION. 1440 DEVCO shall notify the Public Works Director of CITY in writing three (3) days prior to the commencement of construction of the Roadway Improvements Work.

10. 1440 DEVCO'S OBLIGATION TO WARN PUBLIC DURING CONSTRUCTION. Until final acceptance of the Roadway Improvements Work, 1440 DEVCO shall give good and adequate warning to the public of each and every dangerous condition that may exist in the Roadway Improvements Work, and will take all reasonable actions to protect the public from any such dangerous condition.

11. WARRANTY.

(a) 1440 DEVCO guarantees and warrants the public improvements that constitute the Roadway Improvements Work required by this Agreement, and agrees to remedy any defects in the improvements or the Roadway Improvements Work arising from faulty or defective materials or construction of the improvements or the Roadway Improvements Work occurring within twelve (12) months after their acceptance by CITY. 1440 DEVCO agrees to permit inspection of all Roadway Improvements Work by the Public Works Director of CITY for such period, and to reimburse CITY for the cost of such inspections.

(b) If, within the warranty period, the Roadway Improvements Work or improvement or any part of the Roadway Improvements Work done, furnished, installed, or constructed fails to fulfill any of the requirements of this Agreement or the improvement plans and specifications, 1440 DEVCO shall, without delay or cost to CITY, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Roadway Improvements Work. CITY may, at its sole option, perform such repair or replacement itself if 1440 DEVCO has failed to commence such repair within twenty (20) days after CITY has mailed written notice of default to 1440 DEVCO and to 1440 DEVCO's Surety. In such event, 1440 DEVCO agrees to pay the cost of such repair and replacement by CITY and CITY may at its option recover such cost as a lien against the Property should the cost exceed the inspection fee deposited pursuant to Paragraph 5 of this Agreement.

Should CITY determine that the public safety requires repairs or replacements to be made before 1440 DEVCO can be notified, CITY may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work. 1440 DEVCO shall pay to CITY the cost of such repairs and CITY may at its option recover such cost as a lien against the Property.

(c) After acceptance of the improvements by the City, 1440 DEVCO shall remain obligated to eliminate any latent defect in design or dangerous condition caused by the design or construction defect; however, 1440 DEVCO shall not be responsible for routine maintenance. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the recordation of the acceptance of the improvements. It is the intent of this section that 1440 DEVCO shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving or reviewing any work or construction. The improvement security shall not be required to cover the provisions of this Paragraph. 1440 DEVCO shall reimburse the City for all costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section.

12. INJURY TO PUBLIC IMPROVEMENTS, PUBLIC PROPERTY OR PUBLIC UTILITY FACILITIES. Until acceptance of the improvements by City, 1440 DEVCO assumes responsibility for the care and maintenance of, and any damage to, the Public Improvements. 1440 DEVCO shall replace or repair all Public Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless whether resulting from the acts of 1440 DEVCO, prior to the recordation of the Notice of Acceptance. 1440 DEVCO shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer. Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss or damage, regardless of cause, occurring to the work or Public Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

13. INDEMNITY AND HOLD HARMLESS. 1440 DEVCO shall indemnify and hold harmless CITY from any and all loss, damage, or liability resulting from 1440 DEVCO'S performance or nonperformance of his duties and obligations under this Agreement, or from the negligent act or omission of itself, its agents, contractors, subcontractors, servants or employees. 1440 DEVCO shall, at its own cost and expense, defend any and all actions, suits, or legal proceedings that may be brought or instituted against CITY, its officers and employees, on any claim or demand, of any nature whatsoever, and pay or satisfy any judgment that may be rendered against CITY, its officers and employees, in any such action, suit or legal proceedings, resulting from 1440 DEVCO'S performance or nonperformance of its duties and obligations under this Agreement, or from the negligent act or omission of itself, its agents, contractors, servants, or employees or of CITY, save and except the sole active negligence of CITY. The parties intend that this indemnity provision shall be broadly construed.

14. INSURANCE. 1440 DEVCO shall maintain in full force and effect, the following policies of insurance during the term of this Agreement:

(a) Commercial General Liability policy with a minimum $1 million combined single limit for bodily injury and property damage providing all of the following minimum coverage without deductibles: (1) Premises operations; including X, C, and U coverage; (2) Owners' and contractors' protection; (3) Blanket contractual; (4) Completed operations; and (5) Products.

(b) Commercial Business Auto policy with a minimum $1 million combined single limit for bodily injury and property damage, providing all of the following minimum coverage without deductibles: (1) Coverage shall apply to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Agreement; and (2) Any and all mobile equipment including cranes which are not covered under the above Commercial Business Auto policy shall have said coverage provided under the Commercial General Liability policy.

(c) Workers Compensation and Employers' Liability policy in accordance with the laws of the State of California and providing coverage for any and all employees of the Subdivider: (1) This policy shall provide coverage for Workers' Compensation (Coverage A); and (2) This policy shall provide coverage for $1,000,000 Employers' Liability (Coverage B).

1440 DEVCO shall provide a certificate evidencing such coverage in a form satisfactory to the City Attorney of CITY. Such Certificate shall provide thirty (30) days advance written notice prior to the cancellation, reduction, or nonrenewal of any of the coverages.

15. IRREVOCABILITY OF SECURITY. The improvement securities furnished pursuant to Paragraph 6 shall be irrevocable, shall not be limited as to time (except as to the one-year guarantee and warranty period specified in Paragraph 11) and shall provide that they may be released, in whole or part, only upon the written approval of the Public Works Director of CITY.

16. ACTIONS. Any action by any party to this Agreement, or any action concerning a security furnished pursuant to Paragraph 6, shall be brought in the appropriate court of competent jurisdiction within the County of Santa Cruz, State of California, notwithstanding any other provision of law that may provide that such action may be brought in some other location.

17. RELEASE OF REMAINING IMPROVEMENT SECURITY-WARRANTY. At the conclusion of the construction of the Roadway Improvements Work, and upon written acceptance of it by CITY, the Public Works Director shall authorize the release of the faithful performance security upon the furnishing of the warranty security required by Paragraph 6(b).

18. RELEASE OF PAYMENT SECURITY. Thirty-five (35) days after a notice of completion is filed with respect to the Roadway Improvements Work, the Public Works Director of CITY will authorize the release of the payment security, in the event that no claims have been filed against the security. In the event that claims or actions are filed against the security, the Public Works Director may release so much of such security as is in excess of the total of the claims made against it, plus a reasonable amount of costs and attorney's fees.

19. MONUMENTS. 1440 DEVCO agrees to install, on or before the acceptance of the improvements such survey monuments as may be required by the Public Works Director of CITY. Upon the installation of such monuments, and their acceptance by the Public Works Director, the monument security required under Paragraph 6(c) shall be released.

20. FAILURE OF PERFORMANCE. In addition to any other remedies provided in this Agreement or by law, in the event 1440 DEVCO fails to perform one or more of the covenants or conditions of this Agreement, CITY shall have recourse to the security given to guarantee the performance of such acts. CITY may do, or cause to be done, those acts required of 1440 DEVCO, and shall have recourse against so much of the security as is necessary to discharge the responsibility of 1440 DEVCO. In the event CITY seeks recourse against a security, CITY shall also have recourse against 1440 DEVCO for any and all amounts necessary to complete the obligations of 1440 DEVCO in the event the security is insufficient to pay such amounts. All administrative costs, including reasonable attorney's fees pursuant to section 66499.4 of the Government Code, incurred by the City, in addition to the costs of the improvements, shall be a proper charge against the security and 1440 DEVCO.

21. COMPLIANCE WITH LAWS. 1440 DEVCO, its agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in performing this Agreement. 29. Compliance with Labor Code. This Agreement is subject to, and 1440 DEVCO agrees to comply with, all of the applicable provisions of the Labor Code including, but not limited to, the wage and hour, prevailing wage, workers compensation, and various other labor requirements in Division 2, Part 7, Chapter 1, including Sections 1720 to 1740, 1770 to 1780, 1810 to 1815, 1860 and 1861, which provisions are specifically incorporated herein by reference as though set forth herein in their entirety. 1440 DEVCO shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the improvements hereunder.

22. ATTORNEY'S FEES. In the event it becomes necessary for either party to bring an action with respect to enforcement of the provisions of this Agreement, or the security therefor, the prevailing party in such action shall be awarded reasonable attorney's fees, as may be determined by the Court.

23. INTEGRATION. This Agreement is an integrated agreement. It supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by the parties. The law governing this Agreement is the law of the State of California.

24. NOTICES. Any notices sent to the parties relating to this Agreement shall be sent by first class mail, postage prepaid or delivered to the following addresses:

CITY:	1440 DEVCO:
CITY OF SCOTTS VALLEY	P.O. Box 3141
Attn. Public Works Director	Saratoga, CA 95070-1141
One Civic Center Drive	Attn.: Ken Baker
Scotts Valley, CA 95066	______________________

Either party may amend its address by giving written notice to the other.

SIGNATURES ARE SET FORTH ON PAGE 7 THAT FOLLOWS

Exhibit “A” - the Property

Exhibit “B” - the Roadway Improvements;

Exhibit “C” - the Roadway Area

IN WITNESS WHEREOF, the CITY OF SCOTTS VALLEY a municipal corporation, has authorized the execution of this agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 1895.5, adopted by the Council of the CITY OF SCOTTS VALLEY on July 15, 2015, and 1440 DEVCO has caused this agreement to be executed.

CITY OF SCOTTS VALLEY,
a municipal corporation,

BY: ______________________

____

City Manager

ATTEST:

____

City Clerk

1440 DEVCO
1440 DEVCO LLC ,
a California limited liability company

BY: [signature] ______________________

____

Its: MANAGER

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of ALAMEDA)

On 10th. July. 2015 before me, MURSHAD BOBBY KHAN NOTARY PUBLIC,
Date *Here Insert Name and Title of the Officer*

personally appeared KENNETH MELVIN BAKER
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

MURSHAD BOBBY KHAN
COMM. # 1975609
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
MY COMM. EXPIRES MAY 17, 2016
BIP1

Signature ______________________
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: IMPROVEMENT AGREEMENT Document Date: 10th. July. 2015

Number of Pages: 9/NINE Signer(s) Other Than Named Above: ______

Capacity(ies) Claimed by Signer(s)

Signer's Name: KENNETH M. BAKER	Signer's Name: ______
☐ Corporate Officer — Title(s): ______	☐ Corporate Officer — Title(s): ______
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☒ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other: ______	☐ Other: ______
Signer Is Representing: ______	Signer Is Representing: ______

Consent Agenda No. __H__
Date: July 15, 2015

City of Scotts Valley

INTEROFFICE MEMORANDUM

DATE: July 15, 2015

TO: Honorable Mayor and City Council

FROM: Tracy A. Ferrara, City Clerk

SUBJECT: **APPOINTMENT TO PARKS & RECREATION COMMISSION**

Summary of Issue:

With the resignation of Marci-Beth Maple, an appointment is required to the Parks & Recreation Commission. Council Member Reed has requested the appointment of Lori Gentile.

Fiscal Impact:

None.

Staff Recommendation:

Council's approval of this item on the Consent Agenda will ratify the appointment.

Table of Contents **Page**

CITY OF SCOTTS VALLEY

APPLICATION FOR APPOINTMENT TO CITY COMMISSION, COMMITTEE OR BOARD

This application should be completed and returned to the City Clerk by any person desiring appointment to a City Commission, Committee or Board. A separate application must be submitted for each advisory body to which you seek appointment.

I would like to be appointed to serve on the: Parks and Recreation Commission

NAME: Lori Gentile DATE: 7-7-15

HOME ADDRESS:

Hm Phone: 430-9680 Cell Phone: 359-3304 Work Phone:

Email: loriscraps@yahoo.com

How long have you lived in the City of Scotts Valley? 15 years

Occupation: Small Business Owner Employer:

Briefly describe your interests, education, and/or experience as they relate to this position.

As a community member with young children I am interested in helping preserve, protect, and promote our wonderful parks and recreational spaces. My professional background is program management and customer service. I am an active volunteer at Vine Hill Elementary School, Scotts Valley Middle School, and the Scotts Valley Educational Foundation.

Explain how you believe you can contribute toward the effectiveness of this position.

Other cultural or civic activities:

I have experience working with outside vendors, project budgets, and contracts. Volunteering for the Scotts Valley Educational Foundation has taught me the critical need of assuring regulatory compliance while meeting district and community needs.

Date of Application: 7-7-15 Signature: Lori Gentile

(O V E R>>>>)

I learned about this vacancy via: Newspaper☐ Posting☐ Friend☐ Television☐ Other☒

Council Member Jim Reed

Resumes should be filed with the City Clerk's Office, One Civic Center Drive, Scotts Valley, CA 95066. Candidates with resumes on file will be considered by the City Council when openings occur. Thank you for your interest.

NOTE: If you are appointed to a City commission or board, you may be required to file a Statement of Economic Interests (Form 700) with the City as a prerequisite of your appointment. This filing identifies any financial interests you may have within the City of Scotts Valley only and if any conflict of interest may exist.

Presented to Council on: ______________________

J:\MyFiles\FORMS\Commission.Application.wpd

Consent Agenda No. __I__
Date: July 15, 2015

City of Scotts Valley

INTEROFFICE MEMORANDUM

DATE: July 15, 2015

TO: Honorable Mayor and City Council

FROM: Tracy A. Ferrara, City Clerk

SUBJECT: **APPOINTMENTS TO ADA ACCESSIBILITY COMMITTEE**

Summary of Issue:

With the reorganization of the ADA Accessibility Committee, appointments are required to fill the newly established positions. The following Council Members have received applications and requested appointments as follows:

(1) Mayor Bustichi has requested the appointment of Robert White.
(2) Vice Mayor Lind has requested the appointment of Tom Pohle.
(3) Council Member Aguilar has requested the appointment of Ellen Buckingham.

Fiscal Impact:

None.

Staff Recommendation:

Council's approval of this item on the Consent Agenda will ratify the appointments.

Table of Contents **Page**

CITY OF SCOTTS VALLEY

APPLICATION FOR APPOINTMENT TO CITY COMMISSION, COMMITTEE OR BOARD

This application should be completed and returned to the City Clerk by any person desiring appointment to a City Commission, Committee or Board. A separate application must be submitted for each advisory body to which you seek appointment.

I would like to be appointed to serve on the: ADA Committee

NAME: Robrt White DATE: 7/9/2015

HOME ADDRESS:

Hm Phone: 831-440-9647 Cell Phone: Work Phone: N/A

Email: motox8r@comcast.net

How long have you lived in the City of Scotts Valley? 10.8 years

Occupation: retired Employer:

Briefly describe your interests, education, and/or experience as they relate to this position.

I was in the mobility business before I became disabled. I personally experience the issues of being disabled. I am well versed in ADA compliance.

I feel Scotts Valley strives to be proactive regarding ADA issues.

Explain how you believe you can contribute toward the effectiveness of this position.

Other cultural or civic activities:

I volunteer at the Parks and Recreation Dept. I am involved with the disabled community in Santa Cruz. I previously was appointed by Mark Stone to the Santa Cruz County Regional Transportation Commission for the elderly and disabled tac and to the County elderly and disabled commission. I have served as a CASA volunteer and a foster father.

Date of Application: 7/9/2015 Signature: ROBERT WHITE

(O V E R>>>>)

I learned about this vacancy via: Newspaper☐ Posting☐ Friend☐ Television☐
Other☑

Resumes should be filed with the City Clerk's Office, One Civic Center Drive, Scotts Valley, CA 95066. Candidates with resumes on file will be considered by the City Council when openings occur. Thank you for your interest.

<u>NOTE:</u> If you are appointed to a City commission or board, you may be required to file a Statement of Economic Interests (Form 700) with the City as a prerequisite of your appointment. This filing identifies any financial interests you may have within the City of Scotts Valley only and if any conflict of interest may exist.

Presented to Council on: ______________________

J:\MyFiles\FORMS\Commission.Application.wpd

CITY OF SCOTTS VALLEY

APPLICATION FOR APPOINTMENT TO CITY COMMISSION, COMMITTEE OR BOARD

This application should be completed and returned to the City Clerk by any person desiring appointment to a City Commission, Committee or Board. A separate application must be submitted for each advisory body to which you seek appointment.

I would like to be appointed to serve on the: ADA Advocate Committee

NAME: Tom Pohle DATE: 7/7/2015

HOME ADDRESS:

Hm Phone: 438-5334 Cell Phone: Work Phone: 440-5678 x 139

Email: sundance@calcentral.com

How long have you lived in the City of Scotts Valley? 1994 - PRESENT

Occupation: RETIRED Employer: Previous - see attached

Briefly describe your interests, education, and/or experience as they relate to this position.

SEE Attachment

Explain how you believe you can contribute toward the effectiveness of this position.

Other cultural or civic activities:

See Attachment

Date of Application: 7/8/2015 Signature: [signature]

(O V E R>>>>)

I learned about this vacancy via: Newspaper ☐ Posting ☐ Friend ☐ Television ☐
Other ☑

Resumes should be filed with the City Clerk's Office, One Civic Center Drive, Scotts Valley, CA 95066. Candidates with resumes on file will be considered by the City Council when openings occur. Thank you for your interest.

<u>NOTE:</u> If you are appointed to a City commission or board, you may be required to file a Statement of Economic Interests (Form 700) with the City as a prerequisite of your appointment. This filing identifies any financial interests you may have within the City of Scotts Valley only and if any conflict of interest may exist.

Presented to Council on: ____________________________

J:\MyFiles\FORMS\Commission.Application.wpd

PO Box 66981
Scotts Valley, CA 95067

Thomas W. Pohle

831.440-5678 x139
tpohle1@toromail.csudh.edu

EDUCATION

CSU, Dominguez Hills, California, M.A., (2014), Negotiation, Conflict Resolution an Peace-Building

Cabrillo/Rio Hondo Community Colleges, California, created a post B.A. degree "minor", 29 units (2008), Administration of Justice

University of California at Santa Cruz, B.A. Degree (1973), Political Theory

Palomar Community College, San Marcos, California, AA Degree, (1971), Liberal Arts

Foreign Service Institute Washington, D.C. (1967), 32 weeks intensive language training Vietnamese

ADDITIONAL SIGNIFICANT TRAINING COURSES

Stephen Covey's Seven Habits of Highly Effective People for Law Enforcement (24 hrs)
Background Investigation (40 hrs)
Workplace Violence (16 hrs)
Front Line Supervisor and numerous other Red Cross training courses
Extensive additional training; documentation available upon request

CAREER EXPERIENCE (RETIRED) SEE EDUCATION AND OTHER EXPERIENCE FOR CURRENT ACTIVITIES

Project Manager Redevelopment Agency, County of Santa Cruz Fall 1999 - Winter 2007

- Managed affordable housing project developments
- Resolved conflicts between project partners and construction companies
- Investigated fraudulent use of affordable housing
- Facilitated resolution of misuse of housing programs

Director of Technical Services Santa Cruz County Housing Authority Fall 1989 - Fall 1999

- Managed development of new affordable housing projects
- Managed personnel for maintaining and renovating all agency owned housing units
- Managed personnel performing periodic housing inspection process
- Served as Hearing Officer for violations of regulations and laws

Housing Specialist City of Santa Cruz, California Fall 1988 - Fall 1989

- Managed affordable housing renovation projects
- Provided loans and grants for affordable housing renovation
- Resolved conflicts between home owners and renovation contractors

Owner/Manager of Business Santa Cruz County, California Spring 1978 - Fall 1988

- Licensed building contractor: acquired, renovated, sold homes
- Provided renovation services for homeowners

Director PROD, Inc. Santa Cruz, California Spring 1973 – Spring 1978

- Managed non-profit corporation focused on rehabilitation of downtown business and housing areas
- Managed City and County contracts; developed and managed housing renovation programs

MILITARY AND OTHER EXPERIENCE

United States Marine Corps, 1966-1969, Interrogator/Linguist

- Completed basic and infantry training
- Obtained Federal Secret Clearance
- Foreign Service Institute (FSI), Washington D.C., Eight months of Vietnamese languages training
- Interrogation of Prisoners of War training
- Co-author of USMC manual: deploying and monitoring electronic monitors for troop movements

1989 Loma Prieta Earthquake Event, Employee of City of Santa Cruz and Santa Cruz Housing Authority

- On October 17, 1989 observed the complete collapse of numerous buildings in downtown Santa Cruz
- Assessed damage downtown throughout the evening of the earthquake and assisted with attempts to locate victims
- Continued damage inspection for City of Santa Cruz and assisted citizens for approximately 30 days
- Hosted tours on behalf of the City of Santa Cruz for engineers from Japan seeking to gain knowledge on building failure
- Inspected, assessed damage, coordinated with FEMA and provided housing assistance to homeowners and renters
- Provided assistance and information and assisted victims of the earthquake in obtaining temporary housing

Scotts Valley Police Department, Scotts Valley, California, Reserve Police Officer, 1999 - Present

- Served in patrol, investigations, stake-outs, special events and all other assigned police duties
- Peer support mediator for law enforcement officers; facilitate resolution of conflicts
- Research and analyze information to improve recruitment and other law enforcement processes

Santa Cruz County Probation Department (Juvenile Hall) Volunteer (1995 -1997)

- Created a class for juvenile offenders (typically 5-9 attendees), "How to Get and Keep A Job"
- Taught offenders basic skills for presenting themselves, completing job applications and responding to interviewing
- Facilitated video tape interviews and team review and feedback to every participant
- Arranged for local businesses to attend and discuss their business and to provide advice for pursuing jobs

ACCOMPLISHMENTS, AWARDS, ACKNOWLEDGEMENTS,

Scotts Valley Police Department – Chief's Commendations (7), numerous positive Police Incident Reports
Scotts Valley Police Department – Reserve Officer of the Year (2001 and 2003)
Scotts Valley Police Department – Top Gun Award (2000)
Santa Cruz County Probation Department, Community Person of the Year (1996)
State of California Probation, Parole and Correctional Association (CPPCA), Community Person Award (1997)
City of Santa Cruz commendation for participation in earthquake participation (1989)
Housing Authority commendation for participation in earthquake relief assistance (1989)
Palomar College Student Body President (1971)
Bank of America, two financial awards, Palomar College Regional Community College (, 1971)
Numerous additional positive acknowledgements - documentation available upon request

MEMBERSHIPS/AFFILIATIONS

Member of Honor Societies: Phi Kappa Phi and Pi Lambda Theta
Peer Support Team, SVPD, Central Coast Counties Critical Incident Team, 2009 - Present
California Reserve Police Officer Association (CRPOA), 1999 – Present
US Air Corps 449th BG, World War II reunion organization, 2nd generation member for deceased father, 1999 – Present
Red Cross, Santa Cruz, Ca. 2005 – Present

JDF RECEIVED JUN 5 2015 CITY OF SCOTTS VALLEY

CITY OF SCOTTS VALLEY

APPLICATION FOR APPOINTMENT TO CITY COMMISSION, COMMITTEE OR BOARD

This application should be completed and returned to the City Clerk by any person desiring appointment to a City Commission, Committee or Board. A separate application must be submitted for each advisory body to which you seek appointment.

I would like to be appointed to serve on the: ADA Committee

NAME: Ellen Buckingham DATE: 4/16/2015

HOME ADDRESS:

TELEPHONE: (831) 440-1320 (Residence) TELEPHONE: (831) 818-2557 (Business) Email: ellenb@cruzio.com

How long have you lived in the City of Scotts Valley? 13 yrs

Occupation: RN Employer: Self + Coastal Kids Home Care

Briefly describe your interests, education, and/or experience as they relate to this position.

Have been caring for and living with persons with disabilities most of my life. I am a certified developmental disabilities nurse (>15 years). I currently care for several people with mobility impairments, hearing impairments and medically fragile; children with cancer. I attend annual conferences on disabilities and disability rights

Explain how you believe you can contribute toward the effectiveness of this position.

I had 100% attendance at the past ADA meetings. I follow through with projects I take on. I am particularly concerned about members of our community who rely on access to public transportation and access to local shops and medical providers and have limited income. I speak Spanish and limited sign language.

Other cultural or civic activities:

Volunteer with Shared Adventures; I am helping out a neighbor who is experiencing memory loss and is elderly. I have a small "lending library" of equipment for people with disabilities — an overhead lift system, reclining bath chair, inflatable tub, etc. I was instrumental in getting a sling lift for Simpkins' Swim Center and a water wheelchair.

Date of Application: 6/1/15 Signature: Ellen Buckingham, RN, CDDN

(O V E R>>>>)

I learned about this vacancy via: Newspaper ☐ Posting ☐ Friend ☐ Television ☐ Other ☒

Resumes should be filed with the City Clerk's Office, One Civic Center Drive, Scotts Valley, CA 95066, (fax 831-438-2793). Candidates with resumes on file will be considered by the City Council when openings occur. Thank you for your interest.

NOTE: If you are appointed to a City commission or board, you may be required to file a Statement of Economic Interests (Form 700) with the City as a prerequisite of your appointment. This filing identifies any financial interests you may have within the City of Scotts Valley only and if any conflict of interest may exist.

Presented to Council on: ______________________

SCOTTS VALLEY POLICE DEPARTMENT MEMORANDUM

DATE: July 15, 2015

TO: The Honorable Mayor and City Council

FROM: Justin Milroy, Detective Sergeant

SUBJECT: Adding Chapter 5.22 to the Scotts Valley Municipal Code Regarding Tobacco Retail License (TRL) Ordinance

SUMMARY OF ISSUES

In January of 2015, the Police Department received several citizen complaints about questionable business practices related to tobacco retail outlets and tobacco sales to minors. In March of 2015, the Scotts Valley Police Department conducted youth decoy operations at eleven tobacco retail stores in Scotts Valley. Three of the eleven businesses, approximately 27%, sold cigarettes to the minor. This investigation raised some concerns within the department and among community members. One major concern was whether or not existing laws aimed at the prevention of tobacco sales to minors adequately focused on the problem.

It is estimated that in the United States, over one billion packs of cigarettes are sold to minors each year. Sustained and periodic enforcement of federal, state, and local laws prohibiting tobacco sales to minors helps reduce youth access to tobacco products from retail outlets and may play a key role in preventing minors from smoking. In September 1994, California's Stop Tobacco Access to Kids Enforcement (STAKE) Act was signed into law creating Business & Professions Code 22950 - 22960 to address growing tobacco sales to minors. The California Department of Health Services (DHS), Food & Drug Branch (FDB) was given the responsibility for enforcement and implementation of the program. Violations of the STAKE Act are civil in nature and can result in the suspension or revocation of a retailer's license. However, local law enforcement cannot enforce the STAKE Act independently of the DHS/FDB, which has limited funding to enforce tobacco laws.

In 2003, California enacted the Cigarette and Tobacco Products Licensing Act (Assembly Bill 71) requiring all tobacco retailers to be licensed by June 30, 2004. The Act authorizes the California Board of Equalization (BOE) and law enforcement agencies to inspect retail sales locations, review tobacco related invoices, and seize untaxed tobacco products. The BOE administers and enforces the Act for the entire state and retailers found not in compliance are subject to civil and criminal penalties. California's current economic challenges and limited resources make it extremely difficult for the BOE to aggressively monitor and/or police the Act. Penal Code section 308 makes it illegal for persons under the age of 18 to purchase or possess cigarettes, tobacco products, and/or tobacco paraphernalia and for any person, firm, or corporation to knowingly sell, give away, or furnish cigarettes, tobacco products, and/or tobacco related paraphernalia. Local law enforcement agencies currently use this section and criminal complaints are normally filed through the district attorney's office. Limited resources and other public safety priorities often influence the attention to and use of this section.

The intended purpose of a local TRL ordinance is to reduce youth access to tobacco and tobacco related products while simultaneously raising business and community awareness, thereby encouraging responsible tobacco retailing. Routine compliance checks, education, enforcement, and local influence over imposed suspensions/penalties can support voluntary compliance and may persuade tobacco retailers from unlawfully conducting business in Scotts Valley. CA Business and Professions Code 22971.3 authorizes cities and counties to enact additional local tobacco retail licensing requirements that may include annual fees and allow the suspension or revocation of the local license for any tobacco related law violation.

As of September 2013, more than 100 communities in California have adopted strong local tobacco retailer licensing ordinances in an effort to reduce illegal sales of tobacco products to minors. A strong tobacco retail license ordinance is defined as one that includes the following four components:

• License that all retailers must obtain in order to sell tobacco products and that must be renewed annually.

• A fee set high enough to sufficiently fund an effective program including administration of the program and enforcement efforts. An enforcement plan, that includes compliance checks, should be clearly stated.

• Coordination of tobacco regulations so that a violation of any existing local, state or federal tobacco regulation violates the license.

• A financial deterrent through fines and penalties including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance.

These California municipalities have initiated local fees ranging from a low of $30 to a high of $635. The average fee of the seventy-eight cities and counties surveyed was $275.65. See attachment for the table of the aforementioned survey. Currently, the City of Watsonville, Santa Cruz, Capitola, and the County of Santa Cruz have all adopted a TRL ordinance with varying fees. If a TRL ordinance is adopted in Scotts Valley, the goal of the Police Department would be to conduct compliance checks on all tobacco retail license holders semi-annually. Education for retailers and community awareness would be another priority of the department.

After taking into account the hours and staff members required to conduct an enforcement operation, and the potential administrative costs involved for the tracking and issuing of licenses, I am recommending an initial non-refundable annual license fee of $150.00 per retail outlet be established and if necessary, to review the appropriateness of licensing fees every eighteen months. Licensing fees are only intended to cover start-up, administrative, and operational costs, thus making the TRL program self-sufficient. The police department will be responsible for the administrative and operational components of the TRL. If adopted, the issuing of licenses will be coordinated with the City.

FISCAL IMPACT

There are no direct costs associated with this ordinance or required by the City. Any administrative, operational, or educational expenses related to a successful TRL program are incorporated into an annual license fee.

STAFF RECOMMENDATION

The City Council hold first reading and introduction of Ordinance No. 188, the proposed Tobacco Retailer License (TRL) ordinance, and approve Resolution No. 1905 establishing the licensing fee of $150.00 to locally regulate and enforce the retail sales of tobacco and tobacco related products to minors.

TABLE OF CONTENTS PAGE

ORDINANCE NO. 188

AN ORDINANCE OF THE CITY OF SCOTTS VALLEY ADDING CHAPTER 5.22 OF TITLE 5 OF THE SCOTTS VALLEY MUNICIPAL CODE REQUIRING TOBACCO RETAILER LICENSES AND AMENDING CHAPTER 8.25 OF THE SCOTTS VALLEY MUNICIPAL CODE TO REGULATE THE SALE OF TOBACCO PRODUCTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY AS FOLLOWS:

SECTION 1. Title 5 of the Scotts Valley Municipal Code is hereby amended by adding a new Chapter 5.22 entitled "Tobacco Retailer Licenses" to read as follows:

"Chapter 5.22

Tobacco Retailer Licenses

5.22.010 DEFINITIONS.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Chief of Police" shall refer to the City of Scotts Valley Chief of Police or the person designated by the Chief of Police.

(b) "Drug paraphernalia" shall have the definitions set forth in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.

(c) “E-cigarette” means any electronically or battery-operated device, often shaped like a cigarette, containing a nicotine-based liquid, sometimes flavored, that is vaporized and inhaled, and which is used to simulate the experience of smoking tobacco or other combustible substances.

(d) “Person” shall mean any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(e) “Proprietor” shall mean 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 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 can or does have or share ultimate control over the day-to-day operations of a business.

(f) “Tobacco paraphernalia” shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

(g) “Tobacco product” shall mean:

> (1) Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; or
>
> (2) Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco-product dependence.

(h) “Tobacco retailer” shall mean any person or business which sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, tobacco paraphernalia or e-cigarettes, or who distributes free or low-cost samples of tobacco products, tobacco paraphernalia or e-cigarettes. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, tobacco paraphernalia or e-cigarettes sold, offered for sale, exchanged, or offered for exchange.

(i) “Self-Service Display” means the open display or storage of Tobacco Products or Tobacco Paraphenalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer.

5.22.020 TOBACCO RETAILER LICENSE – VIOLATIONS.

(a) It shall be unlawful for any person to act as a tobacco retailer, or to display or advertise the sale of tobacco products, tobacco paraphernalia or e-cigarettes, without complying with Chapter 8.20 and obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur.

(b) Tobacco retailing by persons on foot or from vehicles is prohibited.

(c) Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(d) Positive Identification Required. No person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another person who appears to be under the age of 27 years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

(e) Minimum Age for Persons Selling Tobacco. No Person who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

(f) Self-Service Displays Prohibited. Tobacco Retailing by means of a Self-Service Display is prohibited, except in a Tobacco Retail Store as defined above.

(g) In the course of tobacco retailing or in the operation of a business or maintenance of a location for which a tobacco retailer's license has been issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state or federal law applicable to tobacco products, tobacco paraphernalia, tobacco retailing, narcotics or e-cigarettes.

5.22.030 LIMITS ON TOBACCO RETAIL LICENSE.

(a) No license shall be issued to authorize tobacco retailing at other than a fixed business place.

(b) No license shall be issued to authorize tobacco retailing at any location for which a tobacco retailer license suspension is in effect or during a period of ineligibility following a revocation.

(c) After the effective date of this ordinance, no license shall be issued to authorize tobacco retailing at any location, measured from the nearest property line, that is within one thousand feet of a school, or 500 feet of a park, or other business or institution whose primary business or purpose is the instruction or education of children or those under the age of 18. Examples of such places include, but are not limited to, tutoring centers, child care centers, recreational facilities and gyms.

5.22.040 APPLICATION PROCEDURE.

(a) Application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. The application shall include a statement signed by each proprietor that no drug paraphernalia is or will be sold at the location for which the license is sought.

(b) It shall be the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer's license.

(c) No proprietor may rely on the issuance of a tobacco retailer's license as a determination by the city that the proprietor has complied with all laws applicable to tobacco retailing.

(d) A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 5.22.090

(e) Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.

(f) All applications shall be submitted on a form supplied by the city planning department and shall contain the following information:

(1) The name, address, and telephone number of each proprietor of the business that is seeking a license.

(2) The business name, address, and telephone number of the single fixed location for which a license is sought.

(3) A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (f)(2).

(4) Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California State Board of Equalization, if the tobacco retailer sells products that require such license.

(5) Whether a proprietor has previously been issued a tobacco retailer's license pursuant to this chapter that is or was at any time suspended or

revoked, and, if so, the dates and locations of all such suspensions or revocations.

(6) Such other information as the Chief of Police deems reasonably necessary for the administration or enforcement of this chapter.

(7) All information required to be submitted in order to apply for a tobacco retailer's license shall be updated with the city planning department whenever the information changes. A tobacco retailer shall provide the city planning department with any updates within ten business days of a change.

5.22.050 ISSUANCE OF TOBACCO RETAIL LICENSE.

Upon the receipt of a complete application for a tobacco retailer's license and the license fee required by this chapter, the city planning department shall forward the application to the Chief of Police. The Chief of Police shall have the final authority to issue a tobacco retail license unless one or more of the following exists:

(a) The application seeks authorization for tobacco retailing at a location for which a current proprietor's suspension is in effect pursuant to this chapter, for which a current proprietor's license has been revoked pursuant to this chapter, or for which this chapter otherwise prohibits issuance of tobacco retailer licenses;

(b) The application seeks authorization for tobacco retailing for a proprietor to whom a suspension is in effect pursuant to this chapter for the subject location or another location, whose license has been revoked pursuant to this chapter for the subject location or another location, or to whom this chapter otherwise prohibits a tobacco retailer license to be issued;

(c) The city has information that the proprietor or his or her agent or employee has violated any local, state or federal tobacco control law, including this chapter, within the preceding twelve months; or

(d) The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter or Chapter 8.20, that is otherwise unlawful pursuant to this code, or that is unlawful pursuant to any other local, state, or federal law.

Any denial of an application shall be in writing and shall set forth the reasons for denial of the permit. Such denial shall be subject to appeal in accordance with Section 5.22.130 of this code.

5.22.060 LICENSE RENEWAL AND EXPIRATION.

(a) A tobacco retailer license is invalid unless the appropriate fee has been paid in full and the term of the license has not expired. The term of a tobacco retailer license is one year beginning each fiscal year on July 1st and ending on June 30th of the same year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than thirty days prior to expiration of the term.

(b) A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired, or to renew a license not timely renewed pursuant to subsection (a), the proprietor must:

(1) Submit the license fee.

(2) Submit a signed affidavit affirming that the proprietor:

(i) Has not sold and will not sell any tobacco product, tobacco paraphernalia or e-cigarettes after the license expiration date and before the license is renewed; or

(ii) Has waited the appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section 5.22.090(b) before seeking renewal of the license.

5.22.070 LICENSE NONTRANSFERABLE.

(a) A tobacco retailer's license may not be transferred from one person to another or from one location to another. Whenever a tobacco retailing location has a change in proprietor a new tobacco retailer's license is required.

(b) Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

(1) The location has been fully transferred to a new proprietor or fully transferred to entirely new proprietors; and

(2) The new proprietor(s) provides the city with clear and convincing evidence that the new proprietor(s) has acquired or is acquiring the location in an arm's length transaction. As used in this section, the term "arm's length transaction" shall mean 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 of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.

5.22.080 FEE FOR LICENSE.

The fee to issue or to renew a tobacco retailer's license shall be set by resolution of the City Council from time to time. The fee shall be calculated so as to recover the total cost of both license administration and license enforcement, including, for example, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators. All fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

5.22.090 SUSPENSION OR REVOCATION OF LICENSE BY CHIEF OF POLICE.

(a) In addition to any other remedy authorized by law, a tobacco retailer's license may be suspended and eventually revoked if the Chief of Police finds pursuant to this chapter that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 5.22.020**.** During any period of license suspension, the retailer must remove all tobacco products from public view and cannot sell such products.

(b) Time Period of Suspension of License.

> (1) Upon the first time that the Chief of Police makes a finding as set forth in subsection (a), the tobacco retailer's license shall be suspended for up to 30 days.
>
> (2) Upon the second time that the Chief of Police makes a finding as set forth in subsection (a) within sixty months of the first determination, the tobacco retailer's license shall be suspended for 90 days.
>
> (3) Upon the third time that the Chief of Police makes a finding as set forth in subsection (a) within sixty months of the prior determination, the tobacco retailer's license shall be suspended for 180 days.
>
> (4) Upon the fourth and each subsequent time that the Chief of Police makes a finding as set forth in subsection (a) within sixty months of the prior determination, the tobacco retailer's license shall be revoked, and no new license may be issued for the location until five years have passed from the date of revocation.

(c) Revocation of License Issued in Error. A tobacco retailer's license shall be revoked if the Chief of Police finds, after written notice and opportunity to be heard, that one or more of the bases for denial of a license under Section 5.22.030 existed at the time the application was made or at any time before the license was issued. The decision by the Chief of Police shall be final. The revocation shall be without prejudice to the filing of a new application for license.

5.22.100 NOTICE OF INTENDED DECISION.

(a) Upon determining the existence of any of the grounds for suspension or revocation of a license, the Chief of Police shall issue to the license holder a notice of intended decision.

(b) The notice of intended decision shall state all the grounds upon which the revocation or suspension is based.

(c) The notice of intended decision shall advise the permit holder that the suspension or revocation shall become final unless the licensee files a written request for hearing before the Chief of Police within ten calendar days of the date of service of the notice of intended decision.

(d) The notice of intended decision shall specify the effective date of the suspension or revocation.

5.22.110 PROCEDURE FOR HEARING BEFORE THE CHIEF OF POLICE.

(a) The written request for a hearing before the Chief of Police must be received by the Chief of Police within ten calendar days of the date of service of the notice of intended decision.

(b) Upon timely receipt of a written request for a hearing, the Chief of Police shall schedule a hearing which shall be held no later than thirty calendar days after receipt of a timely request for hearing.

(c) The Chief of Police shall serve a notice of hearing on the licensee at least ten calendar days prior to the scheduled date of the hearing.

(d) At the hearing before the Chief of Police, or before a hearing officer at the chief's option, the licensee shall be given the opportunity to present witnesses and relevant documentary evidence.

(e) The hearing will be conducted informally, and the technical rules of evidence shall not apply. Any and all evidence which the Chief of Police or hearing officer deems reliable, relevant, and not unduly repetitious may be considered.

5.22.120 DECISION OF THE CHIEF OF POLICE.

(a) The Chief of Police, or hearing officer, shall serve on the licensee a written decision sustaining, reversing, or modifying the Chief's or hearing officer's intended decision.

(b) The decision by the Chief of Police, designee, or hearing officer after hearing shall become final unless the licensee files an appeal within the time period specified in Chapter 4.20 of this code.

5.22.130 APPEAL.

If a licensee is dissatisfied with the written decision of the Chief of Police or designee, the licensee may file a written appeal. The appeal shall be conducted in accordance with Chapter 4.20 of this code. For purposes of Chapter 4.20, the written decision of the Chief of Police or designee shall constitute an abatement order and the Chief of Police shall be the designated enforcement Official.

5.22.140 TOBACCO RETAILING WITHOUT A LICENSE – SEIZURE.

(a) Tobacco products, tobacco paraphernalia and e-cigarettes offered for sale or exchange in violation of this chapter are subject to seizure by the Chief of Police, or any peace officer, and shall be forfeited after the licensee and any other owner of the tobacco products, tobacco paraphernalia or e-cigarettes seized is given reasonable notice and an opportunity to demonstrate that the tobacco products, tobacco paraphernalia or e-cigarettes were not offered for sale or exchange in violation of this chapter.

(b) Forfeited tobacco products, tobacco paraphernalia and e-cigarettes shall be maintained and destroyed pursuant to the police department's policy for seized evidence.

5.22.150 ENFORCEMENT.

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(b) Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter, and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

(c) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

(d) Violations of this chapter are hereby declared to be public nuisances.

(e) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied or prosecuted pursuant to Title 4 of this code.

(f) (1) A first violation of this chapter shall constitute an infraction punishable by a fine of three hundred dollars.

(2) A second violation of this chapter committed within one year of a first violation shall constitute an infraction punishable by a fine of one thousand dollars.

(3) A third violation of this chapter committed within one year of a second violation shall constitute an infraction punishable by a fine of three thousand dollars.

(4) A fourth or subsequent violation of this chapter committed within one year of a prior violation shall constitute a misdemeanor punishable by a fine of five thousand dollars.

Each day a violation of this chapter exists is a separate offense.

5.22.160 NOTICE.

Whenever a notice is required to be given under this chapter, it shall be addressed to such person to be notified at the authorized address provided in the application for a tobacco retail license pursuant to Section 5.22.040 or, if an authorized address is not supplied, to the business address provided pursuant to Section 5.22.040.

5.22.170 STIPULATED FINE IN LIEU OF HEARING.

For a first or second alleged violation of this chapter within any sixty-month period, the city attorney may allow a tobacco retailer alleged to have violated this chapter to stipulate to the penalties provided for in this section in lieu of the penalties that would otherwise apply under this chapter and to forego a hearing on the allegations. Notice of any stipulation shall be provided to the police department and no hearing shall be held. Stipulations shall not be confidential and shall contain the following terms, plus any other noncriminal provisions established by the city attorney in the interests of justice:

(a) After a first alleged violation of the chapter at a location:

(1) An agreement to stop acting as a tobacco retailer for one day; and/or

(2) An administrative penalty of one thousand dollars; and/or

(3) An admission that the violation occurred and a stipulation that the violation will be considered in determining the penalty for any future violation.

(b) After a second alleged violation of the chapter at a location within any sixty-month period:

(1) An agreement to stop acting as a tobacco retailer for ten days; and/or

(2) An administrative penalty of at least five thousand dollars; and/or

(3) An admission that the violation occurred and a stipulation that the violation will be considered in determining the penalty for any future violations."

SECTION 2. Section 8.25.010J of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to read as follows:

A. "8.25.010J "Tobacco product" shall mean:

(1) Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; or

(2) Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco-product dependence."

SECTION 3. Section 8.25.010 of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to add the following subsections to read as follows:

A. "8.25.010M. "Tobacco paraphernalia" shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

B. 8.25.010N "Tobacco retailer" shall mean any person or business which sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, tobacco paraphernalia or e-cigarettes, or who distributes free or low-cost samples of tobacco products, tobacco paraphernalia or e-cigarettes. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, tobacco paraphernalia or e-cigarettes sold, offered for sale, exchanged, or offered for exchange."

SECTION 4. Section 8.25.020 of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to add the following subsections:

A. "8.25.020(d) Positive Identification Required. No Tobacco Retailer shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another person who appears to be under the age of 27 years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the Tobacco Product or Tobacco Paraphernalia."

B. "8.25.020(e) Minimum Age for Persons Selling Tobacco. No Person who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing."

C. "8.25.020(f) Self-Service Displays Prohibited. Tobacco Retailing by means of a Self-Service Display is prohibited except in a Tobacco Retail Store as defined above."

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

SECTION 6. REPEALS CONFLICTING ORDINANCES. All other ordinances of the City of Scotts Valley or provisions of the Scotts Valley Municipal Code which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 7. CEQA. The City Council finds and determines that the enactment of this Ordinance is statutorily exempt from environmental review pursuant to the State CEQA Guideline Section 15061(b)(3) because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after the date of its adoption. Prior to the expiration of fifteen (15) days from the date of adoption, this Ordinance shall be published in at least three (3) public places.

This Ordinance was introduced on the 15th day of July, 2015, and passed and adopted by the City Council of the City of Scotts Valley on the 5th day of August, 2015, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:______________________________
Dene Bustichi, Mayor

ATTEST:

____
Tracy A. Ferrara, City Clerk

APPROVED AS TO FORM:

____
Kirsten Powell, City Attorney

RESOLUTION NO. 1905

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SCOTTS VALLEY ESTABLISHING
AN ANNUAL TOBACCO RETAIL LICENSE FEE**

WHEREAS, smoking rates amongst the youth in the State of California are beginning to rise and despite the State of California's efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that each day, nearly 4,000 children under 18 years of age smoke their first cigarette, and almost 1,500 children under 18 years of age begin smoking daily; and

WHEREAS, tobacco retailers in the City of Scotts Valley continue to sell tobacco to underage consumers, evidenced by minor decoy operation conducted in March of 2015; and

WHEREAS, research of cities and counties with local tobacco retail licensing ordinances demonstrates that local tobacco retailer education and enforcement activities reduce youth access to cigarettes; and

WHEREAS, a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City of Scotts Valley to protect the health, safety, and welfare of our residents.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scotts Valley that:

An annual Tobacco Retail License Fee in the amount of $150.00 is hereby established to recover the Tobacco Retail License Program costs, including administration, retailer compliance, outreach and enforcement activities.

The above and foregoing resolution was adopted at a duly held regular meeting of the City Council on the 15th day of July 2015 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED: ___________________________
Dene Bustichi, Mayor

ATTEST: ___________________________
Tracy A. Ferrara, City Clerk

Tobacco Retailer Licensing Is Effective

SEPTEMBER 2013

More than 100 communities in California have adopted strong local tobacco retailer licensing ordinances in an effort to reduce illegal sales of tobacco products to minors. This table includes strong policies defined as one that includes the following four components:

- License that all retailers must obtain in order to sell tobacco products and that must be renewed annually.
- A fee set high enough to sufficiently fund an effective program including administration of the program and enforcement efforts.An enforcement plan, that includes compliance checks, should be clearly stated.
- Coordination of tobacco regulations so that a violation of any existing local, state or federal tobacco regulation violates the license.
- A financial deterrent through fines and penalties including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance.

The table below lists illegal sales rates to minors before and after a strong licensing law was enacted in communities where data is available and enough time (usually at least a year) has passed after the ordinance was enacted to determine results. These sales rates were determined by youth tobacco purchase surveys administered by local agencies. It is important to note that results from the youth tobacco purchase surveys are somewhat dependent on certain factors that differ in each community, such as the age of the youth and the number of stores surveyed.

The results overwhelmingly demonstrate that local tobacco retailer licensing ordinances with strong enforcement provisions are effective. Rates of illegal tobacco sales to minors have decreased, often significantly, in all municipalities with a strong tobacco retailer licensing ordinance where there is before and after youth sales rate data available. However, a licensing ordinance by itself will not automatically decrease sales rates; proper education and enforcement about the local ordinance and state youth access laws are always needed.

Before and after youth sales rate data is available for the following 33 California communities with strong licensing ordinances - Banning, Baldwin Park, Beaumont, Berkeley, Burbank, Calabasas, Coachella, Contra Costa County, Corona, Davis, Delano, Desert Hot Springs, El Cajon, Elk Grove, Grass Valley, Grover Beach, Kern County, La Canada Flintridge, Los Angeles County, Murrieta, Norco, Pasadena, Riverside, Sacramento, Sacramento County, San Fernando, San Francisco, San Luis Obispo, Santa Barbara County, Tehachapi, Vista and Yolo County.

For more resources on these ordinances, including the Matrix of Strong Local Tobacco Retailer Licensing Ordinances with policy and enforcement details for every strong ordinance in the state, visit
www.Center4TobaccoPolicy.org/localpolicies-licensing.
For model tobacco retailer licensing ordinance language, visit ChangeLab Solutions at changelabsolutions.org.

The Center for Tobacco Policy & Organizing | American Lung Association in California
1531 I Street, Suite 201, Sacramento, CA 95814 | Phone: (916) 554.5864 | Fax: (916) 442.8585

Table of youth sales rates before and after the adoption of a strong tobacco retailer licensing ordinance

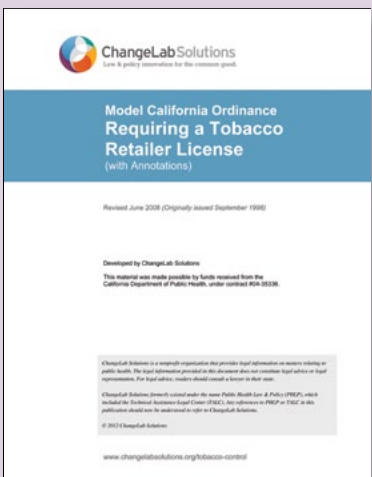
City/County	Date Passed	Annual Fee	Youth Sales Rate Before Ordinance	Most Recent Youth Sales Rate
Banning	August 2006	$350	77%	21%
Baldwin Park	October 2008	$342	34%	9%
Beaumont	December 2006	$350	63%	20%
Berkeley	December 2002	$427*	38%	4.2%
Burbank	February 2007	$235	26.7%	4%
Calabasas	June 2009	$0*	30.8%	5%
Coachella	July 2007	$350	69%	11%
Contra Costa County	January 2003	$160*	37%	3.8%
Corona	October 2005	$350	50%	17%
Davis	August 2007	$344	30.5%	7.8%
Delano	June 2008	$165	23%	5.6%
Desert Hot Springs	August 2007	$350	48%	4%
El Cajon	June 2004	$698	40%	1%
Elk Grove	September 2004	$270	17%	16.7%
Grass Valley	November 2009	$100	27%	0%
Grover Beach	September 2005	$224	46%	0%
Kern County	November 2006	$165	34%	13.3%
La Canada Flintridge	June 2009	$50*	47.1%	0%
Los Angeles County	December 2007	$235	30.6%	8%
Murrieta	May 2006	$350	31%	7%
Norco	March 2006	$350	40%	6%
Pasadena	January 2004	$225	20%	0%
Riverside	May 2006	$350	65%	31%
Sacramento	March 2004	$324	27%	15.1%
Sacramento County	May 2004	$287	21%	7.1%
San Fernando	October 2008	$250	38.5%	3%
San Francisco	November 2003	$175*	22.3%	13.4%
San Luis Obispo	August 2003	$255	17%	15.5%
San Luis Obispo County	October 2008	$342	33.3%	5%
Santa Barbara County	November 2010	$235	21%	9%
Tehachapi	February 2007	$165	8%	16.7%
Vista	May 2005	$250	39%	1.9%
Yolo County	May 2006	$344	28%	11.1%

*City or County fee does not fully cover administration and enforcement of the tobacco retailer license. Rather, the fee is supplemented with another stable source of funds, such as Master Settlement Agreement (MSA) funds or general funds. See the Center's Matrix of Strong Local Tobacco Retailer Licensing Ordinances for full details about the administration and enforcement of these ordinances.

ChangeLab Solutions
Law & policy innovation for the common good.

ChangeLab Solutions has developed model language for a tobacco retailer licensing law in California cities and counties. The model language offers a variety of policy options that can be tailored to the specific goals and needs of your community.

In addition to the core provisions, ChangeLab Solutions has drafted supplementary "plug-in" provisions, which offer additional policy options that can be incorporated into the law. For more information, please see our resources on Tobacco Retailer Licensing at www.changelabsolutions.org/publications/model-TRL-ordinance.


ChangeLab Solutions
Model California Ordinance
Requiring a Tobacco Retailer License
(with Annotations)
Revised June 2008 (Originally issued September 1998)
Developed by ChangeLab Solutions
This material was made possible by funds received from the California Department of Public Health, under contract #04-35336.
www.changelabsolutions.org/tobacco-control

While ChangeLab Solutions' model language for a tobacco retailer licensing law was designed for California communities, the model can be adapted for use in other states as well. It is important to carefully check the existing law in your state to learn if local tobacco retailer licensing is allowed. Consult with an attorney licensed in your jurisdiction.

Tobacco Retailer Licensing
An Effective Tool for Public Health

Communities are adopting tobacco retailer licensing laws as one way to ensure compliance with tobacco laws and to combat the public health problems associated with tobacco use. In this fact sheet, we explain how tobacco retailer licensing works, why many communities are pursuing this policy, and what goes into creating and implementing a strong tobacco retailer licensing law.

What is tobacco retailer licensing?

Licensing is a common policy tool that state and local governments use to regulate businesses like alcohol retailers, pharmacists, or restaurants. A local government may want to similarly license tobacco retailers in order to protect public health and safety by ensuring that retailers comply with responsible retailing practices.

Under a local tobacco retailer licensing law, the city or county government requires all businesses that sell tobacco products to obtain a license from the government in exchange for the privilege of selling these products to consumers.[1] Local governments may require licensed retailers to pay an annual fee, which can fund administration and enforcement activities such as store inspections and youth purchase compliance checks. Increasingly, tobacco retailer licensing is being used to promote other innovative policy solutions as well, including controlling the location and density of tobacco retailers and imposing additional restrictions on the sale and promotion of tobacco products.[2]

As of June 2012, more than 100 cities and counties in California had adopted a local tobacco retailer licensing law.[3] The Center for Tobacco Policy & Organizing (The Center) classifies 94 of these as "strong,"[4] meaning the laws have at a minimum:

- a requirement that all tobacco retailers obtain a license and renew it annually;
- an annual licensing fee high enough to fund sufficient enforcement;
- meaningful penalties for violators through fines and penalties, including the suspension and revocation of the license;[5] and
- a provision stating that any violation of existing local, state or federal tobacco laws constitutes a violation of the local law.

Why adopt a tobacco retailer licensing law?

Many communities adopt tobacco retailer licensing laws because they are effective tools for limiting the negative public health consequences of tobacco use. While this tool provides many benefits, there are three main advantages to a tobacco retailer licensing law. First, these laws have been shown to be effective at limiting youth access to tobacco. Second, strong laws with annual fees create self financing programs that allow for regular enforcement. Third, a tobacco retailer licensing law facilitates comprehensive local enforcement of all tobacco related laws. Each of these points is discussed below.

Protecting youth

Despite state laws prohibiting sales of tobacco to minors, a 2007 survey found that nearly three-quarters of youth access enforcement agencies statewide issued warnings to merchants selling tobacco products to minors during the prior year.[6] Fortunately, strong local tobacco retailer licensing laws—that is, laws that meet the criteria above—have proven effective at reducing illegal tobacco sales to minors. The Center has found that local tobacco retailer licensing is extremely effective at reducing illegal sales to underage youth: the organization surveyed 31 municipalities that have implemented and enforced a strong tobacco retailer licensing law and found that the rates of illegal sales to minors decreased, often significantly, in all communities surveyed.[7]

A self-financing program

An important strength of licensing is that the government may impose a licensing fee that is sufficient to cover the costs of enforcement. Because funding enforcement is often the best way to ensure compliance with a policy, ChangeLab Solutions recommends that the fee be calculated to include all enforcement activities. For more information on how to calculate a fee for a local tobacco retailer license, see our tobacco licensing cost worksheet at: www.changelabsolutions.org/publications/tobacco-licensure-costs.

A comprehensive enforcement mechanism for local communities

A number of federal and California state laws already regulate tobacco sales and establish penalties for illegal sales to minors. But these laws each have separate enforcement mechanisms and penalty structures, making it difficult to enforce them at the local level. A local tobacco retailer licensing law, on the other hand, empowers *local law enforcement* to impose *meaningful penalties* for illegal sales to minors and ensure compliance with all existing laws—ensuring that local communities can prioritize enforcement even when state and federal authorities are unable to do so.

Meanwhile, some of these state and federal laws fail to address important public health concerns related to tobacco. For example, the federal regulations authorized by the 2009 Tobacco Control Act currently apply only to cigarettes and smokeless tobacco products—they do not apply to little cigars or other tobacco products that are aggressively marketed to youth. A local tobacco retailer licensing law is a tool communities can use to help bridge these gaps and address public health concerns in their communities.

An electronic cigarette with charger.

What is a tobacco product?

When people think of tobacco products, they may think of cigarettes, cigars, and chewing tobacco, but there are other products communities may want to restrict. Our model language defines tobacco products broadly to include all products containing tobacco leaf (including hookah, snuff, snus, and dissolvables) as well as nicotine-only products such as electronic cigarettes. This definition is written to restrict emerging tobacco industry products without interfering with FDA-approved cessation devices—like nicotine patches.

020

What else can a tobacco retailer licensing law do?

While a tobacco retailer licensing law may be the best tool to prevent sales to minors, it can also promote other innovative policy solutions, controlling the location and density of tobacco retailers, imposing additional restrictions on the sale of other tobacco products like little cigars, and preventing the sale of drug paraphernalia.

Zoning: location and density of retailers

Another common way to limit where tobacco retailers can locate is through land use laws, also known as zoning laws. For a comparison between land use laws and licensing laws, see ChangeLab Solutions' factsheet, Licensing & Zoning: Tools for Public Health, available at: www.changelabsolutions.org/publications/licensing-zoning.

Location and density of retailers

Local governments can use tobacco retailer licensing to control both the location and density of tobacco retailers in their communities. A licensing law could, for example, prohibit licenses for any businesses operating too close to a school or other area frequented by youth. Because tobacco sales near schools and child-oriented areas have been shown to increase youth smoking[8], this policy can be used to keep tobacco retailers out of areas where youth typically congregate. A tobacco retailer licensing law also could cap the total number of licenses issued based on population, controlling the overall density of tobacco retailers in a community. California law limits alcohol licenses based on density, and this policy applies that same rationale to tobacco retailers.

Cigarillos in grape, strawberry and blueberry flavors, sold for under a dollar a piece.

Little cigars and cigarillos

A tobacco retailer licensing law can also prohibit the sale of individual or small packages of low-priced cigars, including little cigars and cigarillos. Due to their low prices and candy flavoring, these products are particularly appealing to youth, and though they are often similar to cigarettes, they are not subject to the same restrictions against selling the product individually or in small quantities. This policy allows communities to close this loophole and regulate a product that is increasingly used by youth. For more on this policy, see our fact sheet at: www.changelabsolutions.org/publications/limiting-teen-friendly-cigars.

Drug paraphernalia

Many communities are using tobacco retailer licensing laws to address the sale of drug paraphernalia in their neighborhoods. Through this provision, a retailer found to have violated state laws regarding drug paraphernalia will also be in violation of the local tobacco retailer license, and the penalties of the licensing ordinance will apply. In this way, the tobacco retailer licensing law becomes an additional tool for local law enforcement to combat sales of drug paraphernalia. For more information on this policy option, see our fact sheet on this topic at: www.changelabsolutions.org/publications/drug-paraphernalia.

These are just a few examples of cutting-edge policy solutions for tobacco control. These innovative policy solutions—referred to as "plug-in" provisions—can be incorporated into our model language for a tobacco retailer licensing law. For more information about plug-in provisions, including the ones mentioned here, see: www.changelabsolutions.org/publications/policy-provisions-trl.

Meth pipes for sale at a smoke shop in San Francisco, California.

Implementation and enforcement

It's up to individual communities to decide who will implement and enforce a tobacco retailer licensing law. Multiple agencies might be involved: one agency may issue the license (the city manager, for example, or the agency that issues general business licenses), while another agency, such as the environmental health or police department, may monitor compliance.

There is no one right way to implement and enforce a local tobacco retailer licensing program. That said, successful programs share some characteristics.

021

For one thing, they are overseen by a single government agency with dedicated staff members. They also plan early for enforcement that engages all the key players. And they require a license fee that is large enough to cover the full costs of administering and enforcing the program. To assist agencies in coordinating and planning, ChangeLab Solutions created a checklist that includes all the recommended elements of a successful program. The checklist is available at: www.changelabsolutions.org/publications/implementation-checklist-TRL.

To help understand the variety of local approaches to tobacco retailer licensing, in 2006 we studied four communities that are effectively enforcing their local tobacco retailer licensing laws: Contra Costa County, Santa Barbara County, the City of Willits, and the City of Los Angeles. We chose these communities because they were among the first in California to suspend the tobacco licenses of retail outlets that violated sales-to-youth or other tobacco control laws. Read our review of these programs (visit: www.changelabsolutions.org/publications/case-studies-local-trl-ords) to see how, despite their differences, they all achieve the goal of holding retailers accountable for violations of tobacco sales laws.

Licensing for healthy food retailers

Communities can use licensing to improve public health in other ways by ensuring that retailers are not only complying with existing laws but also benefiting the communities they serve. For example, in neighborhoods with limited access to fresh produce and staple foods, a licensing system could require food retailers to carry these items. For more information on healthy food retailer licensing, see our Model Licensing Ordinance for Healthy Food Retailers at: www.changelabsolutions.org/publications/HFR-licensing-ord.

For more information

For support with model language and legal issues:

ChangeLab Solutions

www.changelabsolutions.org

For support with campaign issues:

The Center for Tobacco Policy & Organizing, a project of the American Lung Association in California (The Center)

www.Center4TobaccoPolicy.org

ChangeLab Solutions

changelabsolutions.org

This material was developed by ChangeLab Solutions with funds received from the California Department of Public Health, under contract #09-11182.

ChangeLab Solutions formerly existed under the name Public Health Law & Policy (PHLP), which included the Technical Assistance Legal Center (TALC).

[1] In California, local tobacco retailer licensing laws are specifically authorized by the state tobacco retailer licensing law, which says that "[l]ocal licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law." Cal. Bus. & Prof. Code § 22971.3.

[2] *See generally* McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool.* Tobacco Control Legal Consortium, 2010. Available at: http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf

[3] American Nonsmokers' Rights Foundation. *California Municipalities with Laws Restricting Youth Access to Tobacco.* 2011. Available at: www.changelabsolutions.org/publications/anrf-list (List includes only those laws which provide for suspension or revocation of a license).

[4] The Center. *Table of Strong Locaal Tobacco Retailer Licensing Ordinances.* 2012. Available at: www.center4tobaccopolicy.org/localpolicies-licensing.

[5] The threat of license suspension creates a greater financial deterrent to retailers than a simple fine. For many stores, especially convenience stores, tobacco sales make up a substantial portion of their revenue. Losing the authority to sell tobacco products for a month can cost retailers far more than the largest fines that can be imposed under existing California laws, like Penal Code section 308 or the STAKE Act. See Cal. Penal Code § 308 (violators can be fined $200, $500, or $1000 for first, second, or third violations, respectively); Cal. Bus. & Prof. Code 22958 (violators can be fined $400-600 for a first violation and are subject to harsher penalties for each additional violation in a 5-year period).

[6] Rogers T, Feighery EC, Haladjian HH. *Current Practices in Enforcement of California Laws Regarding Youth Access to Tobacco Products and Exposure to Secondhand Smoke.* Sacramento, CA: California Department of Public Health, 2008. Available at: www.cdph.ca.gov/programs/tobacco/Documents/CTCPEnforcementReport08-05.pdf.

[7] The Center. *Tobacco Retailer Licensing Is Effective.* 2011. Available at: www.center4tobaccopolicy.org/CTPO/_files/_file/Tobacco%20Retailer%20Licensing%20is%20Effective%20March%202011.pdf.

[8] Henriksen et al. "Is Adolescent Smoking Related to the Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventative Medicine,* 47(210): 210-214, 2008. Abstract only is available at: www.sciencedirect.com/science/article/pii/S0091743508002089.

Photos: Lydia Daniller (cover, top of page 2), ChangeLab Solutions (bottom of page 2, top of page 3), SFCityAttorney on flickr.com (bottom of page 3), and Flickr Creative Commons DC Central Kitchen (page 4)

022

Community Prevention Partners of Santa Cruz County
A Drug Free Communities Coalition

Santa Cruz County
Community Prevention Partners

April 10, 2015

Dear City Council Members:

On behalf of the Community Prevention Partners (CPP) Marijuana Initiative, we want to express our strong support for a Tobacco Retail Licensing (TRL) Ordinance. The Santa Cruz Community Prevention Partners are dedicated to building a diverse community that promotes health and well being, and enhances youth and community safety through sustainable alcohol and drug prevention efforts.

Our Coalition has extensive history working with community organizations, community members and local youth to prevent and reduce alcohol, drug, and tobacco use. Last week CPP became aware of the results of the local compliance check conducted by the police department in Scotts Valley, where a 16 year-old was sold tobacco products at three of the 11 retailers surveyed. We are concerned that over 25% of the stores furnished tobacco products to a minor and feel that this problem needs to be addressed, and that there is a proven solution.

Tobacco Retail Licensing (TRL) has proven to be highly effective at reducing the illegal sale of tobacco products to youth. The City of Watsonville provides a local example of how successful a TRL can be, they adopted a TRL in 2010 and their most recent compliance check resulted in 0 sales out of 20 stores surveyed by youth decoys and the police department last week.

Research clearly demonstrates the devastating impact that tobacco has on a community, including youth. We know that tobacco companies are actively and blatantly recruiting “replacement smokers” in their teenage years by using new, attractive products like electronic cigarettes and flavors. Recently, we learned that e-cigarette use doubled in a one-year period among middle and high school students. It’s alarming to see the increase in popularity and use of e-cigarettes, especially when very little is known about them. In addition, e-devices are often used to smoke marijuana concentrates.

A strong local TRL ordinance is a proven solution for reducing youth access to tobacco products which has kept tobacco out of the hands of minors in over 100 communities across the State. We ask that you consider this policy as a solution to the problem of tobacco sales to minors in Scotts Valley and put the health safety of our youth first.

As representatives of the Santa Cruz Community Prevention Partners we thank you for addressing this important emerging public health issue.

Sincerely,
Representatives of Community Prevention Partners Marijuana Initiative Members

Shebreh Kalantari Johnson, Parent	Teela Williams, United Way of Santa Cruz County
Deb Elston, Santa Cruz Neighbors	Jorge Bru, UCSC Student Health
Frank Horst, Cabrillo College Student	Michelle Sapena, Parent