

**BENICIA CITY COUNCIL
REGULAR MEETING AGENDA**

**City Council Chambers
September 17, 2013
7:00 PM**

*Times set forth for the agenda items are estimates.
Items may be heard before or after the times designated.*

I. CALL TO ORDER (7:00 PM):

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL.

B. PLEDGE OF ALLEGIANCE.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC.

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

IV. ANNOUNCEMENTS/PROCLAMATIONS/ APPOINTMENTS/PRESENTATIONS:

A. ANNOUNCEMENTS.

1. Announcement of action taken at Closed Session, if any.

2. Openings on Boards and Commissions:

Arts and Culture Commission
1 unexpired term
Open until filled

Human Services Board
1 full term
Open until filled

Open Government Commission
1 full term
Open until filled

Community Sustainability Commission (Student Commissioner)
1 full term
Open until filled

- 3. Mayor's Office Hours:**
Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

4. Benicia Arsenal Update

Verbal update from City Attorney

B. PROCLAMATIONS.

C. APPOINTMENTS.

D. PRESENTATIONS.

1. TULA SISTER CITIES UPDATE

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN COMMENT.

B. PUBLIC COMMENT.

VII. CONSENT CALENDAR (7:15 PM):

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

A. APPROVAL OF THE MINUTES OF THE SEPTEMBER 3, 2013 CITY COUNCIL MEETING. (City Clerk)

B. INTRODUCTION AND FIRST READING OF THE ORDINANCE AMENDING CHAPTER 5.28 (PEDDLERS, SOLICITORS, AND CANVASSERS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE BY REPLACING IT IN ITS ENTIRETY. (City Attorney)

The existing chapter of the Benicia Municipal Code (BMC) concerning the regulation of peddlers, solicitors, and canvassers needs to be updated so it is compliant with current law. The City Attorney's Office has researched the current legal issues relating to the regulation of peddlers, solicitors, and canvassers as well as reviewed other cities' municipal codes regarding such activity. As a result of this research, the proposed ordinance balances the constitutional protection afforded to peddlers, solicitors, and canvassers with the City's interests in protecting the safety of residents and their right to privacy in their own residences.

Recommendation: Introduce the ordinance revising chapter 5.28 of Benicia Municipal Code to update the regulations regarding peddlers, solicitors, and canvassers in the City.

C. REVIEW AND ACCEPTANCE OF THE INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2013. (Interim Finance Director)

The investment portfolio is in compliance with the City's Investment Policy and California Law. Additionally, the City has adequate investments to meet its expenditure needs for the next six months. The Finance Committee has reviewed and accepted this report.

Recommendation: Accept, by motion, the Investment Report for the quarter ended June 30, 2013.

D. SECOND READING AND ADOPTION OF AN ORDINANCE TO AMEND BENICIA MUNICIPAL CODE CHAPTER 9.06 (SMOKING IN ENCLOSED PUBLIC PLACES) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) TO BAN HOOKAH AND SMOKE LOUNGES, AND REGULATE ELECTRONIC CIGARETTES AS TOBACCO PRODUCTS, BY AMENDING SECTION 9.06.010 (DEFINITIONS) AND BY ADDING SECTION 9.06.120 (EXISTING TOBACCO SHOPS) AND SECTION 9.06.130 (PROHIBITION OF ALL SMOKE LOUNGES). (City Attorney)

The existing regulations of indoor smoking in the Benicia Municipal Code (BMC) currently do not address smoke lounges or the use of electronic cigarettes as an alternate form of smoking. At the August 20, 2013 meeting, the Council introduced an ordinance to amend Chapter 9.06 to address these concerns. With additional research, the staff has found that electronic cigarettes, as a currently unregulated product, warrant the attention of the City. New data on vapor toxins conclude electronic cigarettes are harmful and the use of e-cigarettes in smoke-free areas threaten to undermine compliance with smoking regulations and reverse progress made in the de-normalization of tobacco use. The staff has concluded that the opening of a hookah lounge does not align with the General Plan for the City and that the health and safety of the community outweighs the entertainment value of establishing such new businesses.

Recommendation: After reviewing the additional research on the health and safety concerns regarding the use of electronic cigarettes and hookah products, adopt the ordinance amending the Benicia Municipal Code to set forth regulation procedures for electronic cigarettes under existing tobacco product laws, and to prohibit all hookah and smoke lounges in the City, based on the findings set forth in the ordinance.

E. SECOND READING AND ADOPTION OF AN ORDINANCE TO ADD SECTION 8.24.260 (OWNERSHIP OF REFUSE, GREEN WASTE, AND RECYCLABLES) TO CHAPTER 8.24 (REFUSE MATTER DISPOSAL) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE. (City Attorney)

Recently, the Police Department has received an increase in reports of people removing items from waste collection containers that are not their own. This type of behavior can lead to crimes, such as trespassing and theft, in residential and commercial areas. In addition, it can increase waste collection rates and fees. Due to the increasing amount of this behavior, the existing chapter in the Benicia Municipal Code (BMC) pertaining to refuse matters needs to be updated to include a provision about the ownership of refuse materials.

Recommendation: Introduce the ordinance updating the Benicia Municipal Code to include a section designating ownership of refuse materials.

F. APPROVE THE AMENDMENT TO THE CONTRACT SERVICES AGREEMENT BETWEEN THE CITY OF BENICIA AND RENNE SLOAN HOLTZMAN SAKAI FOR FINANCIAL SERVICES. (Acting Assistant City Manager)

Staff is proposing to amend the contract with Renne Sloan Holtzman Sakai for financial services to allow for interim Finance Director services while the City conducts a recruitment for a Finance Director.

Recommendation: Adopt the resolution approving the amendment to the agreement with Renne Sloan Holtzman Sakai for financial services.

G. Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.

VIII. BUSINESS ITEMS (7:30 PM):

A public hearing should not exceed one hour in length. To maximize public participation, the council requests that speakers be concise and avoid repetition of the remarks of prior speakers. Instead, please simply state whether you agree with prior speakers.

A. APPROVAL OF PROPOSED LEASE AGREEMENTS WITH CLEAR CHANNEL OUTDOOR FOR MODIFICATION AND OPERATION OF DIGITAL BILLBOARDS AT 3190 BAYSHORE ROAD AND 3300 PARK ROAD. (Economic Development Manager)

Clear Channel Outdoor proposes to extend two current lease agreements, which support existing billboard structures. Clear Channel Outdoor intends to modify the most Northern Structure at 3190 Bayshore immediately with an enhanced electronic digital LED screen and has until 2019 to convert the Southern structure, at 3300 Park Road, to a digital display.

Recommendation: Adopt proposed Resolution approving the proposed lease agreements with Clear Channel Outdoor to modify existing billboard signs at 3190 Bayshore Road and 3300 Park Road.

B. AMENDMENT OF THE COUNCIL'S RULES OF PROCEDURES REGARDING THE APPOINTMENT PROCESS. (City Attorney)

At the September 3, 2013 meeting, the City Council discussed various ways to make the appointment process to City Boards, Commissions and Committees

more transparent. The City Council agreed to modify the current procedure. The resolution reduces the possibility of a Brown Act violation while still providing some cover for applicants who may be too timid to interview in public.

Recommendation: Adopt the resolution amending the Rules of Procedure.

C. MAYOR PATTERSON AND COUNCIL MEMBER STRAWBRIDGE REQUEST TO AGENDIZE AN ITEM REGARDING FUNDING FOR MEALS ON WHEELS. (City Manager)

Mayor Patterson and Council Member Strawbridge would like the City Council to consider supporting the Meals on Wheels program by providing \$6,000 in funding to keep the program going five days a week for this year.

Recommendation: Consider Mayor Patterson and Council Member Strawbridge's request to agendize these topics for future City Council Meeting.

D. MAYOR PATTERSON REQUEST TO AGENDIZE ITEMS REGARDING INCREASING LEGAL PROPERTY NOTIFICATION REQUIREMENTS AND CREATING A FORMAL PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS. (City Manager)

This is a request to discuss the Public Outreach Policy for Pending Land Use and Development Proposals. Mayor Patterson would like to clarify through ordinance and policy any public confusion regarding public notices under the law for CEQA and land use projects and the desire to have an informed public.

Recommendation: Consider Mayor Patterson's request to agendize this topic for a future City Council Meeting.

**E. Council Member Committee Reports:
(Council Member serve on various internal and external committees on behalf of the City. Current agendas, minutes and meeting schedules, as available, from these various committees are included in the agenda packet. Oral reports by the Council Members are made only by exception.)**

- 1. Mayor's Committee Meeting.
(Mayor Patterson)
Next Meeting Date: December 18, 2013**
- 2. Association of Bay Area Governments (ABAG)
<http://www.abag.ca.gov/>.
(Mayor Patterson and Council Member Strawbridge)**

Next Meeting Date: TBD

- 3. Finance Committee.
(Vice Mayor Campbell and Council Member Strawbridge)
Next Meeting Date: September 27, 2013**
- 4. League of California Cities.
(Mayor Patterson and Vice Mayor Campbell)
Next Meeting Date: September 18-20, 2013**
- 5. School Liaison Committee.
(Council Members Strawbridge and Council Member Hughes)
Next Meeting Date: December 5, 2013**
- 6. Sky Valley Open Space Committee.
(Vice Mayor Campbell and Council Member Schwartzman)
Next Meeting Date: TBD**
- 7. Solano EDC Board of Directors.
(Mayor Patterson and Council Member Strawbridge)
Next Meeting Date: November 14, 2013**
- 8. Solano Transportation Authority (STA).
<http://www.sta.ca.gov/>
(Mayor Patterson, Council Member Hughes and Council Member Schwartzman)
Next Meeting Date: October 9, 2013**
- 9. Solano Water Authority-Solano County Water Agency and Delta Committee.
<http://www.scwa2.com/>
(Mayor Patterson and Council Member Hughes)
Next Meeting Date: October 10, 2013**
- 10. Traffic, Pedestrian and Bicycle Safety Committee.
(Vice Mayor Campbell and Council Member Schwartzman)
Next Meeting Date: October 17, 2013**
- 11. Tri-City and County Cooperative Planning Group.
(Mayor Patterson and Council Member Strawbridge)
Next Meeting Date: December 9, 2013**
- 12. Valero Community Advisory Panel (CAP).
(Mayor Patterson and Council Member Hughes)
Next Meeting Date: TBD**

13. **Youth Action Coalition.**
(Mayor Patterson, Council Member Strawbridge and Council Member Hughes)
Next Meeting Date: September 25, 2013

14. **ABAG-CAL FED Task Force-Bay Area Water Forum.**
<http://www.baywaterforum.org/>
(Mayor Patterson)
Next Meeting Date: TBD

15. **SOLTRANS Joint Powers Authority**
(Mayor Patterson, Council Member Hughes and Council Member Schwartzman)
Next Meeting Date: September 19, 2013

IX. ADJOURNMENT (9:30 PM):

Public Participation

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access or Special Needs

In compliance with the Americans with Disabilities Act (ADA) and to accommodate any special needs, if you need special assistance to participate in this meeting, please contact Anne Cardwell, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerk's Office.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
September 03, 2013

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

I. CALL TO ORDER:

Mayor Patterson called the Closed Session to order at 6:00 p.m.

All Council Members were present.

II. CLOSED SESSION:

**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
(Subdivision (b) of Government Code Section 54957)
Title: City Attorney**

**B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Property: 3300 Park Road & 3190 Bayshore Road
Negotiating Parties: City Attorney, City Manager and Economic
Development Manager
Under Negotiation: Instruction to negotiator on both payment and
lease terms**

III. CONVENE OPEN SESSION

Mayor Patterson called the Open Session to order at 7:00 p.m.

A. ROLL CALL

All Council Members were present.

B. PLEDGE OF ALLEGIANCE

Barbara Maddox led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC.

IV. ANNOUNCEMENTS/PROCLAMATIONS/APPOINTMENTS/PRESENTATIONS:

A. ANNOUNCEMENTS

1. Announcement of action taken at Closed Session, if any.

Ms. McLaughlin reported the following actions:

II.A - Council conducted the City Attorney's performance evaluation.

II.B - Council gave Staff direction on payment and lease terms.

2. Openings on Boards and Commissions:

Arts and Culture Commission

1 unexpired term

Open until filled

Human Services Board

1 full term

Open until filled

Open Government Commission

1 full term

Open until filled

Community Sustainability Commission (Student Commissioner)

1 full term

Open until filled

3. Mayor's Office Hours

4. Benicia Arsenal Update

Verbal update from City Attorney

Nothing new to report.

B. PROCLAMATIONS

1. IN RECOGNITION OF SOFIT CITY'S RUN THIS TOWN 2013

**2. IN RECOGNITION OF NATIONAL PREPAREDNESS MONTH -
SEPTEMBER 2013**

**3. IN RECOGNITION OF INTERNATIONAL LITERACY DAY -
SEPTEMBER 8, 2013**

**4. IN RECOGNITION OF NATIONAL VOTER REGISTRATION DAY -
SEPTEMBER 24, 2013**

C. APPOINTMENTS

1. Appointment of J. Reed Robbins to the Historic Preservation Review Commission to an unexpired term ending July 31, 2016.

Mayor Patterson stated that Council had received some correspondence recently. She had the opportunity to have a dialogue regarding the appointment of J. Reed Robbins (who is very qualified). At this moment, she would like to withdraw her appointment for the time being.

2. Appointment of Alison Fleck to the Parks, Recreation & Cemetery Commission for a four year term ending July 31, 2017.

RESOLUTION 13-79 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF ALISON FLECK TO THE PARKS, RECREATION & CEMETERY COMMISSION TO AN UNEXPIRED TERM ENDING JULY 31, 2016

Council discussed concerns regarding the subcommittee's lack of support for the appointment.

Public Comment:

None

On motion of Mayor Patterson Council adopted Resolution 13-79, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Hughes

Noes: Schwartzman, Campbell

D. PRESENTATIONS

1. CLEAN WATER PERMIT

V. ADOPTION OF AGENDA:

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council adopted the Agenda, as presented, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Hughes, Schwartzman, Campbell

Noes: (None)

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

Various items received (copies on file).

B. PUBLIC COMMENT

1. Bonnie Silveria - Ms. Silveria discussed the success of the Relay for Life event last week. She encouraged Council and the public to participate in next year's event on 8/25/14.

VII. CONSENT CALENDAR:

Council pulled items VII.A and VII.F for discussion.

On motion of Council Member Schwartzman, seconded by Council Member Strawbridge, Council adopted the Consent Calendar, as amended, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes
Noes: (None)

A. APPROVAL OF THE MINUTES OF THE AUGUST 20, 2013 CITY COUNCIL MEETING

Council Member Strawbridge requested her comments regarding matching funds and the need to act quickly be inserted into the minutes.

Council Member Hughes clarified that he would abstain, as he was absent from the meeting.

Public Comment:

None

On motion of Council Member Schwartzman, seconded by Council Member Strawbridge, Council adopted the Minutes of the August 20, 2013 City Council Meeting, as amended, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell
Noes: (None)

- B. ACCEPTANCE OF A CALIFORNIA LIBRARY LITERACY SERVICES (CLLS) LITERACY AWARD FOR 2013/14 AND AUTHORIZATION FOR THE LIBRARY DIRECTOR TO SIGN ANY NECESSARY DOCUMENTS TO SECURE ADDITIONAL GRANT FUNDING

RESOLUTION 13-80 - A RESOLUTION AUTHORIZING SUBMITTAL OF AN APPLICATION FOR A CALIFORNIA LIBRARY LITERACY SERVICE MATCHING FUNDS GRANT FOR FISCAL YEAR 2013-14 AND AUTHORIZING THE APPROPRIATION OF FUNDS FOR THE LIBRARY'S STATE FUNDED LITERACY ACCOUNT

- C. SECOND READING AND ADOPTION OF AN ORDINANCE TO DISSOLVE THE DESIGN REVIEW COMMISSION, REPEAL CHAPTER 2.92 (DESIGN REVIEW COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE, AND TRANSFER ANY RESIDUAL POWER TO THE HISTORIC PRESERVATION REVIEW COMMISSION

ORDINANCE 13-07 - AN ORDINANCE DISSOLVING THE DESIGN REVIEW COMMISSION, REPEALING CHAPTER 2.92 (DESIGN REVIEW COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE AND TRANSFERRING ANY RESIDUAL POWER TO THE HISTORIC PRESERVATION REVIEW COMMISSION

- D. SECOND READING AND ADOPTION OF AN ORDINANCE TO DISSOLVE THE INDUSTRIAL DEVELOPMENT AUTHORITY, REPEAL CHAPTER 2.88 (INDUSTRIAL DEVELOPMENT AUTHORITY) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE AND TRANSFER ANY RESIDUAL POWER TO THE CITY COUNCIL

ORDINANCE 13-08 - AN ORDINANCE DISSOLVING THE INDUSTRIAL DEVELOPMENT AUTHORITY, REPEALING CHAPTER 2.88 (INDUSTRIAL DEVELOPMENT AUTHORITY) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE AND TRANSFERRING ANY RESIDUAL POWER TO THE CITY COUNCIL

- E. SECOND READING AND ADOPTION OF AN ORDINANCE TO DISSOLVE THE MOBILE HOME RENT REVIEW COMMISSION, REPEAL CHAPTER 2.72 (MOBILE HOME RENT REVIEW COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE AND TRANSFER ANY RESIDUAL POWER TO THE CITY COUNCIL

ORDINANCE 13-09 - AN ORDINANCE DISSOLVING THE MOBILE HOME

RENT REVIEW COMMISSION, REPEALING CHAPTER 2.72 (MOBILE HOME RENT REVIEW COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE AND TRANSFERRING ANY RESIDUAL POWER TO THE CITY COUNCIL

- F. INTRODUCTION AND FIRST READING OF AN ORDINANCE TO ADD SECTION 8.24.260 (OWNERSHIP OF REFUSE, GREEN WASTE, AND RECYCLABLES) TO CHAPTER 8.24 (REFUSE MATTER DISPOSAL) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE**

ORDINANCE 13- - AN ORDINANCE TO ADD SECTION 8.24.260 (OWNERSHIP OF REFUSE, GREEN WASTE, AND RECYCLABLES) TO CHAPTER 8.24 (REFUSE MATTER DISPOSAL) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

Council Member Schwartzman and Ms. McLaughlin discussed the lack of 'whereas' in the proposed ordinance. Council Member Schwartzman suggested adding two 'whereas' to paragraph two, under background. 'Whereas the act of removing materials from refuse containers can result in crime, as it can be used as a cover for criminals to enter and wander around neighborhoods and commercial development without suspicion, and whereas this behavior can also lead to identity theft if a resident places sensitive information into the refuse containers.'

Council Member Strawbridge and Staff discussed how this would work with businesses or individuals who set aside recycling (such as bottles) for individuals to pick up. Staff confirmed that the current practice could continue, as this is geared towards individuals who are wandering through neighborhoods and businesses.

Public Comment:

None

On motion of Council Member Schwartzman, seconded by Council Member Strawbridge, Council approved the Introduction and First Reading of the above Ordinance, as amended, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes
Noes: (None)

- G. DENIAL OF THE CLAIM AGAINST THE CITY BY CANDICE GARNETT AND REFERRAL TO INSURANCE CARRIER**
- H. AUTHORIZE PURCHASE OF THREE (3) REPLACEMENT POLICE PATROL VEHICLES**

RESOLUTION 13-81 - A RESOLUTION AUTHORIZING THE PURCHASE OF THREE (3) REPLACEMENT POLICE PATROL VEHICLES UTILIZING VEHICLE REPLACEMENT FUNDS

- I. **AWARD OF CONSTRUCTION CONTRACT FOR THE KEARNEY STREET PRESSURE REDUCING STATION AND DETERMINATION THE PROJECT IS CATEGORICALLY EXEMPT FROM CEQA**

RESOLUTION 13-82 - A RESOLUTION ACCEPTING BIDS FOR THE KEARNEY STREET PRESSURE REDUCING STATION, DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AWARDING THE CONSTRUCTION CONTRACT TO ATLAS PEAK CONSTRUCTION IN THE AMOUNT OF \$151,100, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

- J. **DENIAL OF THE CLAIM AGAINST THE CITY BY DANIEL AND RENE DUFFIELD AND REFERRAL TO INSURANCE CARRIER**
- K. **YOUTH CENTER ROOF REPLACEMENT**

RESOLUTION 13-83 - A RESOLUTION AUTHORIZING THE PURCHASE AND INSTALLATION OF ROOFING MATERIAL ON THE YOUTH CENTER IN THE AMOUNT OF \$38,000 ALLOCATED FROM THE FACILITY MAINTENANCE FUND

- L. **Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.**

VIII. BUSINESS ITEMS:

- A. **AMENDMENT OF THE COUNCIL'S RULES OF PROCEDURES REGARDING THE APPOINTMENT PROCESS**

Heather McLaughlin, City Attorney, reviewed the staff report.

Council Member Hughes and Staff discussed how Council could have a discussion on the applicants in an open meeting. They discussed whether the Mayor could allow council members to make appointments.

Vice Mayor Campbell and Staff discussed how it could be awkward to discuss concerns or comments on applicants during an open meeting.

Mayor Patterson discussed the current structure of the elected mayors in Solano County. Mayor Patterson and Staff discussed the appointment process in

Danville, Ca.

Vice Mayor Campbell discussed the appointment process in the City of Danville, Ca.

Public Comment:

1. Ellen Kolowich - Ms. Kolowich spoke in opposition to the appointments being made during a public meeting. It would dissuade people from applying. She suggested conducting interviews during closed session meetings.
2. Bonnie Silveria - Ms. Silveria discussed the various interview processes that have been used over the years. She spoke in support of having the applicants interviewed in an open meeting that is not broadcast on television.

Council Member Schwartzman discussed the current process. He discussed seven different options Council could take.

Council Member Hughes discussed why he liked the current process. He discussed concerns regarding conducting interviews in a public setting, as the applicants and council members would not be as relaxed or comfortable. He discussed an option where if the Mayor's appointment did not pass, one of the subcommittee members could offer another appointment to be voted on.

Council Member Strawbridge discussed concerns regarding the current process. She discussed leaning toward option #3. She asked if there would be public comment during option #3. It could be an opportunity for Council to come to a consensus on appointments.

Vice Mayor Campbell and Staff discussed Council Member Hughes' suggestion.

Mayor Patterson discussed Council Member Schwartzman's suggestion to have the subcommittee's recommended appointments included in the agenda packet, along with the Mayor's appointment. Ms. McLaughlin clarified that it would have to be done so that the mayor did not see the recommendations prior to the agenda packet being published. That way everyone would see the recommendations at the same time.

Council Member Hughes discussed the need for consistent questions for all candidates; however he was unsure about having criteria. It should come down to who is the best fit.

Mayor Patterson clarified that she did not intend for a formal adoption of criteria. The most formal thing Council has is the statement that is ahead of the

application.

Council Member Strawbridge discussed oral vs. written explanation of why the subcommittee makes the recommendations they do. Council needs to have reasons as to why the subcommittee makes the recommendations in one form or another.

Vice Mayor Campbell and Council Member Schwartzman discussed support for verbal explanations as opposed to written explanations on why the subcommittee makes the recommendations.

Mr. Kilger asked for clarification on the process. The names would be posted in the agenda. The justification for the recommendations would be done verbally at the Council meetings.

Mayor Patterson discussed possibly saying that 'it is the discretion of the subcommittee to provide a brief explanation, but it was not mandatory'. It could be said that it is preferred that a reason be provided, but it would be discretionary.

Council Member Schwartzman discussed support for oral explanations, so that everyone hears the reasons at the same time.

Council Member Schwartzman made a motion to adopt the resolution, with the following changes: 1) on page VIII.A.16 - change it from 'shall recommend' to 'may recommend', 2) eliminate the sentence regarding the subcommittee providing comments to the mayor, 3) add the sentence 'the subcommittee may present oral reasoning during the meeting', 4) strike the entire section regarding applicant being acceptable to the Mayor, and 5) add that the subcommittee recommendations will be made public on the council agenda.

Mayor Patterson clarified she would like the language to be that the subcommittee's recommendations would be in the Council agenda packet.

Council Member Strawbridge discussed the need to keep the voting order with the subcommittee going first, as that is the only way Council would hear their reasoning for the recommendations they made prior to the other Council Member's votes.

Mayor Patterson gave direction to Staff to provide Council with two options for a future resolution (oral comments or written comments) regarding the subcommittee's recommendations.

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved the above direction to Staff, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes
Noes: (None)

B. RESOLUTION TO MODIFY THE MEETING SCHEDULE OF THE SKY VALLEY OPEN SPACE COMMITTEE TO MEET ON AN "AS-NEEDED" BASIS

RESOLUTION 13-84 - A RESOLUTION AMENDING EXHIBIT A OF THE SKY VALLEY OPEN SPACE COMMITTEE RESOLUTION NO. 04-68

Heather McLaughlin, City Attorney, reviewed the staff report.

Council Member Strawbridge and Staff discussed who would determine the need to meet 'as needed.' The chairperson would discuss it with Staff. Staff would then discuss it with Council.

Public Comment:

None

On motion of Council Member Hughes, seconded by Council Member Strawbridge, Council adopted Resolution 13-84, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes
Noes: (None)

IX. ADJOURNMENT:

Mayor Patterson adjourned the meeting at 8:53 p.m.

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 17, 2013
CONSENT CALENDAR

DATE : August 15, 2013

TO : City Council

FROM : City Attorney

SUBJECT : **INTRODUCTION AND FIRST READING OF THE ORDINANCE AMENDING CHAPTER 5.28 (PEDDLERS, SOLICITORS, AND CANVASSERS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE BY REPLACING IT IN ITS ENTIRETY**

RECOMMENDATION:

Introduce the ordinance revising chapter 5.28 of Benicia Municipal Code to update the regulations regarding peddlers, solicitors, and canvassers in the City.

EXECUTIVE SUMMARY:

The existing chapter of the Benicia Municipal Code (BMC) concerning the regulation of peddlers, solicitors, and canvassers needs to be updated so it is compliant with current law. The City Attorney's Office has researched the current legal issues relating to the regulation of peddlers, solicitors, and canvassers as well as reviewed other cities' municipal codes regarding such activity. As a result of this research, the proposed ordinance balances the constitutional protection afforded to peddlers, solicitors, and canvassers with the City's interests in protecting the safety of residents and their right to privacy in their own residences.

BUDGET INFORMATION:

N/A

GENERAL PLAN:

Relevant General Plan provisions include:

Goal 4.6: Prevent and Reduce Crime in the Community

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

Goal 1.00: Protecting Community Health and Safety

ENVIRONMENTAL ANALYSIS:

Under CEQA Guidelines, Section 15061 (b)(3), the proposed ordinance is exempt

from CEQA because the proposed ordinance will have no significant effect on the environment.

BACKGROUND:

The City of Benicia initially adopted the existing regulations regarding peddlers, solicitors, and canvassers in 1972 and last updated the chapter in 1996. A representative from the ACLU contacted the City Attorney in May 2013 regarding the constitutionality of the existing chapter. The proposed ordinance is a comprehensive revision of the City's existing regulations for peddlers, solicitors, and canvassers. The purpose and intent of the proposed amendments to the BMC are to:

- (1) Be compliant with constitutional standards set forth in case law;
- (2) Update the existing permitting process to ease enforcement of this chapter; and
- (3) Protect the safety and privacy of City residents in their own residences, particularly at night.

To achieve these goals, the proposed ordinance establishes reasonable time, place, and manner restrictions on commercial and non-commercial speech of peddlers, solicitors, and canvassers and removes discrimination against non-residents. In addition to this, the proposed ordinance places responsibility of processing permit applications and issuing permits onto the Chief of the Benicia Police Department, because fingerprinting and a background check must be performed for all permit applicants. These changes are proposed after reviewing case law and other cities' regulations, such as Moraga, Lafayette, Orinda, Danville, Fairfield, Vacaville, and Santa Rosa.

Legal Basis/Constitutional Constraints

Peddlers, solicitors, and canvassers engage in activities recognized as protected speech under the First Amendment of the United States Constitution. Therefore, the acts of peddling, soliciting, and canvassing cannot be completely prohibited. However, the City can regulate such activities, taking into account that commercial activity and non-commercial activity are subject to different regulations. Under case law, commercial speech and non-commercial speech are granted different protections under the First Amendment.

The United States Supreme Court in the *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.* 425 U.S. 748, 96 S. Ct. 1817 (1976) ruled that commercial speech has limited First Amendment protections so long as the speech only proposes a commercial transaction. In the *Central Hudson Gas and Electric Corp. v. Public Service Comm.*, 447 U.S. 557, 100 S. Ct. 2343 (1980), the United States Supreme Court set forth a four-part test for regulations on commercial speech: first, the commercial speech must not be false or

misleading; second, the asserted government's interests must be substantial; third, the regulations must directly advance the asserted government's interests; and fourth, the regulations must not be more extensive than is necessary to serve those government's interests. The United States Supreme Court and other Federal Courts use this test when ruling on cases pertaining to commercial speech (see *Lorillard Tobacco Co. v. Reilly*, 218 F. 3d 30 (2001) and *United States v. United Foods, Inc.*, 533 U.S. 405 (2001)).

Non-commercial speech comprises many forms and regulations must be specific regarding this type of activity. A solicitor's or canvasser's non-commercial speech with the primary purpose of disseminating in any way an idea or viewpoint is protected under the First Amendment. Regulation of such activity must be narrowly tailored to serve substantial interests of the City and cannot require solicitors or canvassers to obtain a permit or register with the City (see *Watchtower Bible & Tract Society of New York, Inc., v. Village of Stratton*, 536 U.S. 150, 122 S. Ct. 2080 (2002)). Charitable solicitation falls under non-commercial speech and is also protected by the First Amendment. As such, regulation of non-commercial solicitation must be narrowly tailored to serve the City's interests and cannot significantly prohibit otherwise protected activities (see *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 100 S. Ct. 826 (1980) and *Riley v. National Federation of the Blind of North Carolina Inc.*, 487 U.S. 781, 108 S. Ct. 2667 (1988)).

The proposed ordinance complies with the protection of commercial and non-commercial speech by:

(1) Allowing the free dissemination of information and charitable solicitation except at those residences with a posted sign prohibiting such activities; and

(2) Having a significant interest in protecting residents from crime and residents' privacy within their own homes.

Bona fide political and religious purposes are completely protected under the First Amendment and therefore cannot be regulated to the extent of charitable and commercial solicitation. Charitable solicitation must also be done through a non-profit organization as defined by section 501(c)(3) of the Internal Revenue Code. Section 501(c)(3) applies to organizations that are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and/or preventing cruelty to children or animals.

Under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and the Equal Protection Clause of Article 1, Section 7 of the California Constitution, regulations that treat residents differently than non-residents are unconstitutional. The United States Supreme Court has struck down

numerous regulations that favor resident merchants over non-resident merchants in any way (see *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 114 S. Ct. 1677 (1994); *Oregon Waste Systems, Inc. v. Dept. of Environmental Quality of the State of Oregon*, 511 U.S. 93, 114 S. Ct. 1345 (1994); and *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 104 S. Ct. 3049 (1984)). Under current provisions, a non-resident or non-resident merchant would be required to post a bond in the amount of \$500. While the City would return the money providing that all conditions of the bond are met, the requirement of extra money from non-residents and non-resident merchants is constitutionally questionable. The proposed ordinance gives the same regulations and requirements for residents and non-residents alike by removing this section.

While the proposed ordinance is compliant with constitutional standards set forth in case law regarding solicitation, peddling, and canvassing, it also considerably lessens regulations of such activity within the City.

Attachment:

- Proposed Ordinance

CITY OF BENICIA

ORDINANCE NO. 13-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 5.28 (PEDDLERS, SOLICITORS AND CANVASSERS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE BY REPLACING IT IN ITS ENTIRETY

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1:

Chapter 5.28 (Peddlers, Solicitors, and Canvassers) of Title 5 (Business Taxes, Licenses, and Regulations) of the Benicia Municipal Code is revised to read as follows:

**Chapter 5.28
PEDDLERS, SOLICITORS AND CANVASSERS**

Sections:

- 5.28.010 Findings – Purpose.
- 5.28.020 Definitions.
- 5.28.030 Certain activity prohibited.
- 5.28.040 Exceptions.
- 5.28.050 Registration and permit requirements.
- 5.28.060 Application investigation.
- 5.28.070 Permit – Denial – Issuance.
- 5.28.080 Permit – Denial – Appeal.
- 5.28.090 Permit – Term – Renewal.
- 5.28.100 Permit – Revocation – Grounds.
- 5.28.110 Permit – Revocation – Appeal.
- 5.28.120 Identification requirements.
- 5.28.130 Effect on conflicting provisions.

5.28.010 Findings – Purpose.

The City Council finds that the unregulated practice of solicitation, canvassing, and peddling can be a nuisance in that:

- A. If activity is carried on at night it may cause annoyance to residents and intrude into their privacy;
- B. The methods used by some of those engaged in the activity can cause apprehension in people solicited;
- C. The activity is one, which can be used as a front or cover for gaining access to premises for the purpose of engaging in criminal activity;

- D. The nature of the activity permits those engaged in it to leave the city before they become widely known and enables them to avoid complying with the law; and
- E. Persons engaged in this activity may be nonresidents and with no fixed or permanent place of business and the regulation of them through the licensing for business does not give the city sufficient control to correct the abuses in this activity.

Based on these findings, the council concludes that the unregulated and uncontrolled activity of solicitation, canvassing, and peddling affects the welfare of the city and is a public nuisance. It is the purpose of this chapter to define the activity sought to be regulated; to impose upon those seeking to engage in it conditions and requirements, which will permit the city to protect the welfare of its citizens, and to prevent intrusion into their privacy; and to regulate the activity to prevent abuses of it.

5.28.020 Definitions.

In this chapter, unless the context otherwise requires, the following terms shall be defined as follows:

“Charitable solicitation” means the act of going from place to place for any reason in connection with a non-profit organization as defined by section 501(c)(3) of the Internal Revenue Code. The term does not include solicitation carried on for a bona fide political or religious purpose.

“Chief of Police” refers to the chief of the Benicia Police Department or his or her authorized representative.

“Peddler” means one who engages in the act of peddling.

“Peddling” is the act of going from place to place, carrying or transporting goods of any kind and offering them for sale, or making sales and deliveries to purchasers. “Peddling” includes hawking.

“Solicitation” or “canvassing” means the act of going from place to place in the city for the purpose of displaying or taking orders for the sale of goods for future delivery, or for services to be furnished.

“Solicitor” or “canvasser” means a person who engages in the conduct of solicitation or canvassing.

5.28.030 Certain activity prohibited.

No person may solicit, canvass, or peddle in the city:

A. Without a registration permit;

B. Before the hour of 9:00 a.m. PST of any day and after the hour of 6:00 p.m. PST or 8:00 p.m. PDT.

VII.B.6

C. Upon the premises posted with a sign stating in substance that no solicitors, peddlers, canvassers, or littering are permitted.

5.28.040 Exceptions.

Section 5.28.030 (A) does not apply to a person who:

1. Solicits orders for products sold on an established route such as ice, bakery, water, or dairy products route;

2. Solicits orders from businesses on behalf of a wholesaler, jobber or manufacturer;

3. Solicits for a bona fide political or religious purpose;

4. Participates as a vendor in farmer's markets/street or community fairs and is duly licensed in accordance with the provisions of BMC 5.06.060 (B) or (C);

5. Is under 15 years of age;

6. Distributes handbills, pamphlets, circulars, or other informational materials door-to-door within the city, including commercial information disseminated in a way that does not involve face-to-face solicitation or peddling; or

7. Does charitable solicitation.

5.28.050 Registration and permit requirements.

A. Each person who desires to solicit, canvass or peddle in the city shall file with the Chief of Police a sworn registration application on a form furnished by the Chief of Police. The applicant shall give the following information:

1. Name and description;

2. Permanent home address and local address;

3. If employed, the name and address of the employer, together with credentials establishing the relationship;

4. A brief description of the nature of the business and the goods to be sold;

5. The length of time for which the permit is sought;

6. Three photographs and a letter of reference from each of three reliable citizens attesting to the applicant's good character sufficient to enable an investigator to evaluate his character and business responsibility;

7. Fingerprints of the applicant;

8. A statement as to whether the applicant has been convicted of a crime or violation of a local agency ordinance, and the nature of the offense and penalty imposed for it.

B. If the Chief of Police knows the applicant sufficiently to be able to evaluate the applicant's character and responsibility without the information from subsections (A)(6) and (A)(7) of this section, the Chief of Police need not require the applicant to furnish that information.

C. A one-time background security check fee that covers the cost of a Department of Justice records review, a Federal Bureau of Investigation (FBI) records review, and fingerprinting process, shall be charged to the applicant. The amount of this fee shall be established, and may be adjusted as necessary, by resolution of the City Council of the City of Benicia.

5.28.060 Application investigation.

Upon receipt of an application, the Chief of Police shall make an investigation of the applicant's business and moral character.

5.28.070 Permit – Denial – Issuance.

A. The Chief of Police may deny an applicant a permit for soliciting, canvassing, or peddling on one or more of the following grounds:

1. Fraud, misrepresentation, or false statement contained in the application for registration permit;
2. Violation of any ordinance or regulation of the city;
3. Conviction of a crime or misdemeanor involving drugs, theft, trespassing, or are of a violent nature; or
4. Conducting the business of soliciting, canvassing or peddling in any other city in an unlawful manner or in a manner, which is a breach of the peace or a nuisance or is a menace to the health, safety or general welfare of the public.
5. Unsatisfactory business responsibility or unsatisfactory character of applicant.

The Chief of Police shall notify the applicant of his decision in writing within 15 days after the application is filed. The decision is final 10 days from the date that notice of denial is given.

B. If the Chief of Police finds that the applicant's character or business responsibility, or both, is satisfactory, he or she shall approve the registration permit and recommend the issuance of a business license.

5.28.080 Permit – Denial – Appeal.

A person aggrieved by the decision of the Chief of Police may appeal the decision in accordance with Chapter 1.44 BMC.

5.28.090 Permit – Term – Renewal.

A. A registration permit authorizes the holder to engage in solicitation, canvassing, or peddling described in the application for a period of not more than one year. The Chief of Police may specify a shorter effective period.

B. A permit holder may renew the permit by filing an application for renewal upon a form prescribed by the Chief of Police.

5.28.100 Permit – Revocation – Grounds.

A. The Chief of Police may revoke the registration permit of a solicitor, canvasser, or peddler on one or more of the following grounds:

1. Fraud, misrepresentation, or false statement made in the course of solicitation, canvassing or peddling;
2. Fraud, misrepresentation, or false statement contained in the application for registration permit;
3. Violation of any ordinance or regulation of the city;
4. Conviction of a crime or misdemeanor involving drugs, theft, trespassing, or are of a violent nature; or
5. Conducting the business of soliciting, canvassing or peddling in an unlawful manner or in a manner, which is a breach of the peace or a nuisance or is a menace to the health, safety or general welfare of the public.

B. The revocation takes effect three days after the Chief of Police mails notice of revocation to the applicant.

5.28.110 Permit – Revocation – Appeal.

A person aggrieved by the action of the Chief of Police in revoking a registered permit may appeal the action in accordance with Chapter 1.44 BMC. During the appeal, the permit is suspended and the solicitor or peddler may not conduct his or her business in the city.

5.28.120 Identification requirements.

Each solicitor, canvasser and peddler shall wear an identification card issued by the Chief of Police while engaged in solicitation, canvassing or peddling. The card shall be affixed to the clothing so that it is easily visible. In addition, each solicitor, canvasser, or peddler shall carry the permit, and shall exhibit it at the request of any citizen.

5.28.130 Effect on conflicting provisions.

This chapter does not repeal, amend or modify the provisions of this code relating to business licenses. This chapter is a regulatory chapter and is not intended as a revenue raising measure. To the extent that BMC Chapters 5.04 and 5.06 conflict with or duplicate this chapter, BMC Chapters 5.04 and 5.06 hold controlling authority

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 17th of September 2013, and adopted at a regular meeting of the Council held on the ____ day of _____, 2013 by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

Date

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 17, 2013
CONSENT CALENDAR

DATE : August 26, 2013

TO : City Manager

FROM : Interim Finance Director

SUBJECT : **REVIEW AND ACCEPTANCE OF THE INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2013**

RECOMMENDATION:

Accept, by motion, the Investment Report for the quarter ended June 30, 2013.

EXECUTIVE SUMMARY:

The investment portfolio is in compliance with the City's Investment Policy and California Law. Additionally, the City has adequate investments to meet its expenditure needs for the next six months. The Finance Committee has reviewed and accepted this report.

BUDGET INFORMATION:

This report has no impact on the City's budget.

GENERAL PLAN:

There is no effect on the City's General Plan.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #3: Strengthening Economic and Fiscal Conditions
 - Strategy #4: Manage City finances prudently

BACKGROUND:

The City's investment portfolio consists of cash balances in checking accounts (less outstanding checks), Local Agency Investment Fund, treasury bills, federal agency notes, corporate notes, certificates of deposits and trustee accounts, which manage the installment payments and reserves for bonds issued by the City.

The City has adequate investments to meet its expenditure requirements for the next six months. In addition, the City's investment portfolio is in compliance with Government Code Sections 53600 et seq. and the City's Investment Policy. The Finance Committee reviewed and accepted the Investment Report, as well as

PFM Asset Management's quarterly review of the portfolio, at its August 23, 2013 meeting. The attached report summarizes the City's investments by purchase date, maturity date, investment type, issuer of investment, cost, current yield and yield to maturity.

Attachments:

- Investment Report for the quarter ended June 30, 2013
- PFM presentation

**City of Benicia
Investment Report
As of June 30, 2013**

Type of Investment	Name of Issuer	Purchase Date	Maturity Date	Current Yield	Yield to Maturity	Par Value	Cost of Investment	Current Market Value
On Demand								
L.A.I.F.	L.A.I.F.			0.240%	\$	10,163,638.61	\$	10,166,415.39
Checking	Bank of America			0.600%		4,590,474.40		4,590,474.40
Money Market	US Bank			0.000%		160,742.37		160,742.37
Subtotal						14,914,855.38		14,917,632.16
Up to 6 Months								
US Obligation	FHLB	3-Aug-11	9-Sep-13	1.090%	0.550%	200,000.00	202,396.00	200,372.00
Subtotal						200,000.00	202,396.00	200,372.00
6 Months to 1 Year								
US Obligation	FHLMC	24-Jan-11	25-Feb-14	1.380%	1.310%	1,500,000.00	1,502,790.00	1,511,355.00
US Obligation	FFCB	16-Aug-11	5-Mar-14	2.070%	0.410%	750,000.00	782,550.00	759,517.50
US Obligation	US Treasury	1-Apr-11	15-Mar-14	1.190%	1.250%	600,000.00	599,976.56	604,638.00
US Obligation	US Treasury	26-Mar-10	30-Apr-14	1.870%	2.220%	250,000.00	246,650.39	253,515.00
US Obligation	FHLB	10-Jun-11	28-May-14	1.380%	0.880%	500,000.00	507,305.00	505,235.00
Subtotal						3,600,000.00	3,639,271.95	3,634,260.50
1 Year to 2 Years								
US Obligation	US Treasury	25-Aug-11	15-Aug-14	0.490%	0.370%	750,000.00	752,988.28	752,460.00
US Obligation	FHLMC	24-Aug-11	27-Aug-14	0.990%	0.620%	750,000.00	758,490.00	756,840.00
US Obligation	FNMA	28-Jan-11	16-Sep-14	2.900%	1.580%	1,000,000.00	1,050,010.00	1,033,550.00
US Obligation	FHLMC	14-Sep-11	19-Sep-14	0.490%	0.600%	1,100,000.00	1,096,642.58	1,103,056.00
Cert of Deposit	Svenska Handelsbanken	5-Apr-13	6-Oct-14	0.490%	0.480%	650,000.00	649,901.01	650,572.00
US Obligation	US Treasury	28-Dec-12	31-Oct-14	2.330%	0.260%	975,000.00	1,012,819.34	1,002,807.00
US Obligation	FHLMC	1-Jun-12	25-Nov-14	0.690%	0.500%	760,000.00	764,628.40	764,947.60
US Obligation	US Treasury	11-Jan-12	15-Dec-14	0.190%	0.350%	750,000.00	747,802.73	750,172.50
US Obligation	US Treasury	29-Feb-12	28-Feb-15	2.310%	0.440%	760,000.00	803,951.56	786,273.20
Cert of Deposit	Bank of Nova Scotia	6-Mar-13	6-Mar-15	0.590%	0.590%	550,000.00	550,000.00	550,324.50
Cert of Deposit	Rabobank Nederland	29-Apr-13	29-Apr-15	0.600%	0.610%	675,000.00	675,000.00	671,738.75
Subtotal						8,720,000.00	8,862,233.90	8,822,744.55
2 Years to 3 Years								
US Obligation	US Treasury	15-Mar-12	31-Jul-15	1.650%	0.580%	225,000.00	233,789.06	231,363.00
US Obligation	FNMA	9-Sep-11	9-Sep-15	0.960%	1.000%	500,000.00	500,000.00	500,620.00
US Obligation	FNMA	14-Sep-11	26-Oct-15	1.560%	0.930%	800,000.00	822,536.00	819,832.00
Corporate Note	Colgate-Palmolive	24-Dec-12	1-Nov-15	1.370%	0.650%	475,000.00	484,758.40	482,034.75
US Obligation	FNMA	16-Nov-12	21-Dec-15	0.400%	0.450%	375,000.00	374,126.25	372,903.75
US Obligation	US Treasury	5-Dec-12	31-Dec-15	2.010%	0.360%	110,000.00	115,916.80	114,408.80
Corporate Note	General Electric	8-Jan-13	8-Jan-16	1.000%	1.10%	275,000.00	274,117.25	273,476.50
Corporate Note	Bank of New York	20-Dec-12	15-Jan-16	2.410%	0.630%	500,000.00	525,250.00	517,260.00
US Obligation	FHLMC	24-Feb-12	24-Feb-16	0.990%	0.890%	700,000.00	702,898.00	702,212.00
US Obligation	FHLMC	21-Mar-12	21-Mar-16	0.990%	0.970%	500,000.00	500,515.00	501,730.00
US Obligation	FNMA	15-Feb-13	30-Mar-16	0.500%	0.540%	465,000.00	464,469.90	462,396.00
US Obligation	FNMA	30-Jul-12	11-Apr-16	2.290%	0.590%	750,000.00	798,960.00	784,155.00
Corporate Note	Toyota Motor	17-May-13	17-May-16	0.800%	0.810%	290,000.00	289,881.10	288,489.10
Subtotal						5,965,000.00	6,087,217.76	6,050,880.90

**City of Benicia
Investment Report
As of June 30, 2013**

Type of Investment	Name of Issuer	Purchase Date	Maturity Date	Current Yield	Yield to Maturity	Par Value	Cost of Investment	Current Market Value
3 Years to 5 Years								
Corporate Note	IBM Corp	26-Dec-12	22-Jul-16	1.850%	0.850%	650,000.00	675,129.00	666,256.50
Corporate Note	Procter & Gamble	9-Jan-13	15-Aug-16	1.380%	0.840%	650,000.00	663,981.50	658,066.50
US Obligation	FNMA	5-Oct-12	28-Sep-16	1.180%	0.560%	900,000.00	924,284.00	910,287.00
US Obligation	FNMA	30-Jul-12	27-Apr-17	1.100%	0.840%	750,000.00	760,080.00	747,397.50
Corporate Note	Berkshire Hathaway	15-Jan-13	15-May-17	1.610%	1.260%	275,000.00	278,918.75	273,108.00
US Obligation	FHLMC	8-Jun-12	6-Jun-17	1.200%	1.120%	500,000.00	501,925.00	496,660.00
US Obligation	FHLMC	31-Jul-12	28-Jul-17	1.010%	0.860%	750,000.00	755,017.50	739,462.50
US Obligation	FNMA	10-Sep-12	28-Aug-17	0.910%	0.820%	700,000.00	701,736.00	686,126.00
US Obligation	US Treasury	5-Nov-12	31-Oct-17	0.710%	0.740%	150,000.00	150,087.89	147,175.50
Corporate Note	Chevron	5-Dec-12	5-Dec-17	1.120%	1.100%	230,000.00	230,459.85	224,735.30
Corporate Note	Berkshire Hathaway	11-Feb-13	9-Feb-18	1.530%	1.580%	350,000.00	349,513.50	342,916.00
Corporate Note	Wal-Mart Stores	11-Apr-13	11-Apr-18	1.130%	1.140%	255,000.00	254,765.40	247,472.40
Corporate Note	Colgate-Palmolive	2-May-13	1-May-18	0.930%	1.000%	505,000.00	502,591.15	485,930.20
Corporate Note	Microsoft Corp	2-May-13	1-May-18	1.030%	1.010%	160,000.00	159,899.20	154,737.60
Corporate Note	Apple	3-May-13	3-May-18	1.040%	1.080%	300,000.00	298,893.00	288,090.00
US Obligation	FNMA	24-May-13	21-May-18	0.930%	1.050%	550,000.00	545,352.50	531,554.00
US Obligation	FNMA	31-May-13	21-May-18	0.930%	1.190%	250,000.00	246,212.50	241,614.00
Corporate Note	Chevron	24-Jun-13	24-Jun-18	1.710%	1.720%	425,000.00	425,000.00	421,090.00
Subtotal						8,350,000.00	8,423,826.74	8,262,579.00

Total (before fiscal agent accounts) \$ 41,749,855.38 \$ 42,129,801.73 \$ 41,888,469.11

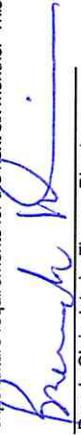
Fiscal Agent Accounts 549,607.43

TOTAL INVESTMENT PORTFOLIO \$ 42,679,409.16 \$ 42,438,076.54

WEIGHTED AVERAGE MATURITY OF THE INVESTMENT PORTFOLIO

Mark to Market \$ (241,332.62)
2.04 Years

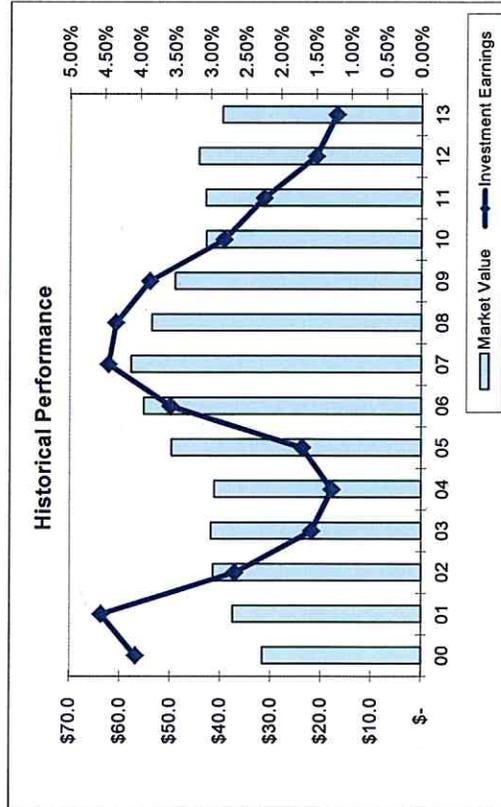
The City of Benicia complies with Government Code Sections 53600 et seq. and the City's Investment Policy. The source of market value is US Bank. The City has the ability to meet expenditure requirements for the next six months. This report to the best of my knowledge, is accurate representation of the City of Benicia's investments.


Brenda Olwin, Interim Finance Director

City of Benicia
Historical Portfolio Comparison

Market Value (Millions)					
Fiscal Year / Quarter	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual Average
2000	\$ 28.4	\$ 31.2	\$ 31.8	\$ 35.1	\$ 31.6
2001	33.0	36.7	37.7	42.8	37.5
2002	39.3	41.5	40.3	44.6	41.4
2003	39.7	43.4	39.5	44.8	41.8
2004	39.3	42.8	41.1	41.8	41.3
2005	38.7	53.8	50.0	56.6	49.8
2006	46.9	54.9	55.1	64.3	55.3
2007	57.4	59.3	54.4	60.1	57.8
2008	51.9	54.7	51.4	56.8	53.7
2009	48.1	52.1	47.3	48.7	49.1
2010	42.6	43.7	39.4	45.7	42.9
2011	37.6	46.2	35.7	52.6	43.0
2012	46.6	45.7	40.2	45.0	44.4
2013	39.2	41.3	36.1	42.4	39.8

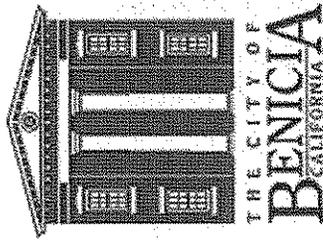
Investment Earnings					
Fiscal Year / Quarter	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual Average
00	3.53%	4.17%	4.15%	4.41%	4.06%
01	4.76%	4.82%	4.58%	4.07%	4.55%
02	3.62%	2.72%	2.27%	2.01%	2.66%
03	1.90%	1.61%	1.41%	1.34%	1.57%
04	1.38%	1.28%	1.24%	1.20%	1.28%
05	1.31%	1.43%	1.74%	2.33%	1.70%
06	2.52%	3.76%	3.84%	4.16%	3.57%
07	4.34%	4.44%	4.46%	4.57%	4.45%
08	4.56%	4.48%	4.20%	4.15%	4.35%
09	4.01%	4.07%	4.03%	3.36%	3.87%
10	3.17%	2.83%	2.65%	2.60%	2.81%
11	2.51%	2.38%	2.15%	1.95%	2.25%
12	1.76%	1.64%	1.43%	1.21%	1.51%
13	1.22%	1.26%	1.20%	1.18%	1.21%



Investment Earnings - Dollars						
Fiscal Year / Quarter	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Mark to Market *	Annual Average
2008	319,769	789,398	474,720	327,578	403,879	578,836
2009	275,114	580,504	577,776	469,555	267,309	542,565
2010	299,040	294,913	226,519	289,374	(196,842)	228,251
2011	267,030	235,311	165,343	162,677	(352,938)	119,356
2012	46,173	132,626	130,494	36,619	47,338	98,312
2013	N/A	N/A	N/A	N/A	(155,017)	-

* Mark to market is the difference between current year minus prior year's mark to market gain or loss.

City of Benicia



Second Quarter 2013 Review of Portfolio

PFM Asset Management LLC
50 California Street, Suite 2300
San Francisco, CA 94111
415-982-5544

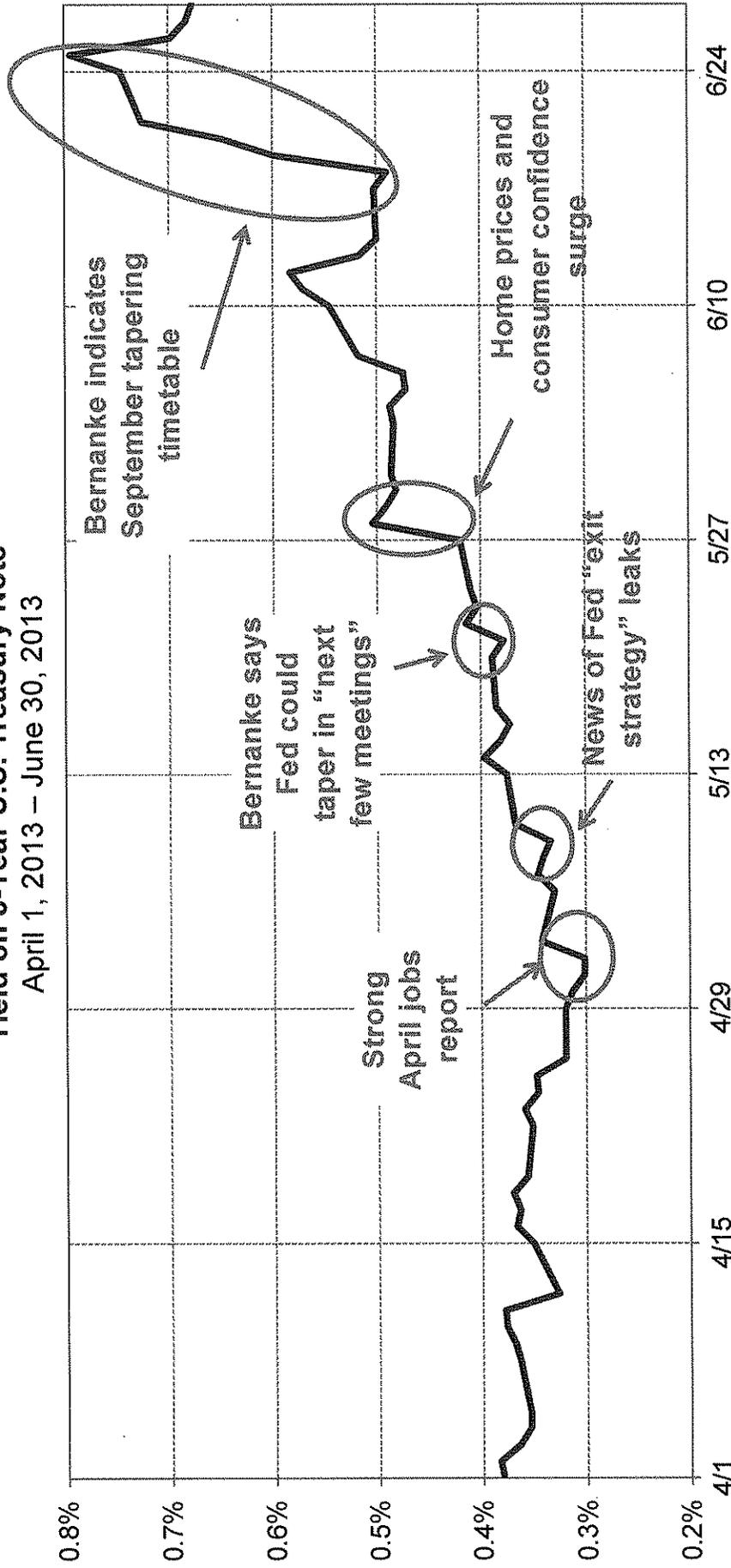
VII.C.8 Second Quarter 2013 Recap

- During the second quarter, interest rates experienced their largest increase since the fourth quarter of 2010. The increase in interest rates was largely due to the Federal Reserve's May and June meetings, which revealed their bond purchases could be tapered beginning in September.
- Total returns, which take into account interest income as well as the change in market value of a portfolio, were negative for the second quarter for investments with durations longer than 1 year.
- Treasuries had higher returns than other sectors because, in addition to Treasury yields rising, spreads (yield difference) between Treasuries and Agencies or corporates also increased causing Agency and corporate yields to rise more (prices fall more).
- Trading activity for the quarter generated a total realized gain of \$8,948.
- Active investment management strategies we used during the quarter were as follows:
 - We diversified the City's corporates with issuers such as Microsoft, Apple, and Toyota.
 - Captured opportunities in yield and spread movements through strategic extensions of select maturities.

Interest Rates on the Rise

- Interest rates surged on a combination of positive economic news and the Federal Reserve's announcements that they would consider tapering their purchases of long-term Treasuries and mortgage-backed securities sooner than expected.

Yield on 3-Year U.S. Treasury Note
April 1, 2013 – June 30, 2013

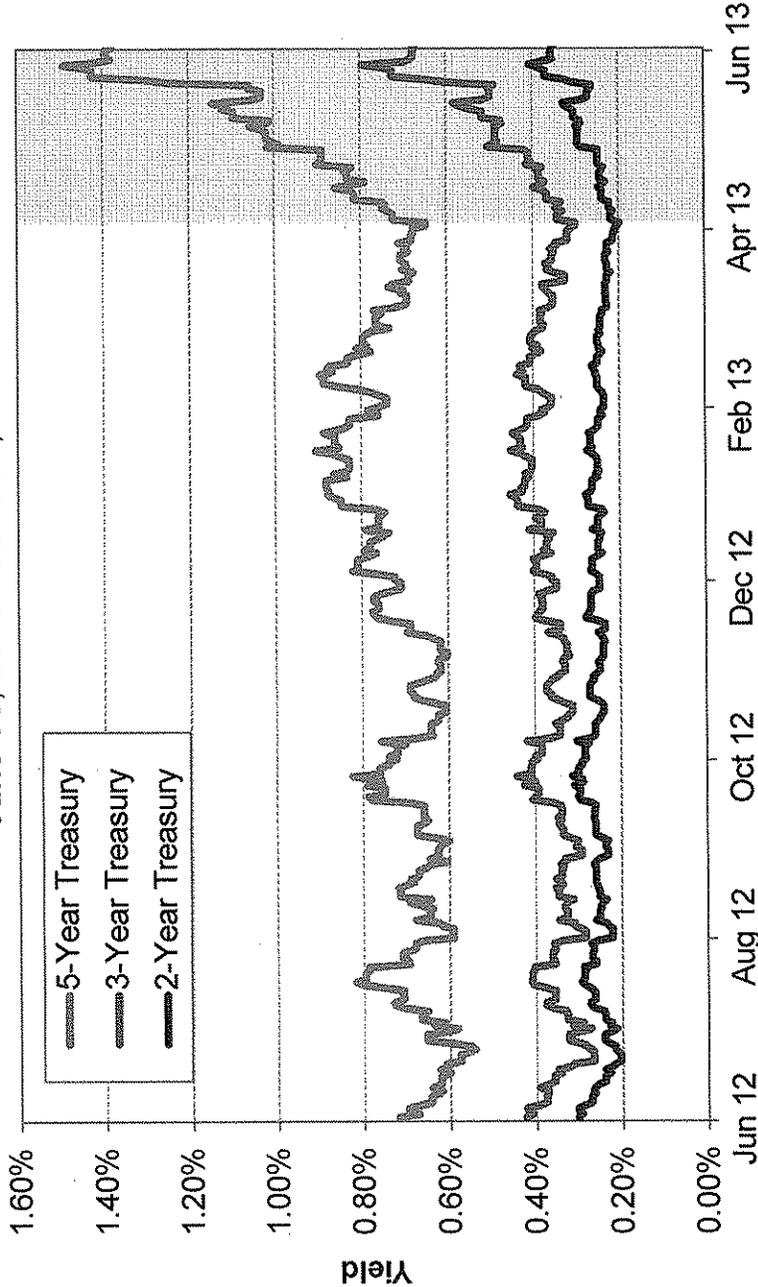


Source: Bloomberg

Longer-Term Rates Broke Out of Range

- The increase in rates following Fed Chairman Bernanke's comments and positive economic releases impacted longer-term maturities more significantly than shorter-term maturities.
- The yield on 5-year U.S. Treasury securities increased by 75 basis points in less than two months.

U.S. Treasury Yields
June 30, 2012 - June 30, 2013

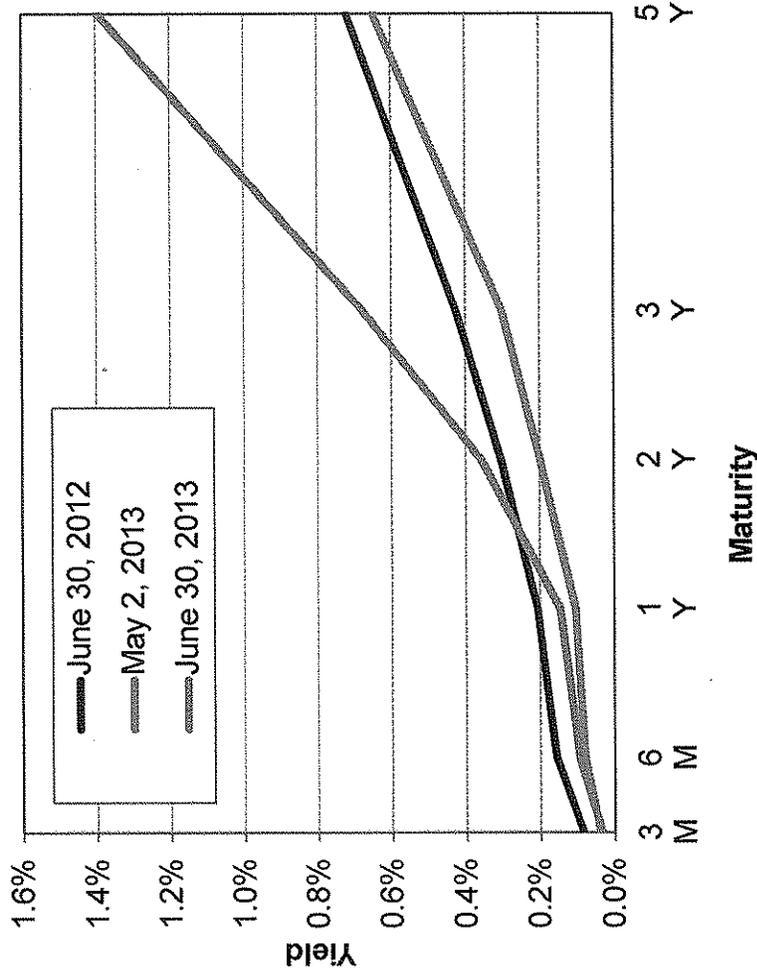


Source: Bloomberg

Yield Curve Steepens in Mid-2013

- The recent increase in rates, especially in the 3- to 5-year maturity range, steepened the yield curve.

U.S. Treasury Yield Curve



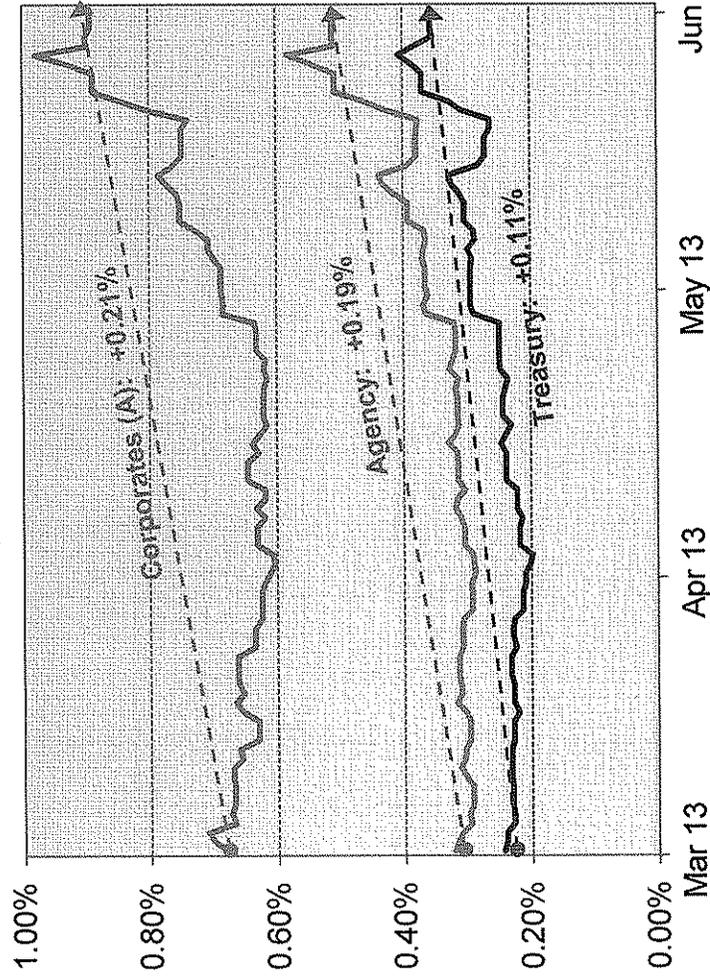
Source: Bloomberg

VII.C.12 Spreads Also Widened, Causing Treasuries to Outperform

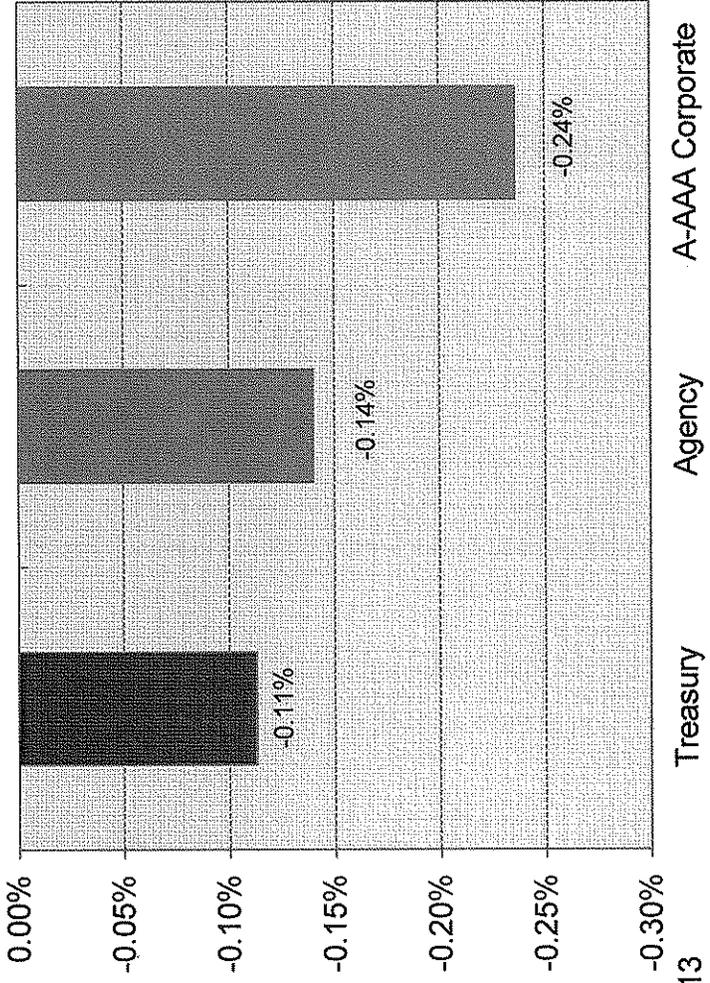
As interest rates rose, yield spreads also widened on Federal Agencies, corporates and mortgage-backed securities. As a result, Treasuries outperformed other sectors.

Spreads have reversed since the beginning of the third quarter.

Comparison of 2-year Yields
March 31, 2013 – June 30, 2013



1-3 Year Index Total Returns (Sector)
March 31, 2013 – June 30, 2013

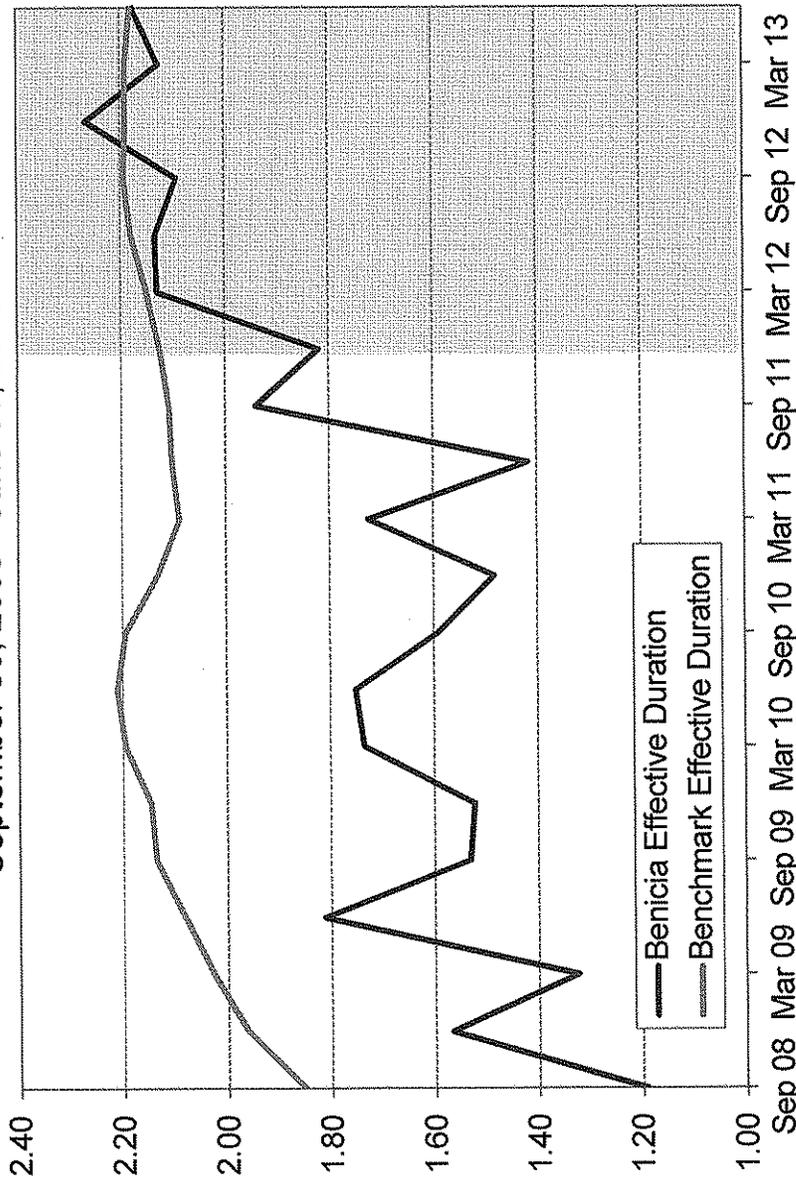


Source: Bloomberg, BofA Merrill Lynch Bond Indices

Portfolio Duration Now in Line with Benchmark

- The portfolio's effective duration is now in line with the benchmark's duration

City of Benicia Duration vs. 0-5 Year Treasury Benchmark Duration
September 30, 2008 - June 30, 2013



Source: Bloomberg

Results as Measured by Total Rate of Return

- The rise in interest rates in May and June caused the fair value of the portfolio to decrease in value more than the amount the portfolio earned in interest for the quarter, generating a negative return.
- Higher interest rates also result in opportunities for enhanced return.

Total Return
For periods ending June 30, 2013

	Duration (years)	Yield to Maturity at Cost	Past Quarter	Past Year	Since 12/31/11	Past 3 Years	Since Inception
City of Benicia Gross Return	2.18	0.83%	-0.60%	-0.01%	0.42%	0.92%	3.13%
City of Benicia Net Return	2.18	0.83%	-0.71%	-0.12%	0.31%	0.80%	3.01%
Merrill Lynch U.S. Treasury Index	2.18	0.53%	-0.54%	0.02%	0.23%	1.19%	3.31%

- Performance on trade date basis, gross (i.e., before fees), in accordance with the CFA Institute's Global Investment Performance Standards (GIPS).
- Merrill Lynch Indices provided by Bloomberg Financial Markets. Custom Benchmark consists of the Merrill Lynch 1-3 Year U.S. Treasury Index through 6/30/2006 and the Merrill Lynch 0-5 Year U.S. Treasury Index thereafter.
- Performance numbers for periods greater than one year are presented on an annualized basis.
- The portfolio started being managed against the 0-5 year U.S. Treasury Index in the first quarter of 2012.
- Money market fund balance is included in performance and duration calculations.
- Inception date is December 31, 2005.

Second Quarter Total Return Detail

Calculating Return in Dollars

Ending Market Value + Accrued Interest	\$27,223,284
- Beginning Market Value + Accrued Interest	- \$27,387,739
+ Distributions	+ \$4,217,980
- Contributions	- \$4,217,102
= Total Return	-\$163,577

Components of Dollar Return

Realized Gain/Loss:	\$8,948	Realized
Net Interest Income:	+ \$53,774	Return
Realized Dollar Return:	\$62,722	→ +0.230%
Unrealized Gain/Loss:	- \$226,299	
Total Return	-\$163,577	

Calculating Average Balance

Beginning Market Value + Accrued Interest	\$27,387,739
- Time-Weighted Distributions	- \$2,525,596
+ Time-Weighted Contributions	+ \$2,525,667
= Time Weighted Average Balance	\$27,387,810

$$\text{Total Return} = \frac{-\$163,577}{\$27,387,810} = -0.597\%$$

Treasury Yields Retreat After Quarter-end

3-Year U.S. Treasury Yields
July 5, 2013 – July 26, 2013



Source: Bloomberg

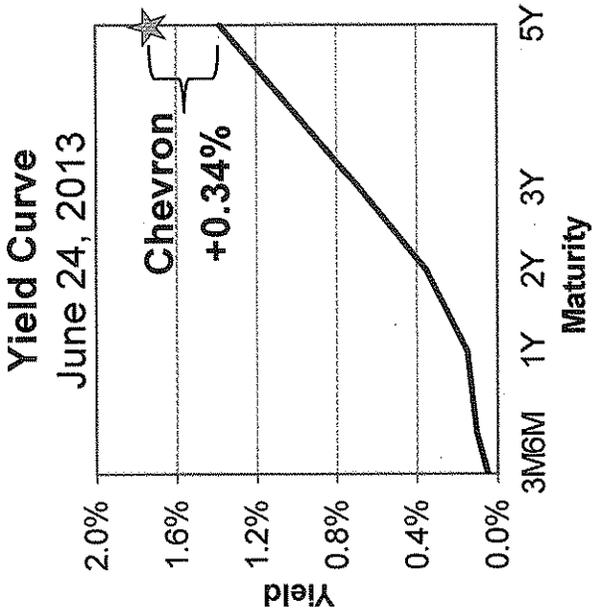
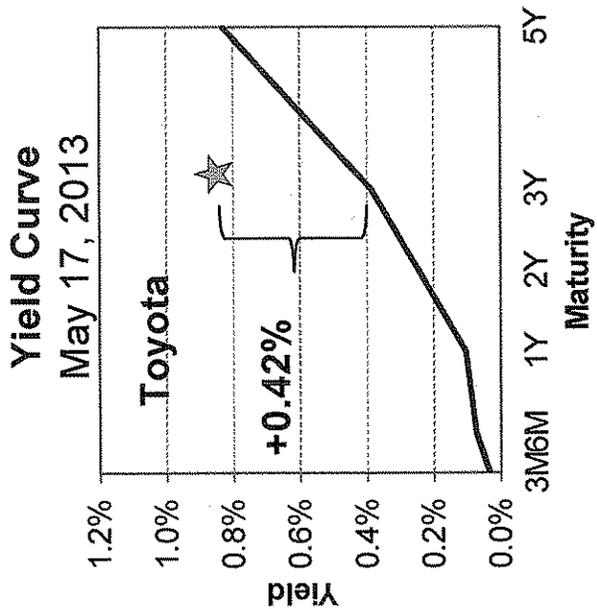
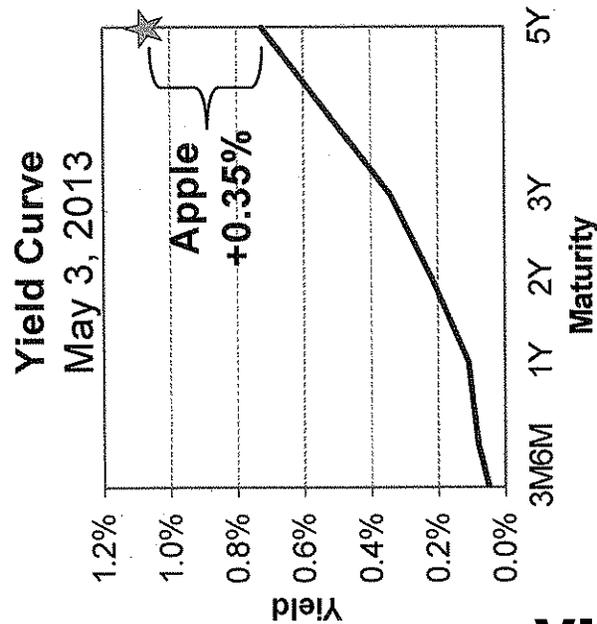
Strategy—Diversify in Non-Financial Corporates

- We made strategic purchases in non-financial corporates as the yield difference between U.S. Treasury securities and corporate obligations widened.
- The new investments enhanced portfolio yield and provided additional diversification.
- These corporate purchases provided significant value over U.S. Treasury securities.

– Apple Inc.—Maturity: 5/3/18 Yield to Maturity: **1.08 %**

– Toyota Motor Credit Corp—Maturity: 5/17/16 Yield to Maturity: **0.81 %**

– Chevron Corp—Maturity: 6/24/18 Yield to Maturity: **1.72 %**



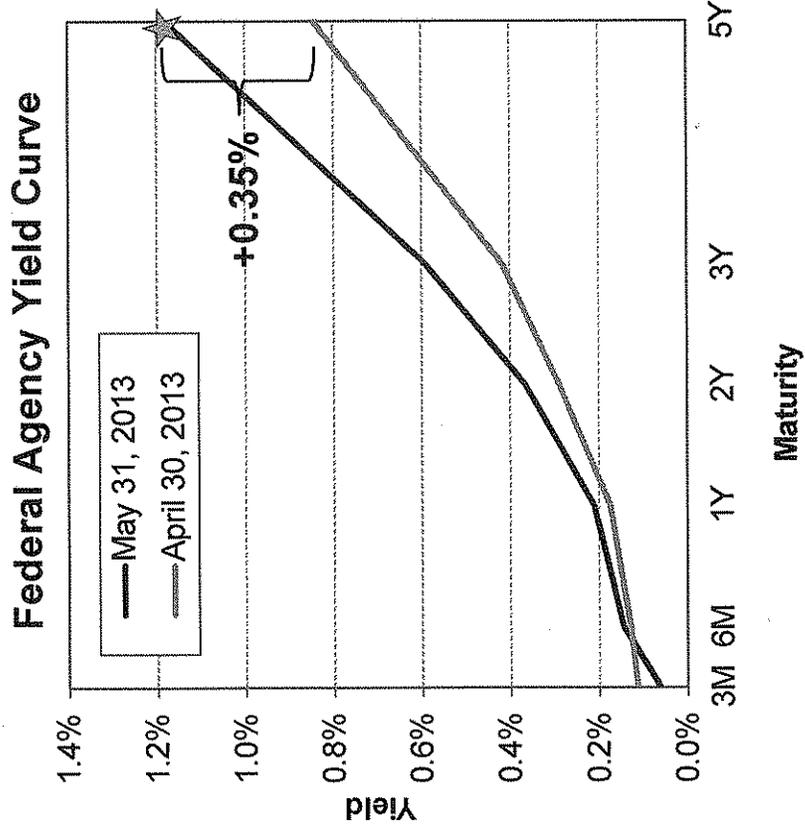
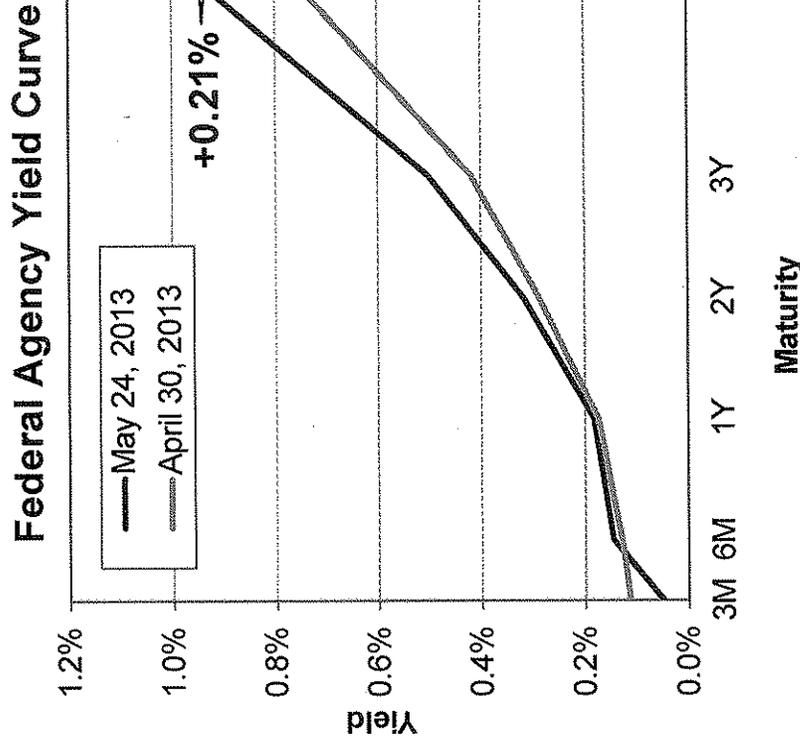
Source: Bloomberg

VII.C.18 Strategy—Extend Duration After Rate Increase

- The rate increase that began in May presented a buying opportunity for the portfolio.
- The steepening in the yield curve increased the potential for roll-down return in longer-term securities.
- We made the following purchases:

- May 24, 2013: FNMA—Maturity: 5/21/18
- May 31, 2013: FNMA—Maturity: 5/21/18

- Yield to Maturity: **1.05%**
- Yield to Maturity: **1.19%**



Source: Bloomberg

Portfolio Is In Compliance with California Government Code and Investment Policy

Security Type	Market Value as of June 30, 2013	Percentage of Portfolio	Permitted by Policy	In Compliance
U.S. Treasuries	\$4,659,070	17%	100%	✓
Federal Agencies	\$15,182,163	56%	100%	✓
Negotiable CDs	\$1,874,266	7%	30%	✓
Corporate Notes	\$5,347,043	20%	30%	✓
Money Market Fund	\$160,742	<1%	20%	✓
Totals	\$27,223,284	100%		

Sample Trades – Strategic Swaps

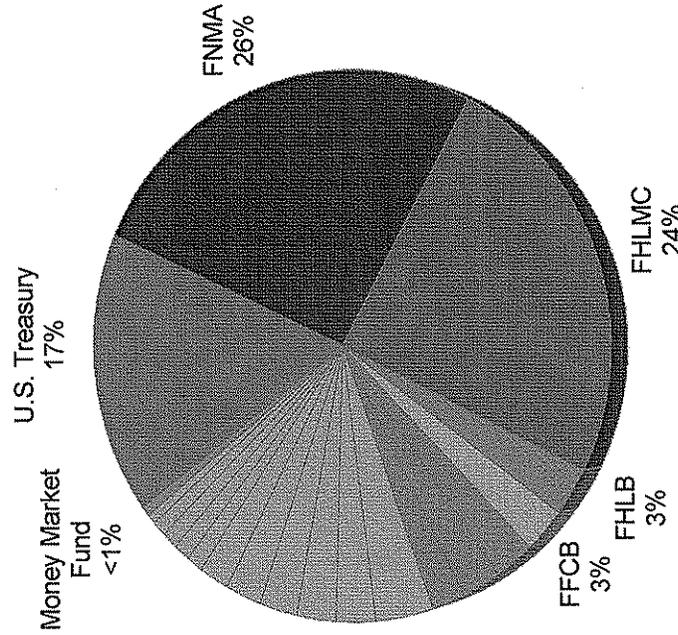
Settle Date	Trade Type	Issuer	Par	Maturity	Yield at Cost	Yield at Market	Gain on Sale	Earnings to 12/21/15	Total Cash Flow
5/17/13	Sale	FNMA	\$300,000	12/21/15	0.45%	0.39%	\$499	(\$3,499)	(\$3,000)
5/17/13	Purchase	Toyota	\$290,000	5/17/16	0.81%	0.81%	-	\$6,122	\$6,122
Additional Net Benefit to 12/21/15									\$3,122

Settle Date	Trade Type	Issuer	Par	Maturity	Yield at Cost	Yield at Market	Gain on Sale	Earnings to 3/15/14	Total Cash Flow
5/31/13	Sale	U.S. Treasury	\$250,000	3/15/14	1.25%	0.13%	\$2,219	(\$2,472)	(\$253)
5/31/13	Purchase	FNMA	\$250,000	5/21/18	1.19%	1.19%	-	\$2,312	\$2,312
Additional Net Benefit to 3/15/14									\$2,059

Issuer Distribution and Credit Quality

- The portfolio is diversified and comprises securities with excellent credit quality.

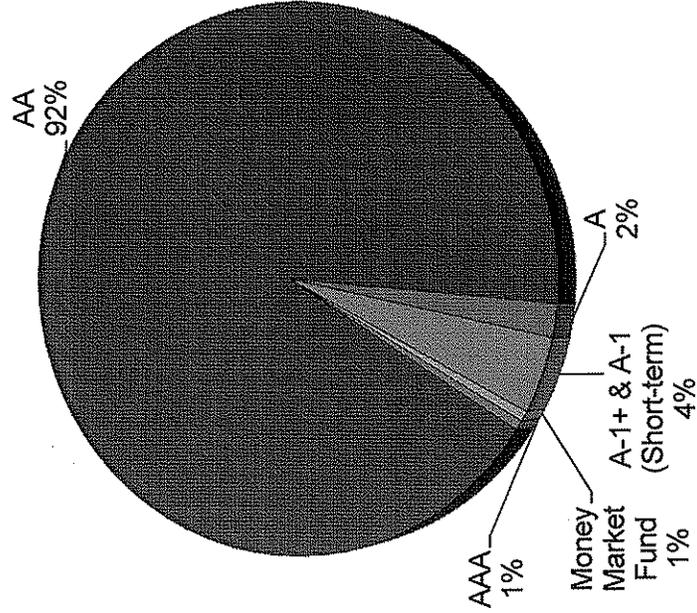
Issuer Distribution



Corporate Issuers	
Colgate-Palmolive	4%
IBM	3%
Procter & Gamble	2%
Chevron Corp	2%
Berkshire Hathaway	2%
Bank of New York	2%
Toyota Motor CC	1%
Apple	1%
General Electric CC	1%
Wal-Mart Stores	1%
Microsoft	1%

CD Issuers	
Rabobank Nederland NY	3%
Svenska Handelsbanken NY	2%
Bank of Nova Scotia Houston	2%

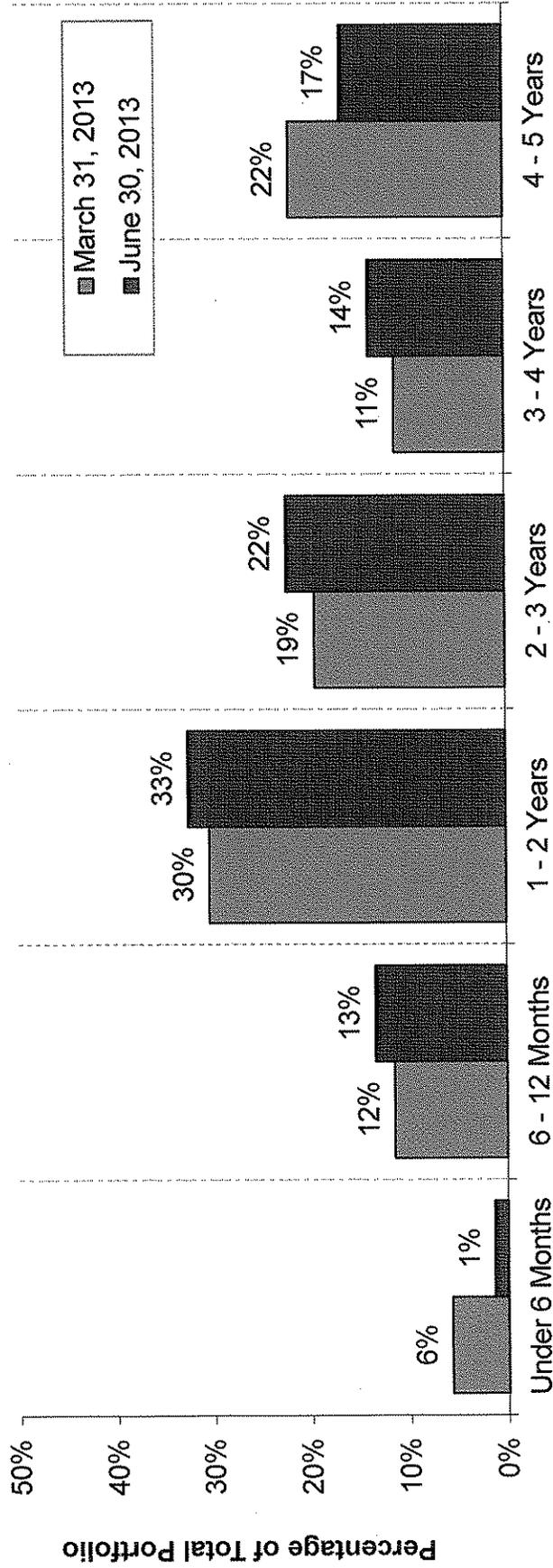
Credit Quality



As of June 30, 2013
Standard & Poor's Ratings

Maturity Distribution

- We decreased the allocations to the shortest and longest maturity ranges by 5% each. We increased the holdings in the 1-4 year range by 9% to maintain the portfolio duration near that of the benchmark.



Note: Callable securities in portfolio are included in the maturity distribution analysis to their stated maturity date, although they may be called prior to maturity.

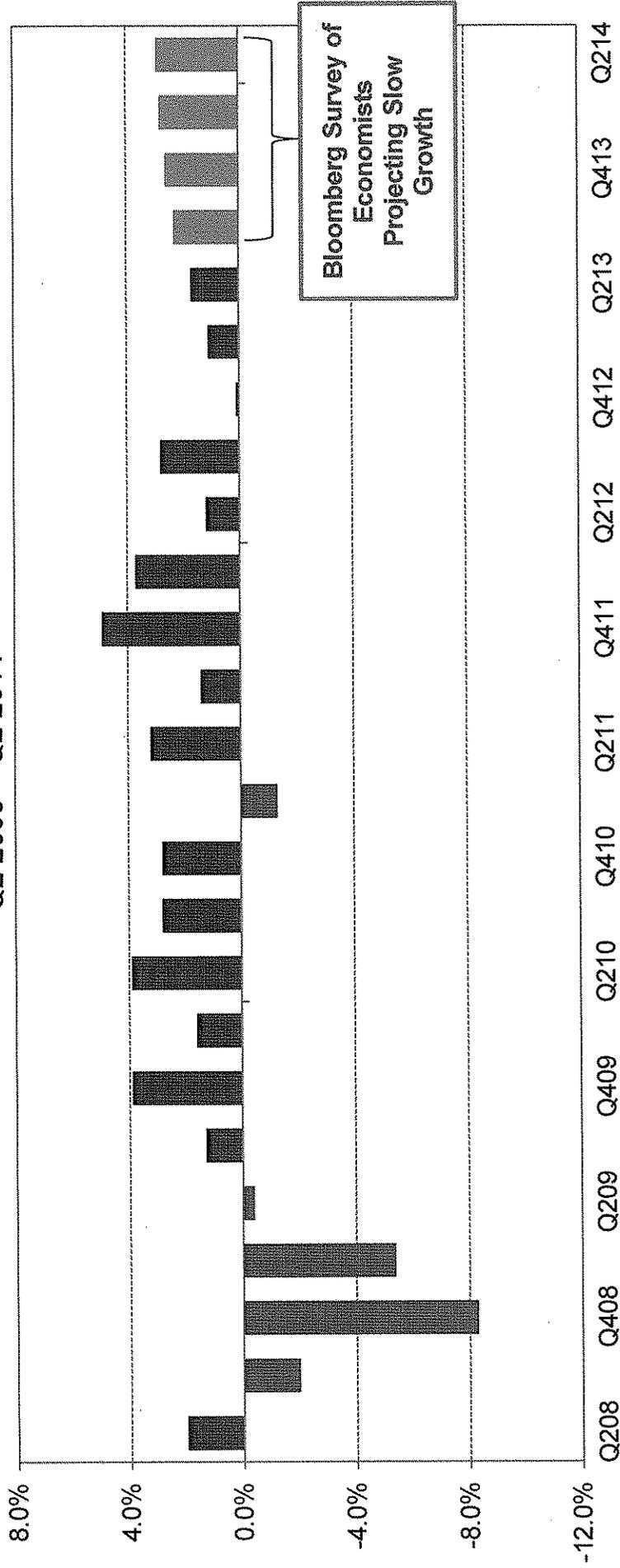
Third Quarter 2013 Investment Outlook

- Investors remain focused on the Federal Reserve, which is poised to take its first steps to decrease bond purchases late in the third quarter.
- High unemployment remains a drag on the economy and GDP growth is not expected to be rapid enough to initiate major job growth.
- Inflation remains low, which will allow the Federal Reserve to continue their aggressive monetary policy and keep their target range at 0.00%-0.25%.
- We will employ the following active management strategies:
 - Take advantage of “roll-down return” and opportunities from spread movements.
 - Monitor the new-issue corporate market for opportunities to add value to the portfolio.
 - Select securities based on a combination of yield and value appreciation potential.

VII.C.24 U.S. Economic Growth Remains Moderate

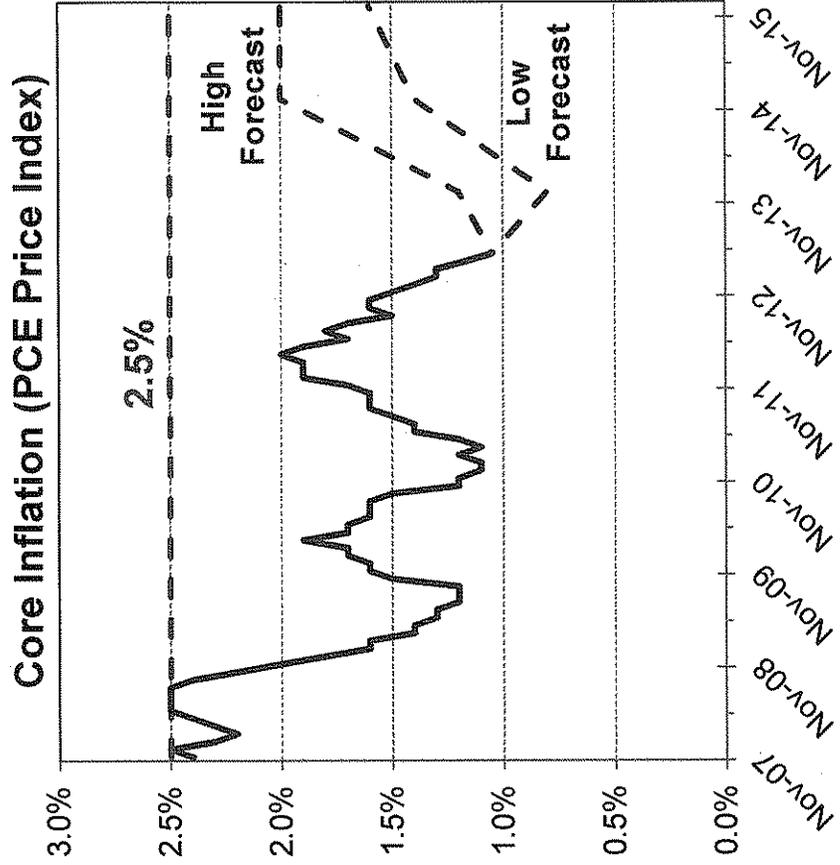
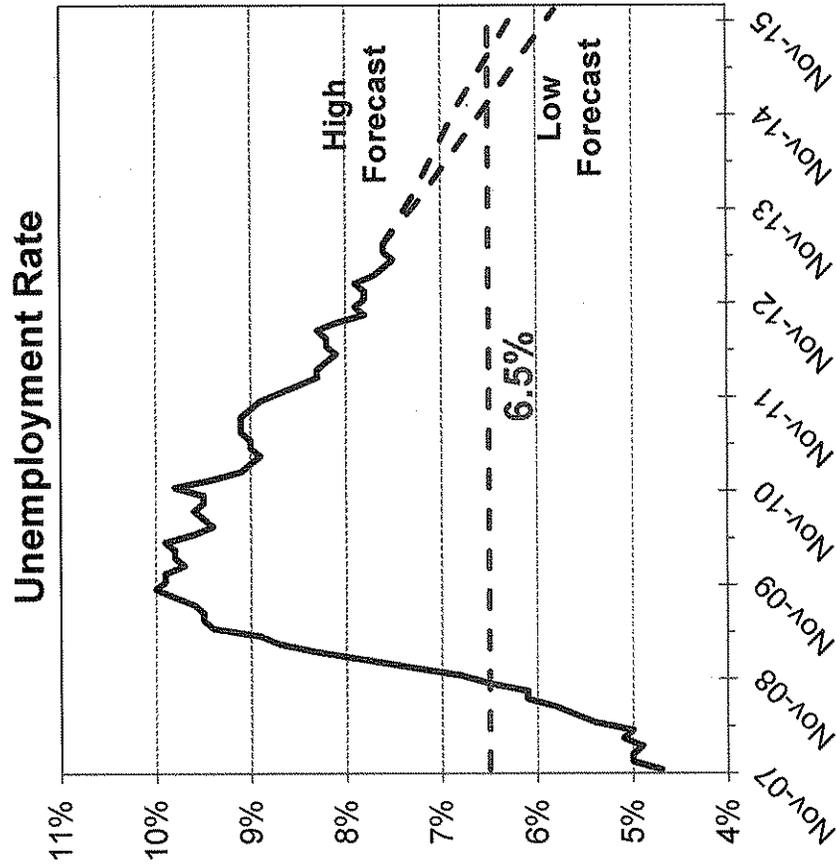
- GDP grew at 1.7% in the second quarter, beating economists' expectations. The positive second quarter news was offset by the downward revision of first quarter GDP from 1.8% to 1.1%.

U.S. GDP
Q2 2008 – Q2 2014



Source: Bloomberg

Fed Rate Guidance Indicates Continued Low Rates Through At Least 2015

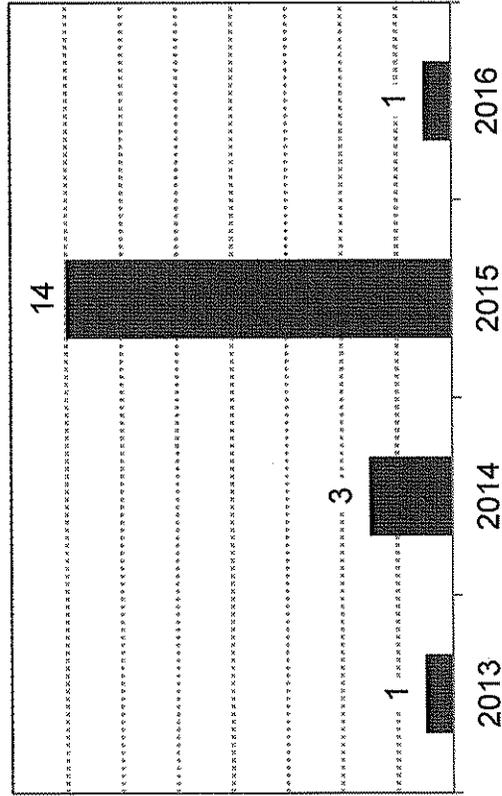


Source: Bloomberg; Federal Reserve

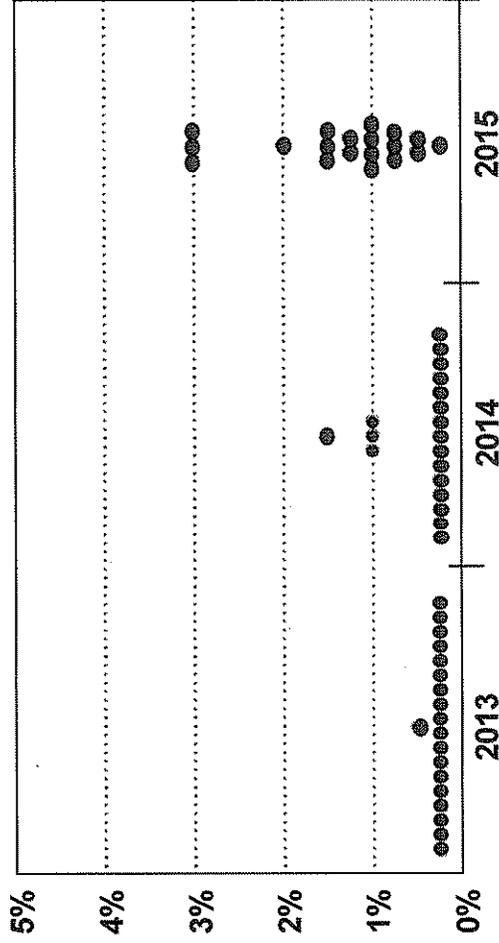
VII.C.26 Fed Rate Guidance Indicates Continued Low Rates Through at Least 2015

- Since unemployment remains at uncomfortably high levels, and inflation remains at low levels, the Federal Reserve is still expected to keep interest rates low until 2015. However, in the Fed's June release they indicated that bond purchases are likely to taper near the end of 2013.

FOMC Participant Votes on Appropriate Timing of Policy Firming
as of June 19, 2013



Targeted Federal Funds Rate at Year-End FOMC Participant Forecasts
as of June 19, 2013

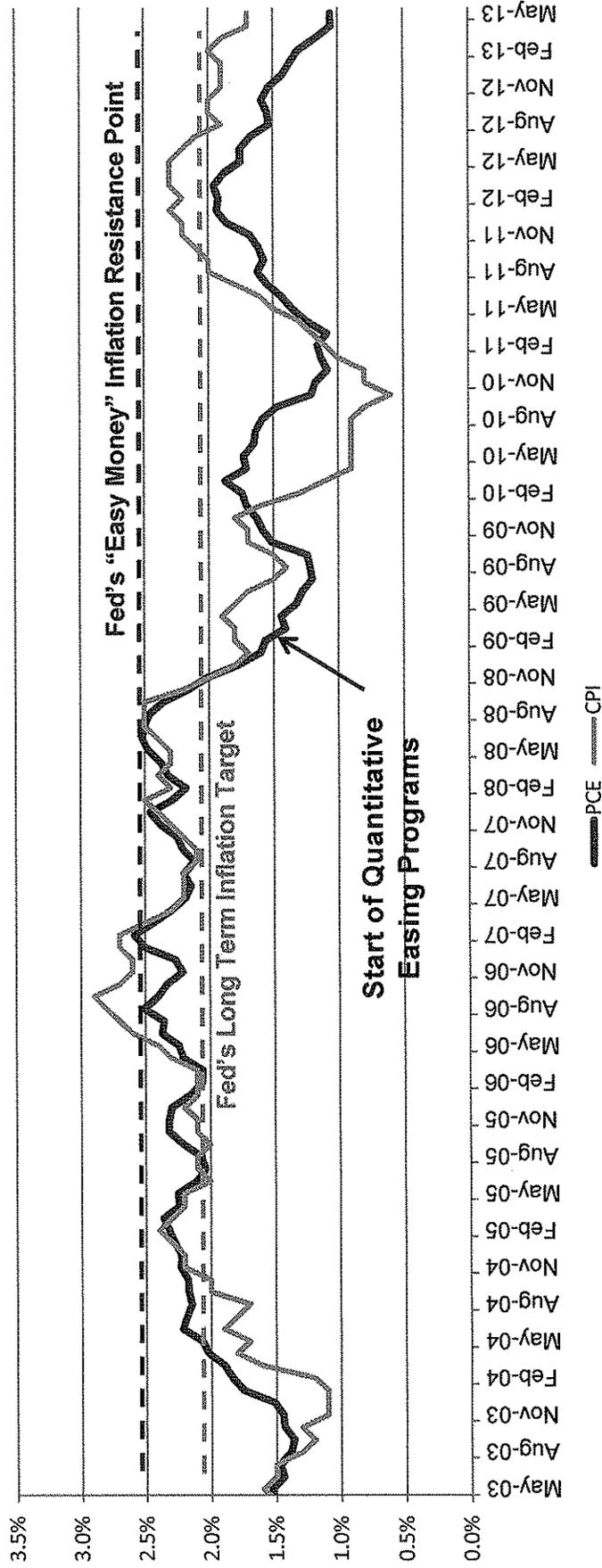


• Individual FOMC participant's judgment of the appropriate level of the target federal funds rate at the end of the specified calendar year.
Source: Federal Reserve Open Market Committee.

Inflation Far From Near

- Personal Consumption Expenditures (PCE) and Consumer Price Index (CPI) are the two most commonly utilized measures of inflation. Both readings seems to confirm that inflation is not an imminent concern.
- When considering monetary policy, the FOMC's primary focus is PCE.

PCE and CPI Inflation

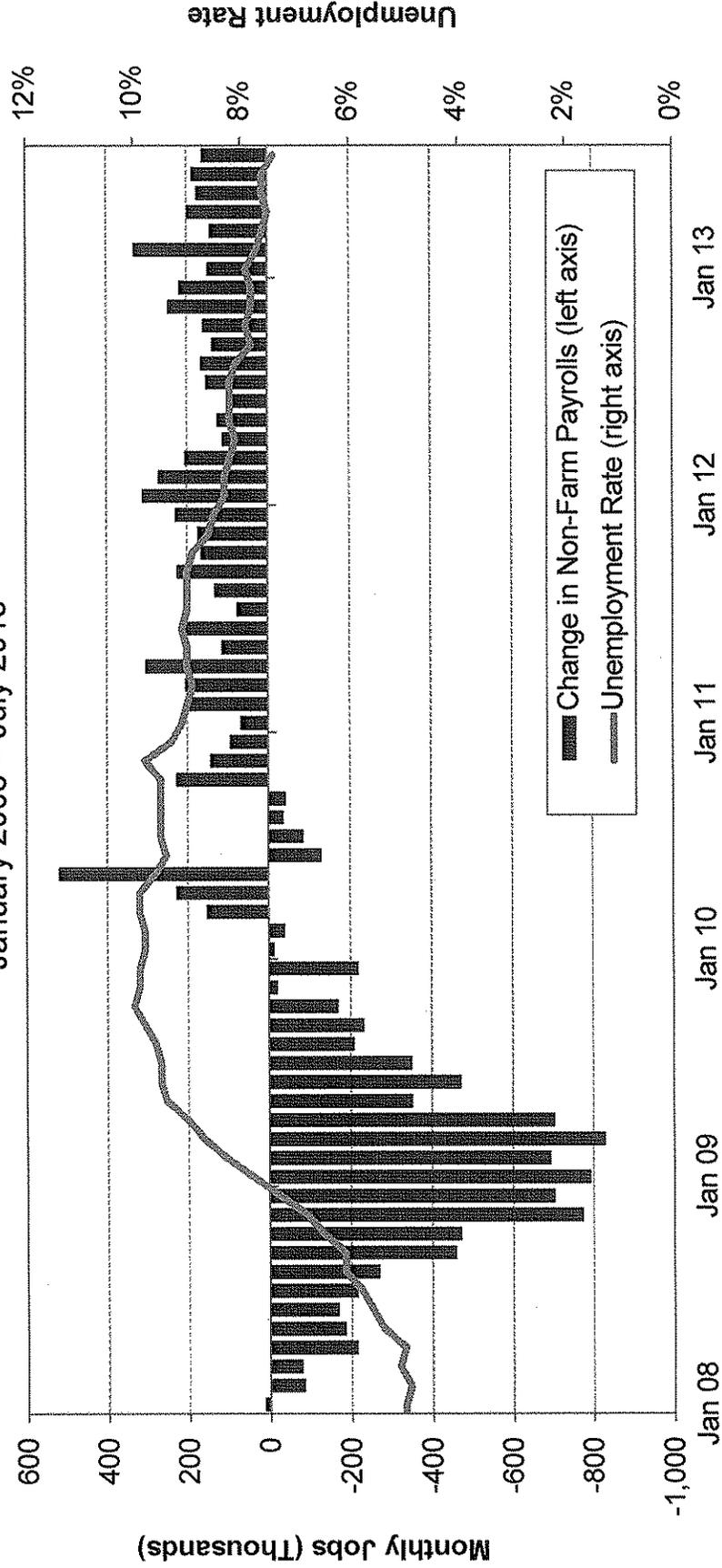


Source: Bureau of Economic analysis, Bureau of Labor Statistics, Bloomberg.

Job Market Continues Slow Improvement

- Over the past year, the unemployment rate has decreased from 8.2% to 7.4%, and the economy has added an average of 190,000 jobs per month.
- Part of the decrease in unemployment is attributed to the continued decline of the labor force participation rate, which is currently 63.4% — just 0.1% higher than the lowest level in over 30 years.

Change in Nonfarm Payrolls vs. Unemployment Rate
January 2008 – July 2013



Source: Bloomberg

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 17, 2013
CONSENT CALENDAR

DATE : September 9, 2013

TO : City Council

FROM : City Attorney

SUBJECT : **SECOND READING AND ADOPTION OF AN ORDINANCE TO AMEND BENICIA MUNICIPAL CODE CHAPTER 9.06 (SMOKING IN ENCLOSED PUBLIC PLACES) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) TO BAN HOOKAH AND SMOKE LOUNGES, AND REGULATE ELECTRONIC CIGARETTES AS TOBACCO PRODUCTS, BY AMENDING SECTION 9.06.010 (DEFINITIONS) AND BY ADDING SECTION 9.06.120 (EXISTING TOBACCO SHOPS) AND SECTION 9.06.130 (PROHIBITION OF ALL SMOKE LOUNGES)**

RECOMMENDATION:

After reviewing the additional research on the health and safety concerns regarding the use of electronic cigarettes and hookah products, adopt the ordinance amending the Benicia Municipal Code to set forth regulation procedures for electronic cigarettes under existing tobacco product laws, and to prohibit all hookah and smoke lounges in the City, based on the findings set forth in the ordinance.

EXECUTIVE SUMMARY:

The existing regulations of indoor smoking in the Benicia Municipal Code (BMC) currently do not address smoke lounges or the use of electronic cigarettes as an alternate form of smoking. At the August 20, 2013 meeting, the Council introduced an ordinance to amend Chapter 9.06 to address these concerns. With additional research, the staff has found that electronic cigarettes, as a currently unregulated product, warrant the attention of the City. New data on vapor toxins conclude electronic cigarettes are harmful and the use of e-cigarettes in smoke-free areas threaten to undermine compliance with smoking regulations and reverse progress made in the de-normalization of tobacco use. The staff has concluded that the opening of a hookah lounge does not align with the General Plan for the City and that the health and safety of the community outweighs the entertainment value of establishing such new businesses.

BUDGET INFORMATION:

There is no budget impact anticipated by adopting these changes.

GENERAL PLAN:

Goal 2.1 states "Preserve Benicia as a small-sized city"; and

Goal 2.3 states "Ensure orderly and sensitive site planning and design for large undeveloped areas of the City, consistent with the land use designations and other policies in this General Plan"; and

Goal 2.5 states "Facilitate and encourage new uses and development which provides substantial and sustainable fiscal and economic benefits to the City and the community maintaining health, safety, and quality of life"; and

Policy 2.1.1: "Ensure that new development is compatible with adjacent existing development and does not detract from Benicia's small town qualities and historic heritage, (and to the extent possible, contributes to the applicable quality of life factors noted above.)"; and

Policy 2.1.2 "Make efficient use of land in new development areas consistent with the surrounding neighborhood."

STRATEGIC PLAN

Relevant Strategic Plan Goals and Issues

- Strategic Issue #1: Protecting Community Health and Safety
 - Strategy #5: Promote community and personal health
 - Action #5: (a) Continue to support the Benicia Youth Action Coalition, a community collaborative, working together to reduce the underage use of alcohol, tobacco, and other drugs (ATOD) by Benicia youth
 - (b) Review smoking ordinance

BACKGROUND

Hookah lounges and electronic cigarettes are not uses currently defined in the Benicia Municipal Code. The City recently received an inquiry about permitting a hookah lounge. At the December 4, 2012 meeting, the City Council adopted a moratorium ordinance to prevent the issuance of any permits for smoke lounges for a period of 45 days while appropriate regulations for such businesses were considered. The moratorium was extended January 16, 2013 for an additional 22 months and 15 days to allow for continued research and sufficient time for the City Attorney to recommend regulations to the City Council. At the August 20, 2013 meeting, the City Attorney introduced the recommended regulations in the first reading of the ordinance.

Findings suggest that the allowance of hookah lounges may be damaging to the community as well as the individual, hookah smoke being just as harmful as or more so than cigarette smoking, with emission of second hand smoke greater and more concentrated than that of an individual smoker. The establishment of

such a business does not align with the City's General Plan. The following amendments to the Benicia Municipal Code Title 9 will prohibit hookah lounges and any other smoke lounges. The introduction of the term "electronic cigarette" into City Code will draw awareness of the product and attention to potential health risks and the need to regulate. Per a study session earlier this year, further updates to the smoking ordinance are on hold until council direction is given.

Electronic Cigarettes

Electronic cigarettes (e-cigarettes) are an emerging product usually marketed toward smokers as a safer alternative or an aid during the process of quitting. E-cigarettes are battery powered devices that convert nicotine into vapor. The products are sold over the counter and are not subject to the same regulation as actual cigarettes. Currently only e-cigarettes marketed for therapeutic purposes are regulated by the FDA Center for Drug Evaluation and Research (CDER). The FDA Center for Tobacco Products (CTP) regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, but as e-cigarettes contain liquid nicotine and not tobacco, the FDA has stated its intent to extend FDA's tobacco product authorities to products that meet the statutory definition of "tobacco product." Research from Morgan Stanley states estimates that e-cigarettes will take the place of around 1.5 billion traditional tobacco cigarettes this year. Though this trend seems positive in the fight against tobacco smoking, it demands awareness of a product that has yet to be well tested or regulated and threatens to reignite the popular culture associated with cigarette smoking.

The World Health Organization concludes in its *Report on the Scientific Basis of Tobacco Product Regulation*, "until such time as a given ENDS [electronic nicotine delivery system] is deemed safe and effective and of acceptable quality by a competent national regulatory body, consumers should be strongly advised not to use any of these products, including electronic cigarettes."

http://www.who.int/tobacco/publications/prod_regulation/trs_955/en/index.html

Center for Disease Control and Prevention wrote in a report published September 6, 2013 that "e-cigarette experimentation and recent use doubled among U.S. middle and high school students during 2011–2012, resulting in an estimated 1.78 million students having ever used e-cigarettes as of 2012... moreover, in 2012, an estimated 160,000 students who reported ever using e-cigarettes had never used conventional cigarettes. This is a serious concern because the overall impact of e-cigarette use on public health remains uncertain."

"The increased use of e-cigarettes by teens is deeply troubling," CDC Director Tom Frieden said in announcing the findings. "Many teens who start with e-cigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes."

"This indicates that e-cigarettes could be a gateway to nicotine addiction and use of other tobacco products," says Matt Myers, president of the Campaign for Tobacco-Free Kids. He blames this upswing on slick new marketing, which enlists celebrities including Jenny McCarthy, Stephen Dorff and Courtney Love for the pitches. These ads portray e-cigarette use as an act of rebellion, much like cigarette ads have done," Myers says, adding they undercut efforts to de-glamorize smoking to kids. He also says the sweet flavors of some e-cigarettes, such as chocolate and "cherry crush," lure youth.

(http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm?s_cid=mm6235a6_w)

(<http://www.usatoday.com/story/news/nation/2013/09/05/e-cigarette-use-doubles-among-us-teens/2768155/>)

Recent Study

On August 29, 2013, the National Consumer's Institute (INC) in France released their findings for a study that tested 10 different rechargeable and disposable models of electronic cigarettes for carcinogenic and toxic properties. The September issue of 60 Million Consumers warns that researchers from the institute have detected alarmingly high levels of formaldehyde, acrolein and acetaldehyde in several of the 10 models they tested. The INC team used a new method – an installation capable of simulating the operation of an electronic cigarette and of collecting all the emitted compounds – to detect the never-before-found substances. The translated article states,

"If previous studies on e-cigarette vapor did not reveal any carcinogenic compounds in significant quantities, our analyses show for the first time that the vapors of some brands contain substances of very high concern, sometimes even more significant than quantities in conventional cigarettes! Our study also shows that we should not rely on the compositions indicated on the label: the nicotine displayed is sometimes far from the actual amount measured, some manufacturers tout the absence of propylene glycol while the product actually contains it; in other cases, the presence of this major component is downright not mentioned on the packaging ..."

The study found that three out of the 10 models the tested levels of the chemical compound formaldehyde came close to those in conventional tobacco cigarettes. Formaldehyde is an organic compound classified as carcinogenic by the International Agency for Research on Cancer (IARC). The research also revealed the presence of another very toxic molecule, acrolein. It was detected when testing the popular Joytech E-Roll, which apparently heats up too fast

causing an unusual reaction with glycerin molecules in the e-liquid and producing acrolein “at levels that sometimes exceed even those measured in some tobacco cigarettes.” Acetaldehyde, a chemical classified as possibly carcinogenic, was also detected in amounts “far from negligible” but that remain lower than those observed in analogs. Researchers also found that some e-cigarette brands contained traces of nickel, chrome and antimony.

Thomas Laurenceau, editor of *60 Million Consumers* calls on authorities to act on the problem of electronic cigarettes, but adds that these findings are “not a reason to ban them, but a good reason to control them.” France has already decided to ban electronic cigarettes in public places. Laurenceau also criticized the lack of safety caps on some of the refills tested, noting that nicotine is particularly toxic for children, and the improper labeling of some of the tested products.

(http://www.60millions-mag.com/actualites/articles/pas_si_inoffensive_la_cigarette_electronique_nbsp)

(<http://vaperanks.com/french-magazine-claims-electronic-cigarettes-are-not-the-harmless-gadgets-they-are-marketed-as/>)

HOOKAH AND SMOKE LOUNGES

Hookah, also commonly known as the use of a water pipe, or narghile is an instrument for vaporizing and smoking flavored tobacco called shisha in which the vapor or smoke is passed through a water basin before inhalation.

Depending on use a hookah can produce smoke by burning or water vapor through use at a lower temperature. Its originating use in the Middle East and South East Asia for social, religious, and even medicinal reasons, has transformed into a popular pastime in the United States, among other countries, attracting a younger crowd to partake in the social aspect of hookah sessions, taking turns inhaling while the hookah pipe is passed around the group.

Center for Disease Control and Preventions compares smoking hookah with smoking cigarettes. “While many hookah smokers may consider this practice less harmful than smoking cigarettes, hookah smoking carries many of the same health risks as cigarettes.” “Hookah smoking is NOT a safe alternative to smoking cigarettes and it is still found to be a leading cause of cancer.”

(http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/)

Hookah Facts

1. Just one puff from a hookah can fill your lungs with 12 times more smoke than one hit from a cigarette.
2. Smoking hookah fills your body with eight times more carbon monoxide than a cigarette.
3. Hookah smoke contains 36 times more tar than cigarette smoke.

4. Smoking hookah can lead to infectious disease since the same mouthpiece can be used by many people during the same smoking session.
5. Studies have shown that the use of water as a filter in a hookah did not change the level of nicotine in the smoke compared to pipes without a water filtration process.
6. The side-stream smoke (smoke that comes out of a pipe, not the smoker's mouth) from a single water pipe session emits 30 times more carbon monoxide than a single cigarette.
7. One study shows that a typical one-hour long water pipe smoking session involves inhaling over 100 times the volume of the smoke inhaled with a single cigarette.

(<http://www.smokefreevegas.com/hookah/>)

Studies

Filtering Through a Water Pipe Does NOT Decrease Toxins

"Smoking tobacco through a water filter does not decrease the type of toxins that would be normally delivered by smoking cigarettes."

[Shihadeh, A., Salman, R., Jaroudi, E., Saliba, N., Sepetdjian, E., Blank, M. D., Cobb, C. O., et al. (2012). Does switching to a tobacco-free waterpipe product reduce toxicant intake? A crossover study comparing CO, NO, PAH, volatile aldehydes, "tar" and nicotine yields. *Food and chemical toxicology*: an international journal published for the British Industrial Biological Research Association, 50(5), 1494–8.]

Carbon Monoxide Poisoning

"One risk of hookah use is the high levels of carbon monoxide that a person is exposed to when smoking (even higher than cigarette smokers). High levels of carbon monoxide in your body prevent oxygen from being effectively delivered to your cells. This results in a condition known as "hypoxia," which means inadequate oxygen supply. When a person is hypoxic from having too much carbon monoxide in their body, they get headaches, feel dizzy, and may be slightly short of breath. These effects gradually diminish as a person is exposed to normal, clean air, but in the meantime they can feel a bit sick."

[Ashurst, J. V., Urquhart, M., & Cook, M. D. (2012). Carbon monoxide poisoning secondary to hookah smoking. *The Journal of the American Osteopathic Association*, 112(10), 686–8.]

Driving Under the Influence....of Smoking?

"Because of the carbon monoxide effects described above, a person's motor skills can be affected enough to impair their driving. This was shown in a controlled study in which individuals who smoked hookah fared significantly worse on a driving simulator than those that didn't smoke (measured by participants' inability to avoid crossing over a center line while driving)."

[Elias, W., Assy, N., Elias, I., Toledo, T., Yassin, M., Armaly, Z., & Bowirrat, A. (2012). The detrimental danger of water-pipe (Hookah) transcends the hazardous consequences of general health to the driving behavior. *Journal of translational medicine*, 10(1), 126.]

(<http://www.mindthesciencegap.org/2012/10/19/up-in-smoke-the-myth-of-the-healthy-hookah/>)

KNOWN BUSINESSES THAT MAY BE EFFECTED

There are currently no known businesses that qualify as a cigar club, hookah or smoking lounge within the City; however, new regulations will prohibit the future establishment of smoke lounges as well as prohibit smoking or use of electronic cigarettes on the premises of tobacco shops.

While the current code lists “Retail stores that deal exclusively in the sale of tobacco and smoking paraphernalia” under section 9.06.050 as a “smoking-optional area”, the revised code regulates these businesses under the same laws as other retail, grocery, and convenience stores, with the entirety of Chapter 9.06 (Smoking in Enclosed Public Places) applicable. Possible businesses that may be affected by these amendments are:

- Cigarettes 4 Less, 191 Military East, Suite C
- Discount Cigarettes, 866 Southampton Road

Staff does not believe that these businesses have smoking areas currently, but have been notified of the proposed changes.

Attachments:

- ❑ Chapter 9.06 Smoking in Enclosed Public Places Clean
- ❑ Chapter 9.06 Smoking in Enclosed Public Places Redlined
- ❑ Memo: What should we know about Electronic Cigarettes?
- ❑ Contra Costa Health Services Advocacy Arguments
- ❑ Memo: Current Legislation on Electronic Cigarettes
- ❑ GASP Electronic Smoking Devices
- ❑ Chapter 9.06 interpretation chart: Where can I smoke?
- ❑ CDC- Fact Sheet: Hookahs (Smoking and Other Tobacco Use)
- ❑ The detrimental danger of water-pipe (Hookah) transcends the hazardous consequences of general health to the driving behavior. (Elias et al. 2012).
- ❑ Does switching to a tobacco-free waterpipe product reduce toxicant intake? A crossover study comparing CO, NO, PAH, volatile aldehydes, “tar” and nicotine yields. (Shihadehet al. 2012).
- ❑ Smoking Ordinance

Chapter 9.06 SMOKING IN ENCLOSED PUBLIC PLACES

Sections:

- 9.06.010 Definitions.
- 9.06.020 Regulation of smoking in city-owned facilities.
- 9.06.030 Prohibition of smoking in designated enclosed places.
- 9.06.040 Regulation of smoking in places of employment.
- 9.06.050 Smoking – Optional areas.
- 9.06.060 Posting requirements.
- 9.06.070 Enforcement.
- 9.06.080 Penalties.
- 9.06.090 Nonretaliation.
- 9.06.100 Other applicable laws.
- 9.06.110 Prohibition of smoking in outdoor public places.
- 9.06.120 Exceptions for existing tobacco retail stores.
- 9.06.130 Smoke lounge license required- Prohibition of all future smoke lounges.

9.06.010 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it shall be apparent from the context that they have a different meaning.

"Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages on the premises.

"Electronic Cigarette" means any electronic device used for the inhalation of nicotine vapor or other substances, usually a battery powered device that contains liquid nicotine cartridges.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

"Employer" means any person, partnership, or corporation, including municipal corporation, who employs the services of more than three persons.

"Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress.

"Hookah" means the use of a water pipe, and any associated products and devices, in order to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

"Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas,

employee lounges, conference rooms and employee cafeterias. A private residence is not a place of employment unless it is used as a child care or a health care facility. The dining area of a restaurant is not a "place of employment."

"Restaurant means an establishment that sells, prepares, and/or serves primarily food to its guests and the dining areas in which said food is consumed.

"Smoking" means holding or possession of a lighted or heated pipe, cigar, or cigarette of any kind, including use of an electronic cigarette, or any other lighted smoking equipment including hookah and other versions of water pipes. As well as the lighting, emitting or exhaling the smoke, fumes, or vapors from plant product, like tobacco, typically used in such devices.

"Smoke lounge" means any business where smoking is the primary activity and usually, but not always, accompanied by the sale of tobacco and other smoking paraphernalia, specifically, but not limited to cigar clubs and hookah lounges.

"Sports arena" means a sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley, and other similar place where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

"Tobacco Shop" means a retail or wholesale store that stands independently from any restaurant, bar, or other place of amusement, whose exclusive purpose, and principal business, is in the sale of tobacco and tobacco related paraphernalia evidenced by more than 50 percent of the total floor and display area being devoted to the sale of these products and more than 70 percent of gross sales deriving from the sale of said product.

9.06.020 Regulation of smoking in city-owned facilities.

All enclosed facilities owned by the city of Benicia shall be subject to the provisions of this chapter.

9.06.030 Prohibition of smoking in designated enclosed places.

Smoking shall be prohibited in the following places within the city:

- A. All enclosed areas available to and customarily used by the general public and all businesses patronized by the public, including, but not limited to, retail stores, hotels and motels, pharmacies, banks, attorneys' offices and other offices;
- B. Within all restaurants having an occupied capacity of 50 or more persons; provided, however, that this prohibition does not prevent (1) the designating of a contiguous area within a restaurant that contains no more than 50 percent of the seating capacity of the restaurant as a smoking area, or (2) the providing of separate rooms designated as smoking rooms, so long as said rooms do not contain more than 50 percent of the seating capacity of the restaurant;

- C. Waiting rooms, hallways, wards, and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' and dentists' offices, except that health facilities shall also be subject to the provisions of BMC 9.06.040 regulating smoking in places of employment;
- D. Elevators, public restrooms, indoor services lines, buses, taxicabs and other means of public transit under the authority of the city while within the boundaries of the county, and in ticket, boarding, and waiting areas of public transit (1) establishing separate waiting areas for smokers and nonsmokers, or (2) establishing at least 50 percent of a given waiting area as a nonsmoking area;
- E. In public areas of museums and galleries;
- F. Enclosed theaters, auditoriums, and halls which are used for motion pictures, stage dramas, and musical performances, ballets or other exhibitions, except when smoking is part of any such production;
- G. Retail food marketing establishments, including grocery stores and supermarkets, except those areas of such establishments set aside for the purpose of serving food and drink, restrooms and offices, and areas thereof not open to the public, which may be otherwise regulated by this chapter;
- H. Public schools and other public facilities under the control of another public agency, which are available to and are customarily used by the general public, to the extent that the same are subject to the jurisdiction of the city;
- I. Sports arenas and convention halls, except in designated smoking areas;
- J. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

9.06.040 Regulation of smoking in places of employment.

- A. It shall be the responsibility of employers to provide smoke-free areas for nonsmokers within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.
- B. Within 90 days of the effective date of the ordinance adopting this chapter, each employer and each place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy, which shall contain at a minimum the following requirements:
 - 1. Prohibition of smoking in conference and meeting rooms, restrooms, medical facilities, hallways and elevators.
 - 2. Any employee in a place of employment shall be given the right to designate his or her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer. The policy adopted by the employer shall include a reasonable definition of the term "immediate work area."

3. In any dispute arising under this smoking policy, the rights of the nonsmoker shall be given precedence.

4. Provision and maintenance of a separate and contiguous nonsmoking area of not less than 50 percent of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges.

C. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter.

D. Notwithstanding the provisions of subsection (A) of this section, every employer shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

9.06.050 Smoking – Optional areas.

Notwithstanding any other provisions of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

A. Private residences;

B. Bars;

C. Hotel and motel rooms rented to guests;

D. Retail stores that deal exclusively in the sale of tobacco and smoking paraphernalia;

E. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions;

F. A private residence which may serve as a place of employment except when used as a child care or a health care facility. Board and care facilities shall provide smoke-free living quarters for nonsmoking boarders;

G. A private enclosed place occupied exclusively by smokers, even though such a place may be visited by nonsmokers, and a private enclosed office, excepting places in which smoking is prohibited by the fire department, or by any other law, ordinance or regulation.

9.06.060 Posting requirements.

A. "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other place.

B. Every restaurant regulated by this chapter will have posted at its entrance a sign clearly stating that a nonsmoking section is available, and every patron shall be asked as to his or her preference.

9.06.070 Enforcement.

- A. Enforcement shall be implemented by the city manager or his/her designees.
- B. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the city manager or his/her designees.
- C. Any owner, manager, operator or employer of any establishment controlled by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.

9.06.080 Penalties.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to: properly post signs required hereunder; to provide signs for the use of employees in designating their areas; to properly set aside "No Smoking" areas; to adopt a smoking restriction policy; or to comply with any other requirements of this chapter.
- B. It shall be unlawful for any person to smoke in any area restricted by the provisions of this chapter.
- C. Any person/business who violates subsections (A) or (B) of this section, or any other provisions of this chapter, shall be guilty of an infraction, punishable by:
 - 1. A fine, not exceeding \$100.00 for first violation;
 - 2. A fine, not exceeding \$200.00 for a second violation of this chapter within one year;
 - 3. A fine, not exceeding \$500.00 for each additional violation of this chapter within one year.
- D. Each day during which this chapter is violated shall constitute a separate and distinguishable violation of this chapter.

9.06.090 Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

9.06.100 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

9.06.110 Prohibition of smoking in outdoor public places.

Smoking shall be prohibited within 20 feet of all entrance(s), exit(s), open windows, ventilation intake systems and covered entryways of any building that is (A) owned or leased by the city of Benicia and (B) used by the city of Benicia. All city of Benicia buildings will post "No Smoking Within 20 Feet" signs outside of all entrance(s), exit(s), and ventilation intake systems.

9.06.120 Existing tobacco shops.

Tobacco shops shall not permit smoking on the premises. Convenience stores, as well as retail and wholesale stores that deal primarily in the sale of tobacco and smoking paraphernalia, are subject to the indoor smoking restrictions of this chapter.

9.06.130 Prohibition of all smoke lounges.

No person shall establish, maintain, manage or operate any smoke lounge or permit or allow any smoke lounge to be established, maintained, managed or operated within any building or structure owned, occupied, or controlled by him/her.

Chapter 9.06 SMOKING IN ENCLOSED PUBLIC PLACES

Sections:

- 9.06.010 Definitions.
- 9.06.020 Regulation of smoking in city-owned facilities.
- 9.06.030 Prohibition of smoking in designated enclosed places.
- 9.06.040 Regulation of smoking in places of employment.
- 9.06.050 Smoking – Optional areas.
- 9.06.060 Posting requirements.
- 9.06.070 Enforcement.
- 9.06.080 Penalties.
- 9.06.090 Nonretaliation.
- 9.06.100 Other applicable laws.
- 9.06.110 Prohibition of smoking in outdoor public places.
- 9.06.120 [Exceptions for existing tobacco retail shops.](#)
- 9.06.130 [Smoke lounge license required- Prohibition of all future smoke lounges.](#)

9.06.010 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it shall be apparent from the context that they have a different meaning.

A. "Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages [on the premises](#).

["Electronic Cigarette" means any electronic device used for the inhalation of nicotine vapor or other substances, usually a battery powered device that contains liquid nicotine cartridges.](#)

B. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

C. "Employer" means any person, partnership, or corporation, including municipal corporation, who employs the services of more than three persons.

D. "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress.

["Hookah" means the use of a water pipe, and any associated products and devices, in order to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.](#)

E. "Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work

areas, employee lounges, conference rooms and employee cafeterias. A private residence is not a place of employment unless it is used as a child care or a health care facility. The dining area of a restaurant is not a "place of employment."

"Restaurant means an establishment that sells, prepares, and/or serves primarily food to its guests and the dining areas in which said food is consumed."

F. "Smoking" means ~~the carrying or~~ holding or possession of a lighted or heated pipe, cigar, or cigarette of any kind, including use of an electronic cigarette, or any other lighted smoking equipment including hookah and other versions of water pipes. As well as ~~of~~ the lighting, ~~or~~ emitting or exhaling the smoke, fumes, or vapors from plant product, like tobacco, typically used in such devices. ~~of a pipe, cigar, or cigarette of any kind.~~

"Smoke lounge" means any business where smoking is the primary activity and usually, but not always, accompanied by the sale of tobacco and other smoking paraphernalia, specifically, but not limited to cigar clubs and hookah lounges.

G. "Sports arena" means a sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley, and other similar place where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events. ~~(Ord. 87-10 N.S. § 3, 1987).~~

"Tobacco Shop" means a retail or wholesale store that stands independently from any restaurant, bar, or other place of amusement, whose exclusive purpose, and principal business, is in the sale of tobacco and tobacco related paraphernalia evidenced by more than 50 percent of the total floor and display area being devoted to the sale of these products and more than 70 percent of gross sales deriving from the sale of said product.

9.06.020 Regulation of smoking in city-owned facilities.

All enclosed facilities owned by the city of Benicia shall be subject to the provisions of this chapter.

9.06.030 Prohibition of smoking in designated enclosed places.

Smoking shall be prohibited in the following places within the city:

- A. All enclosed areas available to and customarily used by the general public and all businesses patronized by the public, including, but not limited to, retail stores, hotels and motels, pharmacies, banks, attorneys' offices and other offices;
- B. Within all restaurants having an occupied capacity of 50 or more persons; provided, however, that this prohibition does not prevent (1) the designating of a contiguous area within a restaurant that contains no more than 50 percent of the seating capacity of the restaurant as a smoking area, or (2) the providing of separate rooms designated as smoking rooms, so long as said rooms do not contain more than 50 percent of the seating capacity of the restaurant;

- C. Waiting rooms, hallways, wards, and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' and dentists' offices, except that health facilities shall also be subject to the provisions of BMC 9.06.040 regulating smoking in places of employment;
- D. Elevators, public restrooms, indoor services lines, buses, taxicabs and other means of public transit under the authority of the city while within the boundaries of the county, and in ticket, boarding, and waiting areas of public transit (1) establishing separate waiting areas for smokers and nonsmokers, or (2) establishing at least 50 percent of a given waiting area as a nonsmoking area;
- E. In public areas of museums and galleries;
- F. Enclosed theaters, auditoriums, and halls which are used for motion pictures, stage dramas, and musical performances, ballets or other exhibitions, except when smoking is part of any such production;
- G. Retail food marketing establishments, including grocery stores and supermarkets, except those areas of such establishments set aside for the purpose of serving food and drink, restrooms and offices, and areas thereof not open to the public, which may be otherwise regulated by this chapter;
- H. Public schools and other public facilities under the control of another public agency, which are available to and are customarily used by the general public, to the extent that the same are subject to the jurisdiction of the city;
- I. Sports arenas and convention halls, except in designated smoking areas;
- J. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

9.06.040 Regulation of smoking in places of employment.

- A. It shall be the responsibility of employers to provide smoke-free areas for nonsmokers within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.
- B. Within 90 days of the effective date of the ordinance adopting this chapter, each employer and each place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy, which shall contain at a minimum the following requirements:
 - 1. Prohibition of smoking in conference and meeting rooms, restrooms, medical facilities, hallways and elevators.
 - 2. Any employee in a place of employment shall be given the right to designate his or her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer. The policy adopted by the employer shall include a reasonable definition of the term "immediate work area."

3. In any dispute arising under this smoking policy, the rights of the nonsmoker shall be given precedence.

4. Provision and maintenance of a separate and contiguous nonsmoking area of not less than 50 percent of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges.

C. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter.

D. Notwithstanding the provisions of subsection (A) of this section, every employer shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

9.06.050 Smoking – Optional areas.

Notwithstanding any other provisions of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

A. Private residences;

B. Bars;

C. Hotel and motel rooms rented to guests;

D. Retail stores that deal exclusively in the sale of tobacco and smoking paraphernalia;

E. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions;

F. A private residence which may serve as a place of employment except when used as a child care or a health care facility. Board and care facilities shall provide smoke-free living quarters for nonsmoking boarders;

G. A private enclosed place occupied exclusively by smokers, even though such a place may be visited by nonsmokers, and a private enclosed office, excepting places in which smoking is prohibited by the fire department or by any other law, ordinance or regulation.

9.06.060 Posting requirements.

A. "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other place.

B. Every restaurant regulated by this chapter will have posted at its entrance a sign clearly stating that a nonsmoking section is available, and every patron shall be asked as to his or her preference.

9.06.070 Enforcement.

- A. Enforcement shall be implemented by the city manager or his/her designees.
- B. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the city manager or his/her designees.
- C. Any owner, manager, operator or employer of any establishment controlled by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.

9.06.080 Penalties.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to: properly post signs required hereunder; to provide signs for the use of employees in designating their areas; to properly set aside "No Smoking" areas; to adopt a smoking restriction policy; or to comply with any other requirements of this chapter.
- B. It shall be unlawful for any person to smoke in any area restricted by the provisions of this chapter.
- C. Any person/business who violates subsections (A) or (B) of this section, or any other provisions of this chapter, shall be guilty of an infraction, punishable by:
 - 1. A fine, not exceeding \$100.00 for first violation;
 - 2. A fine, not exceeding \$200.00 for a second violation of this chapter within one year;
 - 3. A fine, not exceeding \$500.00 for each additional violation of this chapter within one year.
- D. Each day during which this chapter is violated shall constitute a separate and distinguishable violation of this chapter.

9.06.090 Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

9.06.100 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

9.06.110 Prohibition of smoking in outdoor public places.

Smoking shall be prohibited within 20 feet of all entrance(s), exit(s), open windows, ventilation intake systems and covered entryways of any building that is (A) owned or leased by the city of Benicia and (B) used by the city of Benicia. All city of Benicia buildings will post "No Smoking Within 20 Feet" signs outside of all entrance(s), exit(s), and ventilation intake systems.

9.06.120 Existing tobacco shops.

Tobacco shops shall not permit smoking on the premises. Convenience stores, as well as retail and wholesale stores that deal primarily in the sale of tobacco and smoking paraphernalia, are subject to the indoor smoking restrictions of this chapter.

9.06.130 Prohibition of all smoke lounges.

No person shall establish, maintain, manage or operate any smoke lounge or permit or allow any smoke lounge to be established, maintained, managed or operated within any building or structure owned, occupied, or controlled by him/her.



City Attorney's Office
MEMORANDUM

Date: August 26, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: What should we know about Electronic Cigarettes?

WHAT IS AN ELECTRONIC CIGARETTE?

In a statement made July 9, 2013, the Tobacco Free Initiative of the World Health Organization defines electronic cigarettes or ENDS (electronic nicotine delivery systems) as “devices whose function is to vaporize and deliver to the lungs of the user a chemical mixture typically composed of nicotine, propylene glycol and other chemicals, although some products claim to contain no nicotine. A number of ENDS are offered in flavors that can be particularly attractive to adolescents. Electronic cigarettes (e-cigs) are the most common prototype of ENDS. Each device contains an electronic vaporization system, rechargeable batteries, electronic controls and cartridges of the liquid that is vaporized. The manufacturers report that the cartridges typically contain between 6 and 24 mg of nicotine, but can sometimes contain more than 100 mg.”

WHY ARE E-CIGARETTES GAINING POPULARITY?

Electronic cigarettes are marketed and have gained popularity in use for a variety of reasons. E-cigarettes have been and are used by many people as an aid to quit smoking. Many e-cigarettes allow the user to adjust the amount of nicotine taken in per puff, the idea being that you could gradually reduce the levels to ease the impact of nicotine withdrawal of quitting outright. The efficacy of this method, however, has not been scientifically tested and many variable factors such as the amount of nicotine inhaled in one puff, the absorbency of nicotine vapor verses the nicotine in tobacco smoke, and the varying chemicals found in the solution pose a need for further investigation into the efficacy of e-cigarettes as a cessation method. An e-cigarette also allows an extended supply of nicotine to be inhaled while a traditional cigarette lasts only until it burns out.

Electronic cigarettes also allow smokers of traditional cigarettes to reduce the number of cigarettes smoked on a regular basis when supplemented by use of an e-cigarette. Any strategy that reduces the intake of toxins known to be present in tobacco smoke is seen as a health benefit to the user. Smokers may use e-cigarettes in order to avoid disturbing others with their smoke as e-cigarettes emit an odorless vapor rather than smoke and to be able to “smoke” in smoke free places. E-cigarettes are marketed for safe use around children, a more discrete way of satisfying a nicotine addiction, and a safe alternative to traditional smoking.

E-CIGARETTES VERSES TRADITIONAL TOBACCO CIGARETTES

A research paper entitled “Levels of selected carcinogens and toxicants in vapour from electronic cigarettes” (Goniewicz, et al. 2013) confirmed what many have already suspected. Their conclusion, “The vapor generated from e-cigarettes contains potentially toxic compounds.

Date: August 26, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: What should we know about Electronic Cigarettes?

However, the levels of potentially toxic compounds in e-cigarette vapour are 9—450-fold lower than those in the smoke from conventional cigarettes, and in many cases comparable with the trace amounts present in pharmaceutical preparation. Our findings support the idea that substituting tobacco cigarettes with electronic cigarettes may substantially reduce exposure to tobacco-specific toxicants. The use of e-cigarettes as a harm reduction strategy among cigarette smokers who are unable to quit, warrants further study.”

In comparison to traditional tobacco cigarettes, electronic are hands down better when examining the health hazards of these substances we already know are harmful. The problem is we know these substances are harmful from extensive study, and while the electronic cigarettes significantly cuts down many of these toxins, new ingredients, and old ingredients processed in new ways, have yet to be tested for their long term effects on the body.

INGREDIENTS

While it seems that electronic cigarettes provide a way healthier alternative to smoking, closer examination and analysis of the ingredients of the nicotine solution, the effects on those ingredients when heated, and the product exhaled suggests that “vaping”, the use of an electronic cigarette, is not safe and it is not without health risks of its own. Certainly the levels of *known* carcinogens that are present in traditional cigarettes are significantly lower; however, the lack of knowledge about the other substances does not constitute safety. The German Cancer Research Center in Heidelberg published an overview of electronic cigarettes with a closer look at the potential health risks of the most common ingredients:

1. Propylene Glycol: an FDA approved food additive functioning as a humectant and solvent for colors and flavors. It is also used in cosmetics and medical products to be applied to the skin, and as an industrial antifreeze and de-icing agent for cars, airplanes and boats. Propylene glycol when repeatedly inhaled has not been specifically addressed. Safety data sheets for industrial use of propylene glycol caution that the substance may form explosive gas/air mixtures and that heating or burning may lead to toxic gases being formed. Measures recommended in case of unintended release include ample ventilation and avoiding inhalation. The FDA has classified propylene glycol as “generally recognized as safe” for oral intake, yet studies have shown that inhaling propylene glycol may affect airways. Short-term exposure to propylene glycol in indoor air (309 mg/m³ for one minute) already causes irritation in the eyes, throat and airways. Effects of long-term exposure are still untested.

2. Glycerine: is considered generally safe for oral intake and is also used in food production as a humectant and as a solution carrier in flavors. However, this does not necessarily mean that it is safe for repeated inhalation- as in use in e-cigarettes. The specialist journal Chest reports a case study of a patient with lipoid pneumonia which they believed was caused by the glycerine-based oils form the aerosol in electronic cigarettes. The symptoms cleared up when the patient stopped use of electronic cigarettes. Goniewicz et al. (2013) has discovered that the dehydration and the fragmentation of glycerine that occurs when heated is the source of acrolein, a highly carcinogenic substance, present in the vapor, but not the liquid nicotine cartridge. The addition of acids allows pyrolysis to occur at much lower temperatures. Because glycerin is one of the main

Date: August 26, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: What should we know about Electronic Cigarettes?

carrying substances in the liquid nitrogen, the acrolein levels found in most vapor exceeds that of conventional cigarette smoke.

3. Nicotine: is a substance known to raise blood pressure and heart rate, curb appetite, increase basal metabolic rate and more. In the brain, nicotine promotes release of several neurotransmitters causing various psychological effects that may lead to dependence. Widely accepted opinion is that nicotine itself in reasonable doses is not harmful to the normal adult, health concerns have mostly been placed on the method of delivery to the body. Large amounts of nicotine are toxic. Approximately 50 milligrams of nicotine is lethal when swallowed; for a child a dose of only 6 milligrams is life threatening. E-cigarettes usually contain between 6 and 36 milligrams per milliliter.

4. Carcinogens: Individual liquids were found to contain small amounts of nitrosamines. Formaldehyde, acetaldehyde, and acrolein were measured in the aerosol of various e-cigarettes, although considerable less than in cigarette smoke. Formaldehyde and acrolein probably form upon heating the glycerine as they were found only in glycerine-containing products. In addition, nickel, lead, mercury, and chromium were detected in the aerosol, with higher levels of nickel measured that is known to be present in cigarette smoke. The International Agency for Research on Cancer (IARC) classifies aforementioned substances as carcinogenic and are known to irritate nasal cavity, damage lining of lungs, and contribute to cardiovascular disease.

SECONDHAND “VAPING”

Electronic cigarettes are not emission-free. Volatile organic substances including large amounts of propylene glycol (the main ingredient mentioned above), flavors, nicotine, tobacco specific nitrosamines, acetone, formaldehyde, acetaldehyde, acrolein, benzo(a)pyrene, silicate and various metal particles, as well as liquid particles are emitted into the air during vaping. These mist particles are less than 2.5 micrometer in diameter, yet are comparable in size to conventional cigarette smoke. Four of the metals measured (sodium, iron, aluminum, and nickel) are present at higher levels than cigarette smoke and five others (copper, magnesium, lead, chromium, and manganese) in same amounts. As stated above nickel and chromium are known to be carcinogenic and lead is suspected to be. Substances emitted into indoor air when e-cigarettes are used may be inhaled by non-users present in the same room. If several people are vaping in the same room, we have to assume that there is more air pollution from accumulation. Therefore, adverse health effects for third parties due to second-hand exposure cannot be excluded.

DREXEL UNIVERSITY STUDY

This past month a study was published by Igor Burstyn, PhD of Drexel University. The study assessed a compilation data from previous studies on the chemistry of aerosol and liquids of electronic cigarettes to make predictions about compliance with occupational exposure limits for e-cigarette users. “Both peer reviewed and ‘grey’ literatures were assessed and more than 9,000 observations of highly variable quality were extracted”. They found that while the levels of known toxins (those in traditional cigarettes) were below a level of concern, “estimated levels of exposure to propylene glycol and glycerin are close enough to TLV [Department of Labor

Date: August 26, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: What should we know about Electronic Cigarettes?

Threshold Limit Values] to warrant concern” He concludes that, “the only unintentional exposures that seem to rise to the level that they are worth further research are the carrier chemicals [propylene glycol and glycerin] themselves. This exposure is not known to cause health problems, but the magnitude of exposure is novel and thus is at the level for concern based on lack of reassuring data.”

Electronic cigarettes are a new product whose ingredients and health effects have not been rigorously scrutinized as tobacco cigarettes have been over the years. The two carrier ingredients whose exposure levels are potentially dangerous have been approved for use in food, but testing for repeated inhalation, and inhalation of the products created, have yet to be thoroughly tested. This study was funded by CASAA (Consumer Advocates for Smoke Free Alternatives) in opposition to SB 648, a California law that would regulate use of electronic cigarettes under tobacco product regulation.

LABORATORY ANALYSIS BY FDA

U.S. Food and Drug Administration (FDA) conducted laboratory analysis of electronic smoking device cartridges and found the following:

- Diethylene glycol, an ingredient used in antifreeze and toxic to humans, was found in one cartridge;
- Certain tobacco-specific nitrosamines, which are human carcinogens, were detected in half of the samples tested;
- Tobacco-specific impurities suspected of being harmful to humans—anabasine, myosmine, and β -nicotyrine—were detected in a majority of the samples tested;
- All but one tested cartridge labeled as containing no nicotine did in fact contain low levels of nicotine;
- Three identically labeled cartridges emitted markedly different amounts of nicotine with each puff. Nicotine levels per 100 mL puff ranged dramatically from 26.8 to 43.2 mcg nicotine; and
- One high-nicotine cartridge delivered twice as much nicotine to users as was delivered by a nicotine inhalation product approved by FDA for use as a smoking cessation aid which was used as a control.

A study published in the American Journal of Public Health found similar results to the FDA testing and concluded that the electronic smoking devices tested so far have demonstrated “poor quality control; toxic contaminants, albeit at low levels; misrepresentation of the nicotine delivered; and insufficient evidence of the overall public health benefit”. The ingredients in the liquid cartridges are variable even between same companies and same product type and label. What manufacturers chose to include in the ingredient label can be accurate, and estimation, or whatever they want or do not want to disclose.

Date: August 26, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: What should we know about Electronic Cigarettes?

E-CIGS AS A METHOD OF SMOKING CESSATION

Is use of electronic cigarettes (ENDS) an effective method for quitting tobacco smoking?

The World Health Organization states,

“As ENDS do not generate the smoke that is associated with the combustion of tobacco, their use is commonly believed by consumers to be safer than smoking tobacco. This illusive ‘safety’ of ENDS can be enticing to consumers; however, the chemicals used in electronic cigarettes have not been fully disclosed, and there are no adequate data on their emissions.

The efficacy of ENDS for helping people to quit smoking has not been scientifically demonstrated. ENDS are often touted as tobacco replacements, smoking alternatives or smoking cessation aids. But we know that for smoking cessation products to be most effectively and safely used, they need to be used according to instructions developed for each product through scientific testing. There are no scientifically proven instructions for using ENDS as replacements or to quit smoking. The implied health benefits associated with these claims are unsubstantiated or may be based on inaccurate or misleading information. When ENDS are used as cessations aids, they are intended to deliver nicotine directly to the lungs. None of the approved, regulated cessation aids, such as nicotine patches and chewing-gum, delivers nicotine to the lungs. Therefore, the biological mechanism by which smoking cessation might be achieved by delivery of nicotine to the lungs and its effects are unknown. Delivery to the lung might be dangerous. Therefore, independently of the effects of nicotine, it is of global importance to study lung delivery scientifically.”

The World Health Organization concludes, “until such time as a given ENDS is deemed safe and effective and of acceptable quality by a competent national regulatory body, consumers should be strongly advised not to use any of these products, including electronic cigarettes.”

LABELS WITHOUT INFORMATION

While the FDA will soon release their statement on the regulation of electronic cigarettes as tobacco products, currently there are no regulations or requirements of the manufacturing companies. Anna Trtchounian and Prue Talbot report on the lack of information on package and cartridge labels.

“All brands were sold with ambiguous amounts of nicotine/cartridge. Nicotine was usually indicated by a number followed by “mg” (e.g., 24 mg). It was not clear if this was mg/cartridge or mg/ml. Values for nicotine ranged from 6 mg (NJOY) to 24 mg (Liberty Stix, Smoking Everywhere Platinum). Some cartridges claimed no nicotine (0 mg). Manufacturers used terms such as zero/no, low/light, medium, high, and extra high to categorize nicotine concentrations when

Date: August 26, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: What should we know about Electronic Cigarettes?

comparing across brands. For example, Liberty Stix high cartridges had 24 mg of nicotine, while Crown Seven Hydo high had 16 mg. None of the cartridges were clearly labeled with the manufacturer's name, nicotine concentration, expiration date and flavor. Cartridges with no nicotine looked identical to those with high nicotine and were indistinguishable one removed from their wrappers or packs.”

ENFORCEMENT

It can be difficult to tell electronic cigarettes from traditional cigarettes. Electronic smoking devices often mimic conventional tobacco products in shape, size and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products. Some e-cigarettes contain a light emitting diode in the tip that glows when the user puffs, to resemble the end of a cigarette. However, some devices are also made to look like everyday items, pens, and memory cards for people who wish to use the product without notice.

A version of the electronic smoking device has been adapted for use in marijuana vaping, for medical purposes. The nicotine in the cartridges is replaced with cannabis oil reservoirs and when vaporized is nearly odorless. This should raise several red flags. First, the nicotine cartridges are replaceable and refillable by the user. Second, vapor is nearly odorless. It may be increasingly hard to tell what sort of substance the user of a vaporizer is inhaling and more importantly exhaling. Medical marijuana treatment is one thing, but the illegal smoking of it with its very distinct smell will difficult to detect. The device may be adapted for use of other types of drugs as well and the refillable cartridge may encourage manipulation of nicotine dosing properties and mixing of substances whose products will be unknown. A video on YouTube shows a video of a woman putting vodka into the cartridge instead of water.

Vaping Lounges are on the rise. With the popularity of electronic cigarettes taking off, many places that sell e-cigarettes also offer a social environment to vape and to try different kinds with a lounge like area. In light of the City's resistance to the opening of a hookah lounge and the City's goals to discourage the unhealthy habit of smoking, it seems that electronic cigarettes, if unregulated will take us in the wrong direction. The visual appeal and coolness factor of smoking a cigarette from the 60's that as a country we have been fighting to undo has the potential for reemerging in vaping.

CURRENT LEGISLATION (non-comprehensive)

California State Law:

- SB 882, passed by the Senate and Assembly in August 2010 and in effect September 27, 2010, prohibits the sale of e-cigarettes to minors.
- SB 648 passed the Senate Floor May, 2013, but removed from hearing agenda for August 14 to be revisited January 2014. This legislation authored by Senate Majority Leader Ellen M. Corbett would require that electronic cigarettes be regulated as a tobacco product and be included in existing California smoke-free laws.
- SB 648 is officially supported by Breathe California, California Medical Association, & California Black Health Network. And opposed by California NORML (National

Date: August 26, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: What should we know about Electronic Cigarettes?

Organization for Reform of Marijuana Laws), and CASAA (Consumer Advocates for Smoke Free Alternatives)

Federal Bans:

- The U.S. Department of Transportation interprets the federal regulations that prohibit smoking on airplanes to apply to e-cigarettes.
- Amtrak has banned their use on trains.
- The Navy banned the use of e-cigarettes below decks and on submarines.

Prohibit the use of e-cigs under existing smoke free laws in California:

- City of Concord
- Contra Costa County
- CSU Fullerton include e-cigs in smoke free campus law

Prohibits the use of e-cigs in all enclosed indoor places of public access and workplaces:

- New Jersey
- Suffolk County (New York)
- France

Prohibits use of e-cigs on public educational facilities.

- New Hampshire
- Arkansas

Prohibits the sale, importation, and/or use of electronic cigarettes:

- Brazil
- Norway
- Singapore
- Panama
- Lebanon
- Hong Kong (specifically nicotine based)

U.S. Food and Drug Administration:

- Currently, e-cigarettes that are marketed for therapeutic purposes are regulated by the FDA Center for Drug Evaluation and Research (CDER). The FDA Center for Tobacco Products (CTP) currently regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. FDA has stated its intent to issue a proposed rule that would extend FDA's tobacco product authorities to products that meet the statutory definition of "tobacco product."
- FDA approves over-the-counter smoking cessation products that include nicotine replacement chewing gum, lozenges and skin patches and regulates prescription drugs that block nicotine's effects on a smoker's brain.

Date: August 26, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: What should we know about Electronic Cigarettes?

- In 2009 the FDA blocked shipments of electronic cigarettes from Sottera. Following the court case, Sottera Inc. v. Food and Drug Administration, any product containing nicotine from tobacco, unless marketed for therapeutic purposes, is considered a *tobacco product*.
- 2010, FDA issued warnings to five electronic cigarette distributors for various violations of the Food Drug and Cosmetic Act including unsubstantiated claims and poor manufacturing practices.
- FDA announced they would release their statement on electronic cigarettes in October 2013.
- The American Lung Association urges consumers not to use e-cigarettes or any other products that are not approved by the FDA. Until the FDA determines that e-cigarettes are safe and effective for consumers, ALA recommends that the FDA should require their immediate removal from the marketplace.

CONCLUSIONS

- Electronic cigarettes are often assessed in comparison to traditional cigarettes, but they must be taken independently and analyzed as a separate health concern.
- While there is evidence electronic cigarettes contain significantly smaller amounts of the carcinogens known to be present in tobacco cigarettes, the actual ingredients have yet to be tested as their own carcinogens and for safety for repeated inhalation.
- Electronic cigarettes are not regulated by the FDA. Manufacturers are not required to disclose ingredients and often products have found to be variable between like cartridges.
- The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.
- Electronic smoking devices “may have the capacity to ‘re-normalize’ tobacco use in a demographic that has had significant de-normalization of tobacco use previously” (The Journal of Environmental and Public Health).
- While it is illegal for a minor to possess tobacco, it is not illegal for a minor to possess or use an e-cigarette. Federal law restricting the sale of tobacco products to minors does not yet include electronic cigarettes as California law does. Additionally they are available for purchase online with a debit or credit card.
- The FDA has raised concerns that electronic smoking devices, which are often marketed in appealing flavors, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products.
- Electronic smoking devices “are not comparable to scientifically-proven methods of smoking cessation” and that “neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established” (The World Medical Association).
- Electronic cigarettes pose difficulties to the enforcement of our current smoking laws with devices meant to simulate a traditional cigarette and able to conceal the type of substance inhaled and emitted into the air by the user.

Date: August 26, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: What should we know about Electronic Cigarettes?

* On September 6, 2013 GASP (Global Advisors on Smoke Free Policy) released a report on Electronic Smoking Devices. This report, similar to this memo, summarizes current legislation, research, and health information and has been included in attachments as an additional resource in the staff report.

RESOURCES

- Burstyn, Igor. (2013) Peering through the mist: What does the chemistry of contaminants in electronic cigarettes tell us about health risks? Web. 26, Aug, 2013.
http://www.explicitjuice.com/images/studies/ecig_safe.pdf
- Goniewicz ML, Knysak J, Gawron M, et al. (2013) Levels of selected carcinogens and toxicants in vapor from electronic cigarettes. *Tobacco Control* Published Online First: 6 March 2013. Doi: 10.1136/tobaccocontrol-2012-050859.
- Shripp T, Markewitz D, Uhde E, Salthammer T. (2012) Does e-cigarette consumption cause passive vaping? *Indoor Air* 2013; 23 25-31.
- Trtchounian, Anna and Prue Talbot. "E-Cigarettes Are Dangerous and Need Better Regulation." *Tobacco and Smoking: Opposing View Points, Chapter 3: Should Smoking Alternatives Be Regulated*. Ed. Elizabeth Des Chenes. Farmington Hills, Greenhaven Press, a part of Gale, Cengage Learning, 2012. 127-136. Print.
- U.S. Food and Drug Administration: *Protecting and Promoting Your Health*. Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA. 22, July, 2009. Web. 23, Aug., 2013. <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>.
- World Health Organization, *Tobacco Free Initiative (TFI)*. Questions and answers on electronic cigarettes or electronic nicotine delivery systems (ENDS), Statement 9 July 2013. Web. 23, Aug., 2013. http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/.
- World Health Organization, *Tobacco Free Initiative (TFI)*. Report on the Scientific Basis of Tobacco Product Regulation, WHO Technical Report Series, no. 955. 2010. Web. 23, Aug., 2013. http://www.who.int/tobacco/publications/prod_regulation/trs_955/en/index.html.
-



Talking Points on Regulation of Electronic Nicotine Delivery Systems (ENDS)

SUPPORT ARGUMENTS

1. “Allowing use of e-cigarettes in smokefree areas undermines hard work done to denormalize smoking behavior. Let’s not go backward.”

- Use of e-cigarettes simulates smoking.ⁱ Seeing smoking behavior can be a trigger for smokers trying to quit and glamorizes the behavior for youth.ⁱⁱ
- De-normalizing smoking, in addition to reducing exposure to secondhand smoke, is a key rationale for secondhand smoke laws in public places.ⁱⁱⁱ Use of an e-cigarette in public places normalizes the action of smoking, whether it’s tobacco or an e-cigarette.

2. “E-cigarettes can be a ‘gateway’ drug delivery device for youth.”

- E-cigarettes are very youth friendly.^{iv}
- Use of e-cigarettes simulates smoking and may glamorize smoking behavior for youth.^v

3. “The policy would not ban e-cigarettes, it regulates them in the same manner as tobacco products.”

- Since the safety and efficacy of e-cigarettes has not been fully studied, the FDA is concerned that consumers and bystanders have no way of knowing how much nicotine or other potentially harmful chemicals are being inhaled during use.^{vi}

OPPOSITION ARGUMENTS

1. “E-cigarettes helped me quit, so it’s bad public health policy to take them away from me.”

- The ordinance doesn’t ban e-cigarettes, it regulates them like other tobacco products. People are free to use them, just not in places where smoking is prohibited.
- FDA-approved nicotine replacement therapies are still permitted for use in these areas.

2. “New research shows that there is nothing harmful in the vapor so why should it be included in secondhand smoke laws?”

- Since the safety and efficacy of e-cigarettes has not been fully studied, the FDA is concerned that consumers and bystanders have no way of knowing how much nicotine or other potentially harmful chemicals are being inhaled during use.^{vii}
- De-normalizing smoking, in addition to reducing exposure to secondhand smoke, is a key rationale for secondhand smoke laws in public places.^{viii} Use of an e-cigarette in public places normalizes the action of smoking, whether it’s tobacco or an e-cigarette.

3. “Youth aren’t being influenced by e-cigarettes (because they are too expensive/don’t look like cigarettes/aren’t being marketed to them).”

- Data show an increase in use of e-cigarettes by young people.
 - In Florida, the prevalence of youth trying e-cigarettes increased by 30.0% among middle school students and by 40.0% among high school students from 2011-2012.^{ix}
 - In Florida, the prevalence of youth using an e-cigarette at least once during the past 30 days increased by 20.0% among middle school students and by 12.9% among high school students from 2011-2012.^x
- While some e-cigarettes do not look like cigarettes, many, particularly the low cost disposable devices, do look like cigarettes.
- The FDA and other public health agencies are concerned that e-cigarettes can increase nicotine addiction among young people and may lead kids to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death.^{xi}

4. “Local policy makers should wait until the state decides on SB 648 which would include e-cigarettes in the definition of smoking under California clean air laws.”

- This legislation will only apply to statewide clean air laws, not local laws. Communities with their own secondhand smoke protections will need to specifically include e-cigarettes to restrict their use in areas not covered by state law.
- If adopted, the state law will not preempt local jurisdictions from regulating e-cigarettes.

Additional Resources

- <http://changelabsolutions.org/publications/e-cig-regulation>
- <http://www.no-smoke.org/learnmore.php?id=645>
- <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>
- <http://www.legacyforhealth.org/what-we-do/tobacco-control-research/factsheets/topical-fact-sheets>

ⁱ Kuschner, WG, Reddy, S, Mehrotra, N, Paintal, HS. Electronic cigarettes and thirdhand tobacco smoke: Two emerging health care challenges for the primary care provider. *InInt J Gen Med*. 2011;4:115-120. doi: 10.2147/IJGM.S16908.

ⁱⁱ <http://www.tobaccofreekids.org/research/factsheets/pdf/0198.pdf>

ⁱⁱⁱ U.S. Department of Health and Human Services (HHS), Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, HHS, U.S. Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012.

^{iv} U.S. Food and Drug Administration. FDA and public health experts warn about electronic cigarettes [press release]. July, 2009. <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm>. Accessed June 15, 2012.

^v <http://www.tobaccofreekids.org/research/factsheets/pdf/0198.pdf>

^{vi} U.S. Food and Drug Administration. FDA and public health experts warn about electronic cigarettes [press release]. July, 2009.

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm>. Accessed June 15, 2012.

^{vii} U.S. Food and Drug Administration. FDA and public health experts warn about electronic cigarettes [press release]. July, 2009.

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm>. Accessed June 15, 2012.

^{viii} U.S. Department of Health and Human Services (HHS), Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, HHS, U.S. Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012.

^{ix} Florida Youth Tobacco Survey, 2012

^x Florida Youth Tobacco Survey, 2012

^{xi} U.S. Food and Drug Administration. FDA and public health experts warn about electronic cigarettes [press release]. July, 2009.

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm>. Accessed June 15, 2012.



City Attorney's Office
MEMORANDUM

Date: August 30, 2013
To: Heather Mc Laughlin, City Attorney
From: Marilyn Cech, Law Clerk
Re: Current Legislation on Electronic Cigarettes

CURRENT LEGISLATION (non-comprehensive)

California State Law:

- SB 882, passed by the Senate and Assembly in August 2010 and in effect September 27, 2010, prohibits the sale of e-cigarettes to minors.
- SB 648 passed the Senate Floor May, 2013, but removed from hearing agenda for August 14 to be revisited January 2014. This legislation authored by Senate Majority Leader Ellen M. Corbett would require that electronic cigarettes be regulated as a tobacco product and be included in existing California smoke-free laws.
- SB 648 is officially supported by Breathe California, California Medical Association, & California Black Health Network. And opposed by California NORML (National Organization for Reform of Marijuana Laws), and CASAA (Consumer Advocates for Smoke Free Alternatives)

Federal Bans:

- The U.S. Department of Transportation interprets the federal regulations that prohibit smoking on airplanes to apply to e-cigarettes.
- Amtrak has banned their use on trains.
- The Navy banned the use of e-cigarettes below decks and on submarines.

Prohibit the use of e-cigs under existing smoke free laws in California:

- City of Concord
- Contra Costa County
- CSU Fullerton include e-cigs in smoke free campus law

Prohibits the use of e-cigs in all enclosed indoor places of public access and workplaces:

- New Jersey
- Suffolk County (New York)
- France

Prohibits use of e-cigs on public educational facilities.

- New Hampshire
- Arkansas

Prohibits the sale, importation, and/or use of electronic cigarettes:

- Brazil
- Norway
- Singapore

Date: August 30, 2013
To: Marilyn Cech, Law Clerk
From: Heather Mc Laughlin, City Attorney
Re: Current Legislation on Electronic Cigarettes

- Panama
- Lebanon
- Hong Kong (specifically nicotine based)

U.S. Food and Drug Administration:

- Currently, e-cigarettes that are marketed for therapeutic purposes are regulated by the FDA Center for Drug Evaluation and Research (CDER). The FDA Center for Tobacco Products (CTP) currently regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. FDA has stated its intent to issue a proposed rule that would extend FDA's tobacco product authorities to products that meet the statutory definition of "tobacco product."
- FDA approves over-the-counter smoking cessation products that include nicotine replacement chewing gum, lozenges and skin patches and regulates prescription drugs that block nicotine's effects on a smoker's brain.
- In 2009 the FDA blocked shipments of electronic cigarettes from Sottera. Following the court case, Sottera Inc. v. Food and Drug Administration, any product containing nicotine from tobacco, unless marketed for therapeutic purposes, is considered a *tobacco product*.
- 2010, FDA issued warnings to five electronic cigarette distributors for various violations of the Food Drug and Cosmetic Act including unsubstantiated claims and poor manufacturing practices.
- FDA announced they would release their statement on electronic cigarettes in October 2013.

RECENT NEWS:

(Updates from CASAA and full articles available at <http://vaporsplace.com/casaa-updates>)

Seal Beach, CA May Ban E-Cigarette Stores (Hearing September 23rd)

Seal Beach, California: Ordinance No. 1631-U Would Treat E-Cigarettes like Drug Paraphernalia, Ban All Future Sales Within the City Last night (Monday, August 26, 2013), the Seal Beach City Council provisionally approved Ordinance No. 1631-U, an ordinance to impose a 45-day moratorium on the establishment of any business that intends to sell electronic cigarettes.

Pico Rivera, CA May Ban E-Cigarette Sales

August 27, 2013, the Pico Rivera City Council approved an ordinance to ban the use of electronic cigarettes in public places.

Union City, CA May Ban E-Cigarette Stores

Union City, California: City May Treat E-Cigarettes like Hookah, Ban All Future Sales Within the City Tonight (Tuesday, August 27, 2013) the City Council in Union City,

Date: August 30, 2013
To: Marilyn Cech, Law Clerk
From: Heather Mc Laughlin, City Attorney
Re: Current Legislation on Electronic Cigarettes

California will consider an ordinance that would place a 45 day moratorium on the issuance of any new zoning permits for stores that wish to allow customers to use electronic cigarettes and hookah products.

Duluth, MN E-Cigarette Usage Ban

Last night (August 27, 2013) the Duluth City Council had a first reading of the e-cigarette ordinances. As reported by the Duluth News Tribune, Councilwoman Jennifer Julsrud and a representative from the American Lung Association contended that banning e-cigarette use would be a positive for public health.

New York City Ordinances Would Ban Flavored E-Cigarettes and More

August 10, 2013: New York City's collection of ordinances leaked, would include electronic cigarettes in soon to be proposed tobacco bills, instead of separate regulation.

Tooele, Utah Proposed E-Cigarette Use Ban

The Tooele City Council decided to table an ordinance regulating the use of e-cigarettes on Wednesday (August 7, 2013). Proposed an e-cigarette use ban at public parks, playgrounds and sporting areas.

Temple City, CA Passes Zoning Ordinance

August 6, 2013 passed zoning restrictions that prohibit e-cigarette and smoke stores from getting permits if the applicant requests a space within 1,000 feet of public parks, schools, day care centers or any other nicotine-related business.

Canton, MA Ordinance to Ban E-cigarette Sales to Minors

August 12, 2013, Canton, Massachusetts: Banned the sale of electronic-cigarettes to minors and changed the age of tobacco related product sale from 18 to 21.

Duarte, CA Passes Moratorium to Halt Opening of Smoke Shops

July 7, 2013 Duarte has just passed an urgency ordinance to adopt a moratorium on smoke shops that sell vapor, or e-cigarettes, tobacco and smoking paraphernalia.

Rhode Island Bill to Ban E-Cigarette Sales to Minors -- SB 622

SB 622, bans sales of "vapor products" (e-cigarettes) to minors, has passed the Rhode Island House and Senate July 7, 2013.

Massachusetts Bill to Impose 90% Tax on E-Cigarettes -- HB 2593

Date: August 30, 2013
To: Marilyn Cech, Law Clerk
From: Heather Mc Laughlin, City Attorney
Re: Current Legislation on Electronic Cigarettes

June 25, 2013, today the Massachusetts Joint Committee on Revenue held a hearing on HB 2593. No vote taken, action still intended.

Arizona Bill to Ban E-Cigarette Sales to Minors - SB 1209

June 22, 2013: The Arizona House passed SB 1209 by a vote of 44-12. Shortly thereafter, Arizona Gov. Jan Brewer signed SB 1209 into law.

New York Bill to Impose 95% Tax on E-Cigarettes and Smokeless Tobacco -- A.B. 7106

A hearing on A.B. 7106 was held on May 22, 2013 before the Assembly Health Committee. A.B. 7106 was not brought up for a vote. However, the committee chairman is free to bring the bill back up at a later date with minimal notice.

Kitsap County, Washington E-Cigarette Usage Ban

May 14, 2013: Kitsap County, WA: Attempt to Add Smoke-Free Electronic Cigarettes to "Smoking" Ban. According to a report in the Kitsap Sun, Kitsap County's Public Health Board appears to be gearing up to ban e-cigarette use wherever smoking is banned.

Louisiana Bill to Double Smokeless Tobacco Tax -- HB 713

April 24, 2013: Louisiana: Bill Would Increase the State's Smokeless Tobacco Tax by 100% - - HB 713[full text of HB 713] [legislative tracking]If enacted this bill would:- increase the tax on cigarettes from 36 cents to \$1.00 a pack, but it would also increase the tax on smokeless tobacco products from 20% of the invoice price to 40% of the invoice price.

Rhode Island AGAIN Proposes Strangling Online Sales of E-Cigarettes -- HB 5876

April 17, 2013 Rhode Island: Another Bill to Severely Restrict Online Sales of E-Cigarettes -- HB 5876 is an identical bill introduced to the House Committee on Finance.

Contra Costa County, California E-Cigarette Usage Ban -- Ord. 2013-10.

April 9, 2013: After hearing from several e-cigarette users, the Contra Costa Board of Supervisors voted to ban vaping wherever smoking is banned by a vote of 4-1. Law in action.



GASP

7 Cedar St., Suite A
Summit, NJ 07901
Phone: 908-273-9368
Fax: 908-273-9222
Email: info@njgasp.org
www.njgasp.org

Karen Blumenfeld, Director
Tobacco Control Policy and Legal Resource Center
Karen.Blumenfeld@verizon.net

September 6, 2013

ELECTRONIC SMOKING DEVICES

Introduction

The electronic smoking device industry has evolved and now offers more products than electronic cigarettes, like hookah pens and electronic cigars. Some industry trade groups refer to these products as Personal Electronic Vaporizing Units (PEVUs). Throughout this paper, the term e-cigarette is used broadly to include all types of electronic smoking devices.

GASP has many health concerns regarding e-cigarette use and exposure, which are documented in this paper. The U.S. Food & Drug Administration (FDA), U.S. Senator Frank Lautenberg, the World Health Organization, and national advocacy organizations, such as Action on Smoking and Health (<http://ash.org/ashprecigs>) also voice their concerns about e-cigarettes.

Jurisdictions Restricting E-cigarette Use and/or Sales

Local, county, state and international jurisdictions are restricting or banning the sale or use of e-cigarette products.

New Jersey is the first state in the nation to ban the use of e-cigarettes in public places and workplaces, effective March 13, 2010. On January 11, 2010, Governor Corzine signed into law A4227/A4228/S3053/S3054, banning e-cigarette use in public places and workplaces (amended 2006 NJ Smokefree Air Act), and banning e-cigarette sales to people 18 years and younger. The New Jersey Senate and Assembly both voted unanimously in favor of the law. See http://njgasp.org/sfaa_2010_w-ecigs.pdf and njleg.state.nj.us/2008/Bills/A4500/4227_U1.pdf.

On August 7, 2013, the New Jersey Department of Health's Office on Local Public Health, in cooperation with the Department's Office on Tobacco Control, issued as a reminder an Administrative Advisory and two handouts that the use of electronic smoking devices is prohibited in indoor public places and work places.

http://www.njgasp.org/NJ_State_E-cigs_Advisory_2013.pdf

http://www.njgasp.org/NJ_Smokefree_Air_Act_and_Breathe_Easy_flyer.pdf

The impetus for the New Jersey state law came from a local Board of Health and County Board of Chosen Freeholders. In October 2009, New Jersey's Bergen County Board of County Freeholders passed a resolution banning e-cigarette use in county buildings, at county parks and recreational areas. On November 23, Paramus' Board of Health passed an ordinance restricting e-cigarette use in public places and workplaces, taking effect on December 1, 2009.

Other jurisdictions in U.S. and overseas restrict e-cigarette sales and use, require license/permit:

Both restricts use in workplaces/public places and bans sale to minors:

- In August 2013, UK Rail companies announced a complete ban on passengers using e-

cigarettes anywhere inside stations. In May 2013, First Capital Connect, a commuter train in the London metro area banned the use of e-cigarettes on its trains.

http://www.njgasp.org/IndependentCoUK_train_ecig_ban_8-12-13.pdf

http://www.njgasp.org/UK_Hunts_Post_E-cig_ban_fcc_5-30-13.pdf

- March 15, 2013 - Electronic cigarettes and all other tobacco products, are prohibited from use on all military installations unless in a pre-determined smoking area. Regulations for tobacco use by Air Force service members can be found in Air Force Instruction 40-102, Tobacco use in the military, which was adopted in 2010.
<http://www.aerotechnews.com/nellisafb/2013/03/15/air-force-aims-to-curtail-electronic-cigarette-use/>
- Effective January 1, 2013, North Adams Board of Health in Massachusetts bans e-cigarettes and restricts the sale and usage of electronic cigarettes to minors.
<http://www.iberkshires.com/story/41141/Tri-Town-Health-Board-Bans-Tobacco-Sales-In-Pharmacies.html>
- Effective November 8, 2012, Great Barrington, MA updated its Environmental Tobacco Smoke Regulations to include banning e-cigarettes where smoking is already prohibited.
http://www.townofgb.org/Pages/GBarringtonMA_Health/TOBACCO REGULATIONS 2012.pdf
- Effective September 1, 2012 the Saugus, MA Board of Health voted unanimously on June 5 to ban the sale of e-cigarettes to minors and their use in a public places.
<http://www.wickedlocal.com/saugus/news/x2067836337/Saugus-Board-of-Health-restricts-tobacco-sales#axzz2K3abf0bL>
- Cattaraugus County, New York bans e-cigarette sales to minors and the use of herbal and e-cigarettes in public places and workplaces, effective February 14, 2012.
- On March 12, 2012, the Utah Senate voted 24-3 in favor of HB245 which bans e-cigarette smoking and hookah smoking in public places, with a 5 year exemption for existing e-cigarette shops and hookah bars. HB245 already passed the Utah House on February 10, 2012. Utah's governor signed HB245 into law which amended the Utah Indoor Clean Air Act (Rule R392-510.2(5)).
<http://www.sltrib.com/sltrib/politics/53674989-90/hookahs-ban-cigarettes-tobacco.html.csp>
- As of December 2011, Boston Public Health Commission voted to prohibit the use of e-cigarettes in workplaces, and prohibit the sale or distribution of unregulated nicotine delivery products to minors. <http://bphc.org/boardofhealth/regulations/Forms Documents/Amended Clean Air Works Workplace Smoking and E-Cigarette Use Restrictions Regulation.pdf>
- Suffolk County, New York bans e-cigarette sales to minors and the use of e-cigarettes in public places and workplaces, effective November 1, 2009.
- The San Francisco Airport Commission banned the use of e-cigarettes at the airport on April 5, 2011.
- In Kentucky, Madison County amended their smoking ban ordinance to include banning the use of e-cigarettes in public places and workplaces, effective June 6, 2011. On March 22, 2011 Bullitt County Board of Health in Kentucky voted to ban smoking in public places and workplaces, including the use of e-cigarettes, effective September 19, 2011; on September 15, the Circuit County Court found the entire law unconstitutional, and the board of health is appealing the decision. In March 2010, the Kentucky cities of

Bardstown ("The Bourbon Capital of the World") and Glasgow (the county seat of the largest tobacco-producing area in the world) banned the smoking of e-cigarettes in public places and workplaces, effective June 2010.

- Savannah, Georgia banned the use of e-cigarettes in public places and workplaces as of January 2011.
- King County in Washington State banned the use of e-cigarettes in public places and workplaces and banned the sale to minors, December 2010.
- Tacoma-Pierce County Health Department in Washington State (1) banned the use of electronic smoking devices in public places where minors are permitted, exempt places of employment that are not public places and in retail outlets that exclusively sell or promote electronic smoking devices; (2) banned free sampling or at nominal cost unless at an e-cigarette retail outlet; and banned e-cigarette sales to minors. Effective June 2, 2011. <http://www.tpchd.org/news.php?nid=647> and <http://tpchd.org/files/library/22094f84d3b140cb.pdf>

Also requires license to sell nicotine delivery products (e-cigarettes)

- Concord City, California: Enacted an ordinance on September 27, 2011, requiring a 17-block downtown business district be 100% smokefree, including banning the use of e-cigarettes. Can apply for exemptions, e.g. inside residences and private vehicles. <http://www.ci.concord.ca.us/pdf/citygov/agendas/council/2011/0927/4A.pdf>
- Somerset, Massachusetts: Board of Health (1) bans the use of nicotine delivery products in workplaces and public places covered by the state law, requires signage; (2) requires nicotine delivery products (e.g. e-cigarettes) be sold face-to-face (not using self-service displays or vending machines), an only at a non-mobile retail establishment issued an annual permit by the local Board of Health; (3) bans the sale to minors, requires signage; and (4) bans free distribution and sampling. Up to \$300 fine, and suspension of nicotine delivery products permit issued by the local Board of Health. Fines range from \$100 \$300 and 30-day suspension of any and all Board of Health-issued permits. Effective September 1, 2010. \$100 annual permit fee. Ordinance at http://www.njgasp.org/Somerset_BdHealth_ecig_reg_9-2010.pdf. Newsclip at <http://www.wickedlocal.com/swansea/archive/x1869746351/Somerset-wants-to-ban-e-cigarettes#ixzz1XUp1eXO3.pdf>
- North Attleborough, Massachusetts: Board of Health (1) bans the use of nicotine delivery products in workplaces and public places covered by the state law, requires signage; (2) requires nicotine delivery products (e.g. e-cigarettes) be sold face-to-face, an only at a non-mobile retail establishment issued an annual permit by the local Board of Health; (3) bans the sale to minors, requires signage; and (4) bans free distribution and sampling. Fines range from \$100 to \$300, and suspension of nicotine delivery products permit issued by the local Board of Health. Effective July 13, 2010. \$25 annual permit fee. Ordinance at <http://north-attleboro.ma.us/boh/PDF/Regulations/Nicotine%20Delivery%20Product%20and%20E-Cigarette%20Regulation.pdf>
- South Hadley, Massachusetts: Board of Health (1) bans the use of nicotine delivery products in workplaces and public places covered by the state law, requires signage; (2) requires nicotine delivery products (e.g. e-cigarettes) be sold face-to-face, an only at a non-mobile retail establishment issued an annual permit by the local Board of Health; (3) bans the sale to minors, requires signage; and (4) bans free distribution and sampling. Fines range from \$100 to \$400, and seven-day to one-year suspension of any and all licenses and permits issued by the local Board of Health. Effective October 29, 2009. \$75

annual permit fee. Ordinance at
http://www.southhadley.org/Pages/SouthHadleyMA_Health/forms/enicappregs

Ban sale to minors

- Signed into law August, 2013 and effective January 1, 2014, Illinois bans sale of e-cigarettes and alternative nicotine products to people under age 18.
<http://www.nacsonline.com/News/Daily/Pages/ND0819132.aspx#.UjinyRb3A3Z>
- Effective January 2014, Canton, Massachusetts bans the sale of e-cigarettes to people under the age of 21.
http://www.njgasp.org/PatriotLedger_Canton_ecig_sales_ageto21_8-13-13.pdf
- As of May 2, 2013 Hawaii bans sale of e-cigarettes to minors under 18 years of age and requires tobacco products to be sold face-to-face, not through the internet.
http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=672&year=2013
- As of January 1, 2013 New York State prohibits electronic smoking within 100 feet of the entrances or exits of any public or private schools and bans the sale of e-cigarettes to minors with retailer fines from \$300 to \$1000 for the first violation.
<http://wantagh.patch.com/articles/mcdonough-announces-new-laws-that-protect-children-3daa9b21>
- As of July 1, 2012 both Idaho and Kansas bans the sales of e-cigarettes to minors.
- Effective October 1, 2012 Maryland passed a bill in April, 2012 banning the sale of e-cigarettes to minors.
- As of June 23, 2011 Clark County, West Virginia banned the sale of e-cigarettes to minors.
http://www.oregonlive.com/clark-county/index.ssf/2011/06/clark_county_bans_sale_of_e-cigarettes_to_minors.html
- Both Minnesota and New Hampshire's laws banning the sale of e-cigarettes to minors took effect on August 1, 2010.
- In Washington State, Spokane County and the cities of Spokane and Spokane Valley banned the sale of e-cigarettes to minors, effective March 31, 2011.
- Oregon's Attorney General John Kroger, reached a settlement in August 2010, preventing two national travel store chains from selling e-cigarettes.
- See Section 12 for international laws restricting e-cigarette use, sales and importation.

More U.S. and International jurisdictions are considering bans on the use and/or sale of e-cigarettes.

- In August 2013, Massachusetts proposed a bill to restrict the sale of any electronic tobacco or nicotine delivery product to minors, prohibit their use on public school grounds, ban their use in public places and workplaces, and restrict the distribution of samples.
http://www.njgasp.org/myfoxboston_MA_bill_restricts_ecigs_8-13-13.pdf
- On June 26, 2013, the Philippines' Food & Drug Association issued an Advisory that secondary exposure to e-cigarette emission might be harmful to health, and advised the public not to smoke or use e-cigarettes, and that local governing units shall be guided by

this advisory in strengthening their ordinances against smoking in public places and on second-hand exposure to harmful substances." Read the Advisory for more details on the chemical and metals that pollute the air from e-cigarette vapor.

<http://www.fda.gov/ph/attachments/article/80233/FA2013-015.pdf>

- On June 21, the European Union agreed on a directive to make tobacco products less appealing and limit all nicotine-containing products (including vapor products) with a nicotine level equal to or exceeding 1 mg per unit, or products with a nicotine concentration equal to or exceeding 2 mg per ml.
<http://register.consilium.europa.eu/pdf/en/13/st11/st11483.en13.pdf>
- As of June 2013, Italy is considering banning e-cigarette smoking in public places.
http://www.njgasp.org/DNALifestyle-Injurious_to_health_Italy_ecigs_public_6-6-13.pdf
- As of May 31, 2013, France is considering banning e-cigarette smoking in public places.
http://www.njgasp.org/CBSNews_France_ban_ecigs_public_places_5-31-13.pdf
- On May 21, 2013 the Illinois Senate endorsed a bill to ban the sale of e-cigarettes to minors. HB 2250 is now being reviewed in the house.
http://www.nwitimes.com/news/local/illinois/illinois-senate-approves-electronic-cigarette-ban-for-minors/article_95ef0a1e-2f19-5316-a6e7-0567dd5a7472.html
- In April 2013, North Carolina introduced a bill (SB530) to ban the sale of e-cigarettes to minors, which if passed, would take effect December 1.
http://www.njgasp.org/Winston-SalemJournal_NC_ban_ecigs_sales_to_minors_4-4-13
- The Health Commission passed a resolution on June 21, 2011 endorsing the San Francisco Department of Public Health's proposal to prohibit e-cigarettes where smoking is prohibited.
- On February 22, 2013, California introduced a bill (SB 648) that would ban electronic cigarettes in public places and workplaces, amending existing smokefree air laws to include electronic cigarettes as tobacco products.
http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0601-0650/sb_648_bill_20130805_amended_asm_v96.pdf
- As of December 2011, Greece is considering a ban on the sale and use of e-cigarettes.
http://www.njgasp.org/Greece_E-cig-ban-possible-12-13-2011.pdf
- As of September 2011, Macon, Georgia is considering the expansion of the state's smoking ban, which would also include banning the use of e-cigarettes in places where smoking is banned. Draft ordinance at <http://www.breatheeasy-macon.org/files/Ordinance.pdf> and newsclip at <http://www.macon.com/2011/09/23/1714992/macon-at-odds-over-smoking.html>
- The San Francisco Health Commission passed a resolution on June 21, 2011 that encourages the San Francisco Board of Supervisors to adopt an ordinance that would prohibit the use of e-cigarettes in those areas where smoking is prohibited by the San Francisco Health Code, and would require a tobacco permit for the sale of e-cigarettes and other non-FDA approved smoking cessation nicotine delivery devices.
<http://www.sfdph.org/dph/files/hc/HCRes/Resolutions/2011Res/ecig%20reso.pdf>
- As of March 2011, Arizona is considering bans on the sale and purchase of e-cigarettes to minors.

- Kentucky, Montana and Tennessee are considering banning sales of e-cigarettes to minors.
- Former Connecticut Attorney General Richard Blumenthal (current Governor) stated in 2009 he is "actively investigating these companies and their products."
http://www.njgasp.org/USAToday_ecigs_2009-10-25.pdf

Industry Tactics to Limit Regulations on Electronic Smoking Devices

Tobacco industry lobbyists are supporting bills that prevent sales to minors but are worded in such a way to ensure e-cigarettes remain taxed at a lower rate than traditional cigarettes and remain outside states' existing indoor smoking bans.

- In mid July 2013, Rhode Island Governor Chaffee vetoed a bill that banned the sale of e-cigarettes to minors, calling it "counterproductive to prohibit sales to children while simultaneously exempting electronic cigarettes from laws concerning regulation, enforcement, licensing or taxation. As a matter of public policy, electronic cigarette laws should mirror tobacco product laws, not circumvent them."
http://www.njgasp.org/ColumbusDispatch_E-cig_Bill_Trojan_Horse_7-22-13.pdf
http://www.tobaccofreekids.org/press_releases/post/2013_07_18_ri

Poll supports restrictions on e-cigarettes.

A University of Michigan poll released September 13, 2010 shows that adults support restrictions on e-cigarettes, based on potential risks and not just immediate health effect, as well as the possibility that e-cigarettes may lead youth to smoke cigarettes, according to Matthew M. Davis, M.D., director of the poll. The poll found:

- 91 percent of adults in the U.S. think manufacturers should be required to test e-cigarettes for safety.
- 85 percent favor prohibiting the sale of e-cigarettes to minors.
- 82 percent think the FDA should regulate e-cigarettes like other nicotine-containing products.
- 68 percent of adults think e-cigarettes should have health warnings like tobacco cigarettes and other nicotine products.

Read study at <http://www.med.umich.edu/mott/npch/pdf/091310report.pdf>.

Read news clip at <http://www.njgasp.org/e-Cigs-newswire-UMich-study-9-2010.pdf>.

The following sections provide detailed, documented support and information regarding public health concerns with e-cigarette use and exposure.

1. Product is 'smoked', therefore not permissible under the 2006 New Jersey Smoke-Free Air Act (NJSFAA).

The NJSFAA definitions section, NJSA 26:3D-57, defines smoking as "... or any other matter can be smoked":

"Smoking" means the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked."

The heating element in the e-cigarette heats and vaporizes the nicotine/propylene glycol solution, creating the 'smoke' which is inhaled and exhaled. Since the product is 'smoked' and creates a 'smoke', e-cigarette use is **not** permissible for use in public places and workplaces that are covered under the NJSFAA.

In addition, some e-cigarette companies admit in their marketing materials that their products are 'smoked'. GASP surveyed some e-cigarette websites, and, for example, Smokeless Revolution's website admits many times, that the product creates a 'smoke':

"The EVO is an electronic, smokeless alternative that delivers true tobacco flavor through a **vapor mist smoke**, with your preferred level of nicotine."
<http://www.smokelessrevolution.com/home.html>

Their website's "Frequently Asked Questions" section also states that a battery is used to create the smoke vapor:

...a small rechargeable battery and a unique, safe replaceable cartridge containing water, propylene glycol, nicotine, a scent that emulates a tobacco flavor and a membrane to suspend the ingredients. When using EVO, the act of inhaling or smoking it produces the tactile and craving satisfactions traditional smokers seek, and triggers a vaporizing process that releases a simulated smoke that is actually a vapor mist that harmlessly evaporates into the air within a few seconds.
<http://www.smokelessrevolution.com/faq.html>

Other e-cigarette websites have similar language.

2. Public health nuisance created when product used as intended.

The New Jersey general public nuisance code NJSA 26:3-46 et.seq. may also apply, separate and apart from the NJSFAA. It is unclear what byproducts are in the smoke that is emitted from the e-cigarette, and therefore, the safety of the smoke is called into question. NJSA 26:3-46 specifically refers to "gases or vapors... that are injurious to the health of the inhabitants."

Persons with breathing disabilities may especially have their lung functioning compromised, due to exposure to e-cigarette byproducts like propylene glycol (helps to create the smoke effect), and other additives to the nicotine solution when heated, then dispersed into the air. A public place or workplace that permits the usage of e-cigarettes may be subject to a violation of the NJ Law Against Discrimination, or the Americans with Disabilities Act Amendment Act of 2009.

Pertinent sections of the NJ public health nuisance code are in section 14 of this paper.

On January 24, 2011 an Allegiant Airlines flight was diverted when a passenger refused to stop using their e-cigarette in-flight. The passenger argued with the flight attendant, and the pilots diverted the plane. <http://www.wvec.com/home/Electronic-cigarette-leads-to-unexpected-landing-in-Norfolk-114504289.html>

3. July 2009 FDA study finds carcinogens in e-cigarettes, and other health concerns regarding the use of e-cigarettes.

The FDA's Center for Drug Evaluation, Division of Pharmaceutical Analysis (DPA) conducted a laboratory analysis of e-cigarette cartridges from two leading brands. The analysis indicated that e-cigarettes expose users to harmful chemical ingredients:

- Diethylene glycol, an antifreeze ingredient toxic to humans was found.
- Tobacco specific nitrosamines that are human carcinogens were detected in ½ of the samples.

- Tobacco-specific impurities suspected of being harmful to humans – anabasine, myosmine, and B-nicotyrine – were detected in a majority of the samples.
 - The e-cigarette cartridges labeled as containing no nicotine had low levels of nicotine present in all cartridges sampled, except one.
 - 3 different e-cigarette cartridges with the same label emitted markedly different amounts of nicotine with each puff, ranging from 26.8 to 43.2 mcg nicotine/100 ml puff.
 - One high-nicotine cartridge delivered twice as much nicotine to users when inhaled, than was delivered by a sample of an FDA approved smoking cessation nicotine inhalation product.
- FDA Summary <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>
 FDA study <http://www.fda.gov/downloads/Drugs/ScienceResearch/UCM173250.pdf>

The FDA concluded in its July 2009 findings:

- Clinical studies about the safety and efficacy of these products for their intended use have NOT been submitted to the FDA. Consumers have now way of knowing:
 - Whether e-cigarettes are safe for their intended use.
 - About what types or concentrations of potentially harmful chemicals, or what dose of nicotine they are inhaling when they use these products.
- <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm>
- Read highlights from the FDA July 2009 media call in section 13 of this paper.

U.S. Senator Frank Lautenberg issued a July 22, 2009 press release in response to the FDA report:

This report proves what we feared – that e-cigarettes may be unsafe and need to be taken off the market immediately. Not only can these products fuel a life-long addiction to nicotine, but now the FDA has found that they contain cancer-causing chemicals.

http://www.njgasp.org/Ecigs_sen_lautenberg_press_release_03-23-09.pdf

National Public Radio quoted Walt Linscott, an attorney for Smoking Everywhere, a major e-cigarette importer, in their August 5, 2009 story about e-cigarette:

“It is a cigarette, and cigarettes inherent by their design and nature are not safe.”

http://www.njgasp.org/NPR_ecigs_08-05-09.pdf

4. World Health Organization (WHO) issues warnings about e-cigarettes.

At an annual awards ceremony held July 2, 2013, the WHO urged the government of the Philippines to regulate the sale of e-cigarettes, citing a trend in other countries where people who started using e-cigarettes ended up smoking the real thing. Dr. Susan Mercado, director for Building Healthy Communities and Populations of the WHO-Western Pacific office said,

“In 2010, the WHO organized a global panel of experts to review the evidence and there is no evidence to show that it can help you quit smoking,”

http://www.njgasp.org/Phillippines_WHO_ecigs_warning_7-4-13.pdf

In September 2008, the WHO issued a written warning that there is no research/testing that e-cigarettes are safe products for human consumption, and no evidence that e-cigarettes are a safe substitute for smoking, or help smokers to quit. See WHO statement at <http://www.who.int/mediacentre/news/releases/2008/pr34/en/index.html>.

5. Researchers, health organizations voice concerns about e-cigarettes.

An April 2013 study by the German Cancer Research Center (DKFZ) evaluated the current state of e-cigarettes. The Key Message of the research center publication is:

“Electronic cigarettes are novel products emerging on the market just a couple of years ago. Consequently, there are only few scientific studies on the health implications of using electronic cigarettes. Based on current data, the following statements can be made:

Product characteristics

- E-cigarettes cannot be rated as safe at the present time.
- Consumers do not have reliable information on product quality.
- Electronic cigarettes have various technical flaws (leaking cartridges, accidental intake of nicotine when replacing cartridges, possibility of unintended overdose).
- Some manufacturers provide insufficient and partly wrong information about their liquids.

Health effects

- The liquids contain ingredients that on short-term use irritate air-ways and may lead to allergic reactions and which may be harmful to health when inhaled repeatedly over a prolonged period of time.
- The aerosol of some liquids contains harmful substances (formaldehyde, acetaldehyde, acrolein, diethylene glycol, nickel, chromium, lead).
- The functionality of electronic cigarettes can vary considerably (aerosol production, nicotine delivery into aerosols).
- Adverse health effects for third parties exposed cannot be excluded because the use of electronic cigarettes leads to emission of fine and ultrafine inhalable liquid particles, nicotine and cancer-causing substances into indoor air.

Users of electronic cigarettes

- Electronic cigarettes are used predominantly by smokers and smokers considering cessation, as well as former smokers.
- Even though only few non-smokers use electronic cigarettes, the products may bring them closer to smoking conventional cigarettes.
- Electronic cigarettes are used as an alternative to cigarette smoking and as smoking cessation aids primarily because they are believed to be less harmful than regular cigarettes.

Efficacy as cessation device

- Electronic cigarettes – regardless of their nicotine content – can reduce the desire to smoke (craving) and withdrawal symptoms.
- Some smokers cut down smoking or quit smoking as a result of using e-cigarettes.
- The efficacy of e-cigarettes as an aid for sustained smoking cessation has not yet been proven.

Product regulation

- We desperately need to know more on product quality, ingredients, possible health effects of e-cigarette use, and efficacy of e-cigarettes as cessation aid. Carefully planned studies by qualified and objective scientists are necessary.
- Electronic cigarettes should be regulated as medicinal products, regardless of their nicotine content.
- E-cigarettes should not be dispensed to children and youth.
- Non-smoker protection legislation should apply to e-cigarettes.”

<http://www.dkfz.de/en/presse/download/RS-Vol19-E-Cigarettes-EN.pdf>

A March 2013 study published in *Tobacco Control* found that as a harm reduction strategy, a

nicotine inhaler would be a safer approach to delivering nicotine than an e-cigarette product. The study results comparing the two products show:

Toxic Compounds	E-cig	Inhaler
Formaldehyde	28.2	2.0
Acetaldehyde	7.4	1.1
Acrolein	11.5	ND
o-methylbenzoyne	3.9	0.7
Toluene	0.8	ND
p,m-xylene	0.1	ND
NNN	1.5	ND
NNK	6.6	ND
Cadmium	0.09	0.03
Nickel	0.19	0.19
Lead	0.09	0.04
	ND=not detected	

Accordingly, an e-cigarette delivers 14 times as much formaldehyde, 7 times as much acetaldehyde, 6 times as much o-methylbenzene, 3 times as much cadmium and twice as much lead as a nicotine inhaler, as well as acrolein, toluene, p,m-xylene, NNN and NNK, which were not detected in the inhaler. Read more on the [Center for Tobacco Control Research & Education's website](http://tobaccocontrol.bmj.com/content/early/2013/03/05/tobaccocontrol-2012-050859.abstract).

<http://tobaccocontrol.bmj.com/content/early/2013/03/05/tobaccocontrol-2012-050859.abstract>

A March 13, 2013 *New York Daily News* article identifies e-cigarettes as being tried by about 21% of adult smokers in 2011, up from 10% in 2010. According to Dr. Andrew Strasser, associate professor in the department of psychiatry at the University of Pennsylvania School of Medicine, and resident tobacco products expert at Penn's Center for Interdisciplinary Research on Nicotine Addiction:

- "Just replacing some of your daily cigarettes [with e-cigarettes] is not really a harm reduction strategy."
- "There has not been a rigorous evaluation of quality control."
- "There could be a significant variation in nicotine dosing in individual cartridges."
- "We don't know enough about the e-cigarette to be able to recommend it as a smoking cessation tool"

Read the full article at http://www.nigasp.org/NYDailyNews_More_people_are_smoking_e-cigarettes_but_as_a_quitting_tool_they_may_be_all_smoke_and_mirrors_3-13-13.pdf

The May 2013 issue of the journal *Nicotine & Tobacco Research* published a study entitled, "[Use of Electronic Cigarettes Among State Tobacco Cessation Quitline Callers](#)", which found that smokers trying to quit who used e-cigarettes were significantly less likely to be tobacco abstinent at the 7-month survey, compared with participants who had never tried e-cigarettes. Read a list of implications [from this study](#), published by Dr. Stan Glantz of the University of California, San Francisco Center for Tobacco Control Research & Education.

The Italian Health Ministry published a report on December 28, 2012 that concludes e-cigarettes do not help smokers quit, nor do they provide a safer alternative to traditional smoking. Roberta Pacifici, director of Italy Observatory on Smoking, Alcohol and Drug Use at the National Health Institute, who worked on the report, said that the scientific reports studied "do not reassure us about the effectiveness or the innocuousness of its use."

http://www.nigasp.org/ABC_no_proof_e-cigs_combat_addiction_1-2-13.pdf

A University of Athens study was presented at the European Respiratory Society's Annual Congress in Vienna, Austria on September 2, 2012.

- The study showed that the electronic tubes of e-cigarettes caused an immediate

increase in airway resistance, lasting for 10 minutes, making it harder for participants to breathe.

- "We found an immediate rise in airway resistance in our group of participants, which suggests e-cigarettes can cause immediate harm after smoking the device. More research is needed to understand whether this harm also has lasting effects in the long-term.

<http://www.erscongress2012.org/mediacenter/news-release/item/428-experts-warn-that-e-cigarettes-can-damage-the-lungs.html>

- "ERS does not classify e-cigarettes as a safe alternative to smoking, nor does it consider them an approved tobacco cessation tool," spokesman Klaus Rabe recently told reporters, reiterating from the society's statement in February. "ERS recommends following effective smoking cessation treatment guidelines based on clinical evidence which do not advocate the use of such products."

<http://www.dailycommercial.com/091112electroniccigarettes>
<http://www.medicalnewstoday.com/articles/249784.php>

The August 1, 2012 edition of the Oxford University Press on behalf of the Society for Research on Nicotine or Tobacco 2012 published FDA's letter entitled, [FDA Summary of Adverse Events on Electronic Cigarettes](#). The letter was submitted by li-Lun Chen, MD, Office of Science, Center for Tobacco Products, FDA. The types of adverse effects from e-cigarettes reported to the FDA are:

- "2008 and earlier (1 of 18 total tobacco product reports), 2009 (10 of 16), 2010 (16 of 27), 2011 (11 of 30), and first-quarter 2012 (9 of 11). Of the 47 reports on e-cigarettes, 8 reported serious adverse events. A summary of serious e-cigarette complaints include hospitalization for illnesses such as pneumonia, congestive heart failure, disorientation, seizure, hypotension, possible aspiration pneumonia, second-degree burns to the face (product exploded in consumer's mouth while driving and during routine use), chest pain and rapid heartbeat, possible infant death secondary to choking on e-cig cartridge, and loss of vision requiring surgery."
- "In addition to these serious adverse events, other e-cigarette complaints include concerns about false advertising, headache/ migraine, chest pain, cough/sputum, nausea/vomiting, dizziness, feeling sick, confusion/stupor, sore throat, shortness of breath, abdominal pain, pleurisy, blurry vision, and sleepy/tired. Of note, there is not necessarily a causal relationship between AEs reported and e-cigarette use, as some AEs could be related to pre-existing conditions or due to other causes not reported."
- "Research by CTP reviewers found e-cigarette companies marketing flavored cartridges containing nicotine levels ranging from 0 mg to upwards of 24 mg..." .

A July 2012 study published in the journal *Indoor Air* found that e-cigarettes are putting detectable levels of significant carcinogens and toxins into the air: acetic acid, acetone, isoprene, formaldehyde and acetaldehyde. The authors concluded "[t]he consumption of e-cigarettes marks a new source for chemical and aerosol exposure in the indoor environment. To evaluate the impact of e-cigarettes on indoor air quality and to estimate the possible effect of passive vaping, information about the chemical characteristics of the released vapor is needed." The study was conducted at the Fraunhofer Wilhelm-Klauditz-Institut in Germany.

http://www.njgasp.org/Indoor_Air_journal_ecig_vaping_5-2012.pdf

In July 2011, *The New England Journal of Medicine* published a perspective from the Schroeder National Institute for Tobacco Research and Policy Studies which discusses safety concerns with e-cigarettes. According to the Legacy Foundation's press release

<http://www.legacyforhealth.org/4550.aspx> :

- "Smokers attempting to use e-cigarettes as quitting aids will most likely find them ineffective due to the fluctuating nicotine content and unpredictable delivery."

- “The safety of inhaling propylene glycol over an extended period of time has not been studied in humans.”
- “E-cigarettes may serve as a ‘bridge product’ that smokers use in places where traditional tobacco smoking is prohibited, thus perpetuating their addiction and use of real cigarettes.”
- E-cigarettes “may be used as a ‘starter’ product for young people considering smoking, especially since the cartridges can be purchased over the Internet with tempting flavoring like grape and chocolate.”

In December 2010, a study funded by a grant from the University of California Tobacco-Related Disease Research Center studied 5 brands of e-cigarettes and observed many safety issues:

- “Batteries, atomizers, cartridges, cartridge wrappers, packs and instruction manuals lack important information regarding e-cigarette content, use and essential warnings;
- “E-cigarette cartridges leak, which could expose nicotine, an addictive and dangerous chemical, to children, adults, pets and the environment;
- “Currently, there are no methods for proper disposal of e-cigarettes products and accessories, including cartridges, which could result in nicotine contamination from discarded cartridges entering water sources and soil, and adversely impacting the environment; and
- “The manufacture, quality control, sales, and advertisement of e-cigarettes are unregulated.”

These researchers expressed their concern about the safety of the e-cigarette vapors. The University of California press release states: “Contrary to the claims of the manufacturers and marketers of e-cigarettes being ‘safe,’ in fact, virtually nothing is known about the toxicity of the vapors generated by these e-cigarettes. Until we know any thing about the potential health risks of the toxins generated upon heating the nicotine-containing content of the e-cigarette cartridges, the ‘safety’ claims of the manufacturers are dubious at best.”

http://www.njgasp.org/e-cig_study_UC_Riverside_12-3-2010.pdf

The e-cigarette device can be dangerous. A Florida user lost teeth and part of his tongue when an e-cigarette battery malfunctioned, blowing up in his mouth and causing a fire in his home.

http://www.njgasp.org/ABCNews_ECig_Explodes_2-17-2012.pdf

The December 2010 issue of the American Public Health Association Journal published an editorial expressing health concerns about e-cigarettes.

http://www.njgasp.org/APJA_ecig_editorial_12-2010.pdf

Harvard School of Public Health's industry watch entitled, "Electronic Cigarettes: A new 'tobacco' industry?" published October 7, 2010 concludes: "Research on product design, toxicant exposure, abuse liability including dual use with tobacco products, youth initiation, and influence on cessation efforts is needed to counteract e-cigarette industry marketing and inform regulatory strategies." http://www.njgasp.org/TC_ecig_industry_10-25-2010.pdf

On August 27, 2010, The American Cancer Society Cancer Action Network presented to the New Mexico Tobacco Settlement Revenue Oversight Committee asking for a ban of all sales of e-cigarettes until approved by the FDA.

<http://www.njgasp.org/ACSCAN-Aug-27-2010-ecig-ppt.pdf>

On June 14, 2010, The American Medical Association (AMA) House of Delegates adopted a new policy that recommends electronic cigarettes (e-cigarettes) be classified as drug delivery devices, subject to the same FDA regulations as all other drug delivery devices. Additional policy

adopted supports prohibiting the sale of e-cigarettes that are not FDA approved. AMA Board Member Edward L. Langston, MD, stated:

- "Very little data exists on the safety of e-cigarettes, and the FDA has warned that they are potentially addicting and contain harmful toxins."
- "Because e-cigarettes have not been thoroughly tested, one cannot conclude that they are less harmful or less dangerous than conventional cigarettes."
- "The fact that they come in fruit and candy flavors gives them the potential to entice new nicotine users, especially teens."

http://www.njgasp.org/AMA_ecigs_drug_delivery_06-14-10.pdf

In May 2010, support of an Illinois bill that would ban the sale of electronic cigarettes (SB 3174), national public health organizations issued a public statement with 3 key messages about this product that is not regulated by the FDA: "There is no scientific evidence that e-cigarettes are safer for consumers than regular tobacco products"; "Many e-cigarettes are being enhanced with bubble gum and fruit flavors, which are attractive to teens."; "There is no scientific evidence that e-cigarettes can help smokers quit." <http://www.iafp.com/legislative/SB3174e-cigarettes.pdf>

In May 2009, the American Lung Association, American Cancer Society Cancer Action Network, the American Heart Association, and the Campaign for Tobacco-Free Kids have called for e-cigarettes to be removed from the market. See FDA website.

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173175.htm>

6. E-cigarettes appeal to youth.

Youth are attracted to electronic gadgets. Coupled with e-cigarette flavorings that are enticing to teens and children, there is concern that e-cigarettes smoking may appeal to teens, and also lead teens to smoking cigarettes, little cigars that look like cigarettes, or other tobacco products, which are less expensive than e-cigarettes. See health organizations concerns at

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173175.htm>

New electronic smoking devices, such as "hookah pens", can appeal to minors. They are colorful, come in fruit and candy flavors, and allow the smoker to be discreet in their usage around parents or other adults in school situations. For an example:

<http://www.texashookah.com/images/disposablehookah.htm>

A study published July 2012 in the *American Journal of Public Health* entitled "Young Adults' Favorable Perceptions of Snus, Dissolvable Tobacco Products, and Electronic Cigarettes: Findings From a Focus Group Study" concludes: "Young adults perceive the new tobacco products positively and are willing to experiment with them. Eliminating flavors in these products may reduce young adults' intentions to try these products."

http://njgasp.org/AmJPublicHealth_abstract_ecigs_young_adults_7-19-12.pdf

The FDA and health advocates are concerned about the appeal of e-cigarettes to young people. The FDA July 2009 report stated:

- E-cigarettes can increase nicotine addiction among young people and may lead kids to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death.

<http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm>

The liquid nicotine solution, packaged in a separate bottle, can be consumed by a child, and lead to nicotine poisoning, as in this case where it was reported that a child died after swallowing her grandfather's liquid e-cigarette nicotine cartridge.

http://www.njgasp.org/TimesofIsrael_toddler_ecig_nicotine_death_5-29-13.pdf

7. Unsubstantiated claims about e-cigarettes' reduced health risk.

In 2011, about 21 percent of adults who smoke traditional cigarettes had used electronic cigarettes up from about 10 percent in 2010.

http://www.cdc.gov/media/releases/2013/p0228_electronic_cigarettes.html

Employers are beginning to assess a health insurance plan surcharge for employees using e-cigarettes. According to the National Business Group on Health, using e-cigarettes is tobacco use and should be treated as such by employers. In 2014, UPS will charge employees \$150 per month more for their health plan, if they use tobacco, including e-cigarettes. Wal-Mart also places employees who use e-cigarettes in their health plan's "tobacco user" classification; their health plan has two classifications: non-tobacco user and tobacco user. In 2013, 42% of employers added a monthly surcharge for tobacco-using employees.

http://www.njgasp.org/ModernHealthcare_employers_ins_charge_ecigs_smoking_8-29-13.pdf
http://www.njgasp.org/CincinattiBusinessCourier_ecig_health_insur_9-13-13.pdf

Federal, state, county and local policymakers are concerned about claims of reduced health risk when using e-cigarettes. The e-cigarette companies have NOT provided any scientific clinical studies and toxicity analyses to the FDA that demonstrate reduced health risk, or that the product is safe to use. See public health advocacy organizations concerns at <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173175.htm>

For example, an October 24, 2009 press release from Denver-based E-CigaretteDirect.com states:

"E-CigaretteDirect.com recommends that smokers switch to electronic cigarettes to protect themselves and their loved ones from secondhand smoke and heart disease... The electronic cigarette takes all the smell, and detrimental health risks out of the picture. The e-cigarette is considered a harm reduction alternative to regular cigarettes."
http://www.njgasp.org/Ecigdirect_press_release_10-24-09.pdf

The e-cigarette industry opposes smokefree air laws that are proposed in states without comprehensive smokefree air laws, and encourages e-cigarette usage on airplanes, which are confined spaces with recirculated air. An e-cigarette buyer's guide blog details how an airplane passenger should convince a flight attendant to let them smoke e-cigarettes on a plane. See <http://www.electroniccigaretterevue.com/best-electronic-cigarette>.

U.S. Senator Frank Lautenberg (New Jersey), who spearheaded requiring 100% smokefree airlines, voices his concerns with e-cigarettes. Read the Senator's letter to the FDA at http://www.njgasp.org/Ecigs_sen_lautenberg_press_release_03-23-09.pdf

8. Health risks of nicotine

Powerful side effects of nicotine on the cardiovascular system:

- Releases epinephrine (adrenaline), which raises blood pressure, heart rate and respiration and glucose levels.
- Vasoconstrictor – harder for the heart to pump through constricted arteries.
- May cause body to release stored fat and cholesterol into bloodstream.
<http://en.wikipedia.org/wiki/Nicotine>

- Nicotine itself promotes blood vessel damage by promoting cellular damage in vascular smooth muscle cells, promoting plaque formation thereby causing blood vessel damage. http://www.njgasp.org/Biophysics_presents_nicotine_findings_2-26-2012.pdf
- Nicotine plays multiple roles in carcinogenesis through inhibition of apoptosis and cell proliferation ([Catassi et al. 2008](#); [Wright et al. 1993](#); [Zhou et al. 2010](#)). It is known to affect oxidative stress and to have adverse effects on brain and lung development in children ([Zhou et al. 2010](#)). Nicotine may have adverse effects on vascular function and might promote inflammation ([Wittebole et al. 2007](#)). Because nicotine and other THS constituents may be transformed into new toxicants ([Sleiman et al. 2010a](#), [2010b](#)), concerns about potential health risks of THS must include compounds created through secondary reactions. Thirdhand Tobacco Smoke: Emerging Evidence and Arguments for a Multidisciplinary Research Agenda, *Environmental Health Perspectives* (journal), published May 31, 2011. <http://ehp03.niehs.nih.gov/article/fetchArticle.action?articleURI=info%3Adoi%2F10.1289%2Fehp.1103500>
- Nicotine and the increased cholinergic activity it causes have been shown to impede apoptosis, which is one of the methods by which the body destroys unwanted cells (programmed cell death). Since apoptosis helps to remove mutated or damaged cells that may eventually become cancerous, the inhibitory actions of nicotine may create a more favorable environment for cancer to develop. <http://en.wikipedia.org/wiki/Nicotine>
- Nicotine raises blood sugar levels and the more nicotine that was present, the higher the blood sugar levels were. Higher blood sugar levels are linked to an increased risk of complications from diabetes, such as eye and kidney disease. Researchers from California State Polytechnic University in Pomona presented the study's findings at the American Chemical Society meeting in Anaheim, California, March 27, 2010. Author Xiao-Chuan Liu concluded, "This study should encourage diabetics to quit smoking completely, and to realize that it's the nicotine that's raising [blood sugar levels]." <http://njgasp.org/Yahoo-News-Nicotine-Raises-Blood-Sugar-Levels-3-27-11.pdf> See also 1989 study, which similarly concluded that Nicotine increases glucose levels, making blood sugar levels even harder to manage in diabetics. http://findarticles.com/p/articles/mi_m0689/is_n5_v28/ai_7923099/
- Women who use nicotine gum and patches during the early stages of pregnancy face an increased risk of having babies with birth defects, says a study that looked at about 77,000 pregnant women in Denmark. The study found that women who use nicotine-replacement therapy in the first 12 weeks of pregnancy have a 60 percent greater risk of having babies with birth defects, compared to women who are non-smokers, the Daily Mail reported. The findings were published in the Journal Obstetrics and Gynecology. <http://en.wikipedia.org/wiki/Nicotine>
- A study from South Africa at the University of Stellenbosch found that exposure to nicotine decreased the overall viability of sperm by between 5 and 15 percent. http://www.njgasp.org/IOL_Male_fertility_study_9-12-12.pdf
- There are documented cases of tobacco workers suffering from nicotine overdose as a result of handling raw tobacco leaves, a condition known as Green Tobacco Sickness. <http://www.enotes.com/how-products-encyclopedia/nicotine-patch>
http://en.wikipedia.org/wiki/Green_Tobacco_Sickness
- Spilling an extremely high concentration of nicotine onto the skin can result in intoxication or even death since nicotine readily passes into the bloodstream from

dermal contact. Lockhart LP (1933). "Nicotine poisoning". *Br Med J* 1: 246–7

- In some cases children have become poisoned by topical medicinal creams which contain nicotine. http://en.wikipedia.org/wiki/Nicotine_poisoning

Nicotine is FDA-regulated in NRTs, but not for e-cigarettes. Nicotine replacement therapy treatments (NRTs), such as the patch, gum, nasal spray, lozenges, are made with pharmaceutical grade nicotine. Manufacturers of FDA-approved nicotine replacement products are required to submit a detailed Manufacturing and Controls Section as part of the New Drug Application (NDA). This documentation assures that the product is manufactured in compliance with Good Manufacturing Practices regulations.

The NDA includes sourcing, processing and meticulous documentation at each step of production and use of a pharmaceutical grade active drug. These rigorous conditions are required to assure that the product contains the type and quantity of the drug as labeled. Failure of a manufacturer of an NDA product to comply with these regulations can result in prosecution / enforcement action by the FDA for marketing an adulterated, mislabeled and/or illegal drug product under U. S. law.

The FDA does not regulate nicotine products used with e-cigarettes for quality or quantity. The FDA's preliminary analysis showed that levels of nicotine can vary per tested cartridge, regardless of labeling, and that nicotine was found in nicotine-free labeled product.

9. E-cigarettes are drug delivery devices; therapeutic claims may require FDA approval.

The FDA classifies nicotine as a drug. E-cigarettes deliver nicotine to the user, like other nicotine delivery devices that are FDA approved as smoking cessation products (e.g. nicotine patch, lozenge, nasal inhaler, etc.) On September 8, 2010, the FDA issued letters stating that electronic cigarettes and similar products meet the definition of drug delivery devices and need to be regulated as such. See Section 11 on page 7 of this white paper, for more details on the FDA's September 8, 2010 letters.

The July 2009 FDA study found different e-cigarettes yielded different levels of nicotine dosages, with one delivering approximately twice the amount allowable from an FDA approved nicotine nasal inhaler that is used for smoking cessation purposes. Nicotine poisoning is a concern.

The FDA is required to approve and regulate tobacco cessation products under Federal Food, Drug, and Cosmetic Act (FFDCA) section 505(a) or 21 U.S.C. 355. Tobacco cessation products are considered drugs that have to undergo the new drug application/FDA approval process. <http://www.fda.gov/TobaccoProducts/ResourcesforYou/ucm168231.htm>

Websites that sell e-cigarettes, and share testimonials from users about how the e-cigarettes helped them reduce smoking cigarettes, may be promoting the product for smoking cessation purposes. Only FDA approved smoking cessation products are allowed to market and sell their product for a smoking cessation purpose. If a product is marketed and sold as a smoking cessation product, without FDA approval, that product should not be sold.

10. Amazon.com prohibits sale of electronic tobacco products on their website; Paypal cancels e-cigarette accounts

Onlineprnews.com reported on October 14, 2009, that internet retailer Amazon.com noticed its resellers that e-cigarettes and other e-tobacco products are "inappropriate for Amazon.com" and that Amazon.com is prohibiting the sale of such products. Onlineprnews.com also reported that Paypal cancelled its electronic cigarette accounts. http://www.njgasp.org/OLPRMedia_amazon_ecigs_removed_10-19-09.pdf

11. FDA decides not to appeal court decision allowing e-cigarette imports to USA.

April 25, 2011: the FDA announced that it will not appeal the recent decision by the U.S. Court of Appeals for the D.C. Circuit in *Sottera, Inc. v. Food & Drug Administration*, 627 F.3d 891 (D.C. Cir. 2010), stating that e-cigarettes and other products are not drugs/devices unless they are marketed for therapeutic purposes, but that products “made or derived from tobacco” can be regulated as “tobacco products” under the FD&C Act. The FDA webpage stated that the FDA is aware that certain products made or derived from tobacco, such as electronic cigarettes, are not currently subject to pre-market review requirements of the Family Smoking Prevention and Tobacco Control Act. FDA is developing a strategy to regulate this emerging class of products as tobacco products under the Family Smoking Prevention and Tobacco Control Act. Products that are marketed for therapeutic purposes will continue to be regulated as drugs and/or devices. The FDA “is considering whether to issue guidance and/or a regulation on ‘therapeutic’ claims.” Sourced directly from FDA website at <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm> Stakeholder letter: <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm252360.htm>

December 20, 2010: The FDA filed a new appeal, asking the full U.S. Court of Appeals to reinstate a stay of the preliminary injunction, pending the FDA's request for a rehearing of the case. The FDA argues that the three-judge panel's December 7, 2010 decision “rests on a clear error of law and will undermine” objectives that were laid out by Congress when it passed legislation in 2009 that empowered the FDA to regulate tobacco products for the first time. In early December, the Court of Appeals three-judge panel ruled that e-cigarettes and other products made or derived from tobacco can be regulated as “tobacco products” by the FDA, unless marketers make specific claims that the devices help smokers quit or provide other therapeutic remedies. *Wall Street Journal* at <http://online.wsj.com/article/SB10001424052748703581204576033640017829896.html>

The three-judge panel decision on December 7, 2010 affirmed the District Court's preliminary injunction that allows NJOY to import their e-cigarettes while the lawsuit is pending. The Court of Appeals noted that the factual record on NJOY is “meager”, and intimated that the FDA should consider trying to establish that NJOY does in fact make therapeutic claims regarding its electronic cigarettes.

www.njgasp.org/SotteravFDADCCCourtofAppealsDecision.pdf, pg. 13. If the FDA is successful in its claim that NJOY makes therapeutic claims, then the FDA may have jurisdiction over NJOY's e-cigarette products under the FDCA's drug/device provisions. Some e-cigarette companies market their products as smoking cessation devices, as evidenced on their website testimonials, at live demos, etc.

September 8, 2010: The FDA issued warning letters to five electronic cigarette distributors for various violations of the Federal Food, Drug, and Cosmetic Act (FDCA) including unsubstantiated claims and poor manufacturing practices. In letters to the Electronic Cigarette Association and the five distributors, the FDA said the agency intends to regulate electronic cigarette and related products in a manner consistent with its mission of protecting the public health. The FDA determined that the electronic cigarette products addressed in the warning letters, and similar products, meet the definitions of both a drug and device under the Federal Food, Drug and Cosmetic Act, and the definition of a combination product in 21 C.F.R. Part 3, with a drug primary mode of action. Firms that introduce these electronic cigarette products into the marketplace will have to comply with the FDCA, including the drug approval process. <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm225224.htm> <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/UCM225263.pdf>

The 5 e-cigarette companies have 15 days from Sept 8, 2010 (date of FDA notices of

violations) to describe steps each will take to rectify the violations. If the FDA does not receive sufficient responses from each company, the FDA may seek seizure of the e-cigarette products, and injunctive relief.

May 24, 2010: The FDA filed its appellate brief for the pending lawsuit being heard by the District of Columbia Court of Appeals, in its e-cigarettes lawsuit, and national tobacco control organizations filed an amicus brief on behalf of the FDA's case which can be read at [http://www.casaa.org/files/FDA Appeals Brief.pdf](http://www.casaa.org/files/FDA%20Appeals%20Brief.pdf) All court papers on this appeal are due by July 22, 2010.

April 2, 2010: The U.S. Court of Appeals (District of Columbia) ruled that the FDA can ban the importation of e-cigarettes into the USA, during the pending of a lawsuit filed by the e-cigarette company plaintiffs. The U.S. Court of Appeals reversed a lower court decision that disallowed the FDA from banning the importation of e-cigarettes while the litigation proceeded. This April 2, 2010 ruling is a win for the FDA. Read the April 2, 2010 U.S. Court of Appeals decision at <http://www.ash.org/ecigstay>. Read the April 21, 2010 newsclip on our website <http://www.njgasp.org/e-cigs-fda-ban-04-2010-article.pdf>.

March 1, 2009, U.S. FDA: FDA opened an investigation, refusing to allow e-cigarettes, e-cigars and e-pipes to cross the border on a case-by-case basis. The FDA concludes that e-cigarettes meet the definition of a combination drug device product under the Federal Food, Drug and Cosmetic Act, considers e-cigarettes new drugs that require FDA approval:

The U.S. Food and Drug Administration has reviewed several electronic cigarettes, cigars, and pipes, and refused these products at the United States border. The agency has acted because these products offered for import appear to require FDA approval to be legally marketed in the U.S and have not been reviewed by the agency.

These products consist of devices that turn nicotine and other chemicals into a vapor to be inhaled by the user. They are typically designed to look like conventional cigarettes, cigars, and pipes, and to be used the same way.

The FDA is concerned about the potential for addiction to and abuse of these products. They may also be perceived as safer alternatives to conventional tobacco use and possibly initiate nicotine use among those who have never smoked, or among former smokers. The agency is also concerned that this could lead to an increase in the use of conventional tobacco products by young people, with well-known adverse health consequences.

As of March 1, 2009, the FDA had refused 17 shipments of various brands of these "electronic" cigarettes, cigars, and pipes, and their components. At that time, the FDA stated it would continue to evaluate these products on a case-by-case basis.

<http://cfc.wjla.com/external.cfm?p=fdaecigs033109>

See FDA statement for full details.

12. State, county, local laws restricting e-cigarette use and sales in the U.S.

- **Effective October 1, 2012 Maryland** bill [HB1272](#) bans the sale of e-cigarettes to minors.
- **Effective December 2011 New York's** Liquor Authority made a Declaratory Ruling that beer wholesalers who have a C license cannot sell e-cigarettes. <https://www.sla.ny.gov/system/files/2011-03687-Saleofelectroniccigarettes.pdf>
- **Effective September 19, 2011, Bullitt County Board of Health in Kentucky** bans smoking in public places and workplaces, including the use of e-cigarettes (law passed 3/22/10). <http://www.bullittcountyhealthdept.com/BOH%20Regulation%2010-01.pdf>

- **July 1, 2011, effective in Colorado** bans the sale of e-cigarettes to minors. http://www.leg.state.co.us/clics/clics2011a/csl.nsf/fsbillcont3/78CCDD6C6E59B37187257808008013AE?open&file=1016_enr.pdf
- **Effective June 23, 2011, Clark County in Washington State** banned the sale of e-cigarette to minors. http://www.oregonlive.com/clark-county/index.ssf/2011/06/clark_county_bans_sale_of_e-cigarettes_to_minors.html
- **San Francisco signed into law on June 21, 2011** a ban on using e-cigarettes in public places and workplaces covered by their smokefree air law.
- **June 6, 2011 effective in Madison County, Kentucky** amended its smoking ban ordinance to include a ban on using e-cigarettes in public places and workplaces. Voted April 6, 2011. read law at http://www.madisoncountyhealthdept.org/Documents/Community/REVISED_MCHR_700.pdf and newsclips at <http://www.kentucky.com/2011/06/01/1758625/madison-countys-ban-on-e-cigarettes.html> and <http://www.whas11.com/news/health/Madison-County-adds-e-cigarettes-to-smoking-ban-119406749.html>
- **March 31, 2011 Washington State's Spokane County and cities of Spokane and Spokane Valley** banned the sale of e-cigarettes to minors.
- **January 2011 Savannah, Georgia** banned the use of e-cigarettes in public places and workplaces, effective January 2011.
- **December 2010 King County, Washington State** banned the use of e-cigarettes in public places and workplaces, and banned the sale to minors.
- **December 16, 2010 King County (Washington State) Board of Health** bans the use of e-cigarettes in public places and work places, restricts the sales of e-cigarettes or any other unapproved nicotine delivery devices only to people 18 and older, and prohibits free or highly discounted electronic smoking devices or unapproved nicotine delivery products. Press release http://www.njgasp.org/King_County_Washington_ecigs_12-16-2010.pdf. Ordinance http://www.njgasp.org/King_County_Washington_ecig_Ord_12-2010.pdf.
- **August 1, 2010 New Hampshire** bans e-cigarette sales to minors.
- **August 1, 2010 Minnesota's Tobacco Modernization and Compliance Act of 2010** took effect, banning the sale of e-cigarettes to minors, banning self-service displays of tobacco products and e-cigarettes except in adult-only facilities, and allowing for municipalities to license and regulate retail sales of e-cigarettes and tobacco products. See <http://publichealthlawcenter.org/content/passage-tobacco-modernization-and-compliance-act-2010> and <https://www.revisor.mn.gov/laws/?id=305&year=2010&type=0> www.njgasp.org/Minnesota_PR_Tob_Mod_Compl_Act-2010.pdf
- **July 29, 2010 the California Attorney General entered into a Stipulated Consent Agreement** with NJOY, an e-cigarette manufacturer and retailer. The Agreement settles the lawsuit filed by the Attorney General, making it unlawful for NJOY to sell e-cigarettes to a minor, along with other restrictions on marketing and sales of e-cigarettes. <http://oag.ca.gov/news/press-releases/brown-announces-electronic-cigarette-makers-agreement-stop-deceptive-marketing>
- June 2011, effective date for the city of Bardstown, Kentucky banning the use of e-cigarettes in public places and workplaces; signed into law on March 9, 2010. http://www.cityofbardstown.org/pdfs-ordinances/Chapter_123.pdf

- June 2011, effective date for the city of Glasgow, Kentucky banning the use of e-cigarettes in public places and workplaces; signed into law in March 2010.
<http://blogs.theheart.org/melissa-walton-shirley-blog/2010/3/26/glasgow-kentucky-goes-smoke-free-war-and-peace-part-1>. See also
<http://www.ctpost.com/news/article/Madison-County-adds-e-cigarettes-to-smoking-ban-1326985.php>
- **March 13, 2010: New Jersey bans use/sale of e-cigarettes.** On January 11, 2010 New Jersey Governor Corzine signed into the law banning the use of e-cigarettes in workplaces and public places, and banning the sale of e-cigarettes to persons 18 years and younger. The law amended the 2006 NJ Smokefree Air Act. **New Jersey is the first state in the nation to ban the use of e-cigarettes in public places and workplaces.**
www.njleg.state.nj.us/2008/Bills/A4500/4227_U1.PDF
- **November 23, 2009: New Jersey's Paramus Board of Health bans use of e-cigarettes at certain locations.** Resolution prohibits the use of e-cigarettes in public places and work places effective December 1, 2009.
<http://www.njgasp.org/Electronic%20Cigarettes%20Paramus%20Ordinance%2012-2009.pdf>
- **October 7, 2009: New Jersey's Bergen County Board of Chosen Freeholders bans use of e-cigarettes at certain locations.** Resolution prohibits the use of e-cigarettes at all county parks where children are present, and inside county buildings and county vehicles. Bergen County resolution at http://www.njgasp.org/Bergen_ecigs_resolution.pdf; press release is http://legis.suffolkcountyny.gov/press/do18/2009/do18pr_081809_ecig.pdf.
- **August 2009: Suffolk County, New York bans use/sale of e-cigarettes.** The Suffolk County Legislature voted to ban the use of e-cigarettes in workplaces and public places, and banned the sale of e-cigarettes to persons under age 19. The law takes effect November 1. Suffolk County ordinance at <http://legis.suffolkcountyny.gov/Resos2009/i1347-09.pdf>; their press release at http://legis.suffolkcountyny.gov/press/do18/2009/do18pr_081809_ecig.pdf
- **July 2009: Oregon Attorney General bans e-cigarette sales.** The Oregon Department of Justice today filed two settlements that prevent two national travel store chains from selling "electronic cigarettes" in Oregon.
<http://www.doj.state.or.us/releases/2009/rel073009.shtml>

Other U.S. federal policies; University policies that restrict e-cigarette sales and use

- **February 2011: The U.S. Department of Transportation (DOT) communicated in writing to New Jersey Senator Frank Lautenberg that the use of smokeless e-cigarettes on airplanes is prohibited.** The DOT plans to issue an official ban in the spring of 2011. According to the Associated Press, Transportation Secretary Ray LaHood said the DOT has been informing airlines and the public that it interprets smoking regulations to include e-cigarettes.
http://www.njgasp.org/DOT_Policy_on_ecigs_feb_2011_ltr_to_lautenberg.pdf

Examples of enforcing the no e-cigarette use policy in-flight:

- In July 2011, a passenger refused to extinguish his e-cigarette in-flight from Los Angeles to Salt Lake City on Southwest Airlines, and upon disembarking, the FBI charged him with interference with the flight crew.
http://connect2utah.com/search-fulltext?nxd_id=156217

- o January 24, 2011 an Allegiant Airlines flight was diverted when a passenger refused to stop using their e-cigarette in-flight. The passenger argued with the flight attendant, and the pilots diverted the plane.
<http://www.wvec.com/home/Electronic-cigarette-leads-to-unexpected-landing-in-Norfolk-114504289.html>

Senator Lautenberg wrote the 1987 law that banned smoking on airplanes; he asked the DOT to clarify the rule. In 2010, GASP requested Senator Lautenberg's office to look into clarifying the 1987 law banning smoking on airlines, to have it apply to electronic smoking devices as well. <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2011/02/11/financial/f055143S14.DTL#ixzz1Dtl4gqZJ> On January 24, 2011 an Allegiant Airlines flight was diverted when a passenger refused to stop using their e-cigarette in-flight. The passenger argued with the flight attendant, and the pilots diverted the plane. <http://www.wvec.com/home/Electronic-cigarette-leads-to-unexpected-landing-in-Norfolk-114504289.html>

- **August 2010: The Air Force surgeon general, Lt. Gen. (Dr.) Charles B. Green, has issued a memo alerting all Airmen about safety concerns regarding electronic cigarettes.** The memo states that due to the nature, appearance and safety concerns of electronic cigarettes, they are considered to be in the same category as tobacco products, the use of which is governed by Air Force Instruction 40-102, Tobacco Use in the Air Force. This new product will be included in the upcoming revision of AFI 40-102 due out this fall.
http://www.af.mil/news/story_print.asp?id=123218666
- **August 2010: The U.S. Navy has announced that smoking will no longer be permitted below decks on its submarines, effective December 31, 2010.** The policy was initiated to protect the health of nonsmoking sailors. The Navy offers smoking cessation programs and nicotine replacement therapy will be widely available on the submarines.

Prescription drugs will be off-limits due to the potential to modify behavior patterns. Electronic cigarettes are not authorized.

http://www.njgasp.org/kitsapsun_navy_news_4-8-2010.pdf

- **August 2010: Central Michigan University banned the use of e-cigarettes in all buildings and residence halls , and within a 25 feet perimeter of all buildings**
<http://www.cm-life.com/2010/08/19/electronic-cigarettes-banned-in-campus-buildings-residence-halls/>

Laws outside the U.S. that restrict e-cigarette sales and use

- **European Union, July 10, 2013:** The European Parliament's environment and health committee voted to back the European Commission's proposed tobacco restrictions. One was to regulate e-cigarettes as medicinal products if they contain 4 mg or more of nicotine.
http://www.njgasp.org/EU_E-cigs_as_medicine_7-17-13.pdf
- **United Kingdom, June 2013:** Electronic Cigarettes are to be regulated as medicine by the Medicines and Healthcare products Regulatory Agency. Beginning 2016, e-cigarette manufacturers will have to prove the quality of their products and demonstrate they deliver the correct amount of nicotine to obtain a license to sell their products in the UK.
http://www.njgasp.org/Reuters_UK_ecigs_regulated_6-12-13.pdf
- **Argentina, May 2011:** resolution 3226/2011 bans the importation, distribution, commercialization and advertising of e-cigarettes and paraphernalia related to them.

http://www.njgasp.org\Argentina_bans_e-cigs_YahooNews_5-9-2011.pdf

- **July 2010: Singapore bans e-cigarette importation, distribution and sales** under Section 16 (1) of the Tobacco (Control of Advertisements and Sale) Act, enforced by the Health Sciences Authority (HSA). Prohibits the importation, distribution, sale or offer for sale of any confectionery or other food product or any toy or other article designed to resemble a tobacco product or packaging which is designed to resemble the packaging commonly associated with tobacco products. Fine is of up to \$5, 000 upon conviction.
www.njgasp.org/Singapore_ban_7-19-10.pdf
- **January 2010: Malta bans e-cigarette use in public places where smoking is banned; bans sale to minors.** <http://archive.maltatoday.com.mt/2010/01/10/t14.html>
- **2009: Brazil bans the sale, importation and advertisement of electronic cigarettes.** The Brazil's health and sanitation federal agency, Anvisa, found the current health safety assessments about e-cigarettes not to be yet satisfactory to make the product eligible to be approved for commercialization. <http://www.estadao.com.br/noticias/vidae,anvisa-proibe-comercializacao-do-cigarro-eletronico,427373,0.htm>
- **July 2009: Israeli Health Ministry bans e-cigarette sales and importation.**
<http://www.israelnationalnews.com/SendMail.aspx?print=print&type=0&item=132629>
- **June 2009: Panama bans the importation, distribution and sale of e-cigarettes.** Ministry of Health cites FDA findings as reason for their ban.
<http://mensual.prensa.com/mensual/contenido/2009/10/22/hoy/panorama/1969677.asp>
- **In March 27, 2009: Canada bans sale of e-cigarettes that contain nicotine.** Health Canada called for the immediate cessation of imports, sales, and advertising of electronic smoking products containing nicotine, and advised Canadians not to purchase or use any electronic smoking products. Under the Canadian Food and Drugs Act, Food and Drugs, electronic smoking products containing nicotine require market authorization before they can be imported, marketed, or sold. As of March 27, 2009, no electronic smoking product has been authorized for sale by Health Canada. See Health Canada's March 27, 2009 Notice at http://www.hc-sc.gc.ca/dhp-mps/prodpharma/applic-demande/pol/notice_avis_e-cig-eng.php
- **March 2009: Hong Kong bans the use and sale of electronic cigarettes, unless registered as a pharmaceutical product with the government.**
http://www.tco.gov.hk/textonly/english/infostation/infostation_04032009.html and http://www.thestandard.com.hk/news_detail.asp?pp_cat=30&art_id=79120&sid=22983216&con_type=3
- **January 2009: Jordan's Ministry of Health banned the import of the electronic cigarettes,** citing World Health Organization's health concerns.
<http://www.jordantimes.com/?news=13857>
- **January 2009: Victoria (Australia) bans e-cigarette use, sales and advertising.** Australian law classifies nicotine as a poison (only exemption is for cigarettes and for cessation products). E-cigarettes have not been evaluated for safety and efficacy:

According to a spokesperson for the [Federal Department](#) of Health and Ageing, every form of nicotine except for replacement therapies and cigarettes are classified as a form of poison. Last October, the National Drugs and Poisons [Schedule Committee](#) (NDPSC) decided that this classification should remain for

e-cigarettes, which effectively makes it illegal to sell nicotine e-cigarettes in all states and territories.

"The e-cigarette has not been evaluated for safety or efficacy," said a spokesperson for the Federal Department of Health and Ageing. "Nicotine has well recognized physiological and pathological effects and, as with conventional cigarettes, the e-cigarette would be expected to lead to, and sustain, nicotine addiction." <http://www.news.com.au/technology/story/0,28348,24930638-5014239,00.html>

- **March 2008: Turkey's Health Ministry banned the sale and importation of e-cigarettes**, classifying e-cigarettes as a pesticide. Ads of e-cigarettes are also banned. <http://arama.hurriyet.com.tr/arsivnews.aspx?id=-621407> and <http://arama.hurriyet.com.tr/arsivnews.aspx?id=-622303>

13. Transcript highlights from FDA's July 2009 media call re: preliminary analysis

Several leading experts provided information on the FDA's media call in July 2009, to discuss the FDA's findings in their preliminary analysis of a sampling of e-cigarettes:

Dr. Jonathan Samet, Director of the Institute for Global Health at the University of Southern California, is a leading authority on the health effects of smoking and air pollution and he serves as Consulting Editor and Senior Scientific Editor for the Surgeon General Reports on smoking and health including the 1985, 1986, 1990, 2004 and 2006 reports. Dr. Samet commented on the study, stating that:

- "... one group of compounds were the **tobacco specific nitrosoamines** which are quite closely linked in smokers to lung cancer and they were found in detectable - they **were detected.**" (page 19)

Mr. Westenberger is the Deputy Director at the Center for Drug Evaluation and Research at FDA in the Division of Pharmaceutical Analysis. He has served with FDA for 39 years. The CDER is where the FDA's preliminary testing was conducted on electronic cigarettes. Testing was performed by a team of analytical chemists under his supervision and he wrote the final report. On the media call, Mr. Westenberger stated the following:

- "... the majority of the **samples tested positive for the presence of tobacco specific impurities suspected of being harmful to humans such as anabasine, myosmine, and beta-nicotyrine.**" (page 4)
- "... **Half the samples also tested positive for the presence of certain tobacco specific nitrosoamines that are known human carcinogens such as N-(nitrosonornicotine), and 4-(methylnitrosoamino)-1-(3-pyridyl)-1-butanone.** In addition to these carcinogenic impurities one cartridge was found to have approximately 1% diethylene glycol present a toxic compound to humans. As far as the manufacturing quality **some of the cartridges listed as containing no nicotine were actually found to have nicotine present.**" (page 4)
- "... **Variability in the amount of nicotine delivered is also an issue. Three different cartridges with the same label contained significantly different amounts of nicotine per puff** ranging anywhere from 27 to 43 micrograms. All of these results indicate a lack of general overall quality control. **In summary these results suggest e-cigarettes could have safety and quality concerns.**"(page 4)

Dr. Jonathan Winickoff is a practicing Pediatrician and Assistant Professor of Pediatrics at Harvard Medical School and the Chair of the American Academy of Pediatrics Tobacco Consortium.

- "... electronic cigarettes are available on the market in a **variety of flavors** such as bubblegum, chocolate and mint. **Past experience suggests that these products may be particularly appealing to young people.**" (page 7)
- Flavored regular cigarettes promote youth initiation and help young occasional smokers to become daily smokers. Similarly e-cigarettes might encourage children, teens and young adults to take their first step toward smoking cigarettes. **Young people may be attracted to these products due to their novelty, safety claims and the availability of the products in a variety of fruit, candy, cola and chocolate flavors.** In addition these products are **easily accessed online, in stores and at mall kiosks where young people often hang out.** (page 7)
- **One cigarette company is claimed to be putting vitamins in the cartridges. This is either a direct or an implied health claim that may confuse some potential users into thinking that the product promotes health** when it actually might lead to nicotine dependence. The advertising warning that "this product is for adults only" appears tailor made to appeal to kids. (page 7)
- Nicotine addiction is one of the hardest addictions to break. **An expanding pool of unregulated nicotine products that appeal to youth might increase the overall number of individuals who become nicotine dependent for life** and later use regular cigarettes. (page 8)
- Once you've smoked the e-cigarette and are nicotine dependent the leap to a regular cigarette may not seem as great. **Between 1/3 and 1/2 of all youth who try a regular cigarette will become daily smokers because of the highly addictive nature of nicotine.** It is therefore **vital to decrease exposure to products that would lead to experimentation with nicotine. It is not a safe drug to try.** (page 8)
- **My last point is that nicotine can be toxic in higher amounts for adults but it takes much less to have toxic effects in children.** It is unclear what safety mechanisms are in place for these devices. For example, **a young child modeling a parent might be able to inhale the entire nicotine load of an e-cigarette cartridge simply by puffing until it was empty.** (page 8)

<http://www.fda.gov/downloads/NewsEvents/Newsroom/MediaTranscripts/UCM173405.pdf>

14. New Jersey Nuisance Code

NJSA 26:3-46. Abatement of nuisances

The local board, within its jurisdiction, shall examine into and prohibit any nuisance, offensive matter, foul or noxious odors, gases or vapors, water in which mosquito larvae breed, and all causes of disease which may be known to the board or brought to its attention, which, in its opinion, are injurious to the health of the inhabitants therein, and shall cause the same to be removed and abated at the expense of the owner.

NJSA 26:3-47. Abatement without ordinance

The power given to the local board to remove and abate nuisances, sources of foulness, or causes of sickness hazardous to the public health, shall not depend upon whether the board has exercised its power to pass, alter, or amend ordinances in relation to the public health.

NJSA 26:3-48. Nuisance on public property; notice

Whenever a nuisance, noxious odors, gases or vapors, water in which mosquito larvae breed, or cause of ill health or disease is found on public property or on a highway, notice shall be given by the local board to the person officially in charge thereof to remove and abate the same within such time as the board may specify. If he fails to comply with the notice, the mode of

procedure shall be the same as is hereinafter provided in case of a like condition existing on private property.

NJSA 26:3-49. Nuisance on private property; notice

Whenever any nuisance, noxious gases or vapors, water in which mosquito larvae breed, or cause of ill health or disease is found on private property, the local board shall notify the owner to remove and abate the same, at his own expense, within such time as the board may specify. A duplicate of the notice shall be left with one or more of the tenants or occupants. If the owner resides out of the state or cannot be so notified speedily, a notice left at the house or premises with the tenant or occupant, or posted on the premises, shall suffice.

NJSA 26:3-50. Failure to comply with notice; abatement

If the owner when notified, as provided in section 26:3-49 of this title, shall not comply with the notice or order of the local board within the time specified, the board shall proceed to abate the nuisance and remove the cause of such foul or noxious odors, gases or vapors, water in which mosquito larvae breed, or other thing detrimental to the public health.

Interpreting Indoor Smoking Law

Currently the Benicia Municipal Code on smoking for indoor and public places does not mirror the State smoking laws. California Codes on smoking and tobacco regulation supersede local laws, but do not supersede local authority to enact additional regulation. If adopted, this ordinance will redefine “smoking” to include electronic cigarettes in the City, regulating electronic cigarettes according to the words written in the Benicia Municipal Code. Tobacco smoking laws, where written more restrictively in California Code than City Code, will not restrict the usage of electronic cigarettes. The result is regulation for electronic cigarettes that is less restrictive than for traditional tobacco cigarettes. The below information summarizes California tobacco smoking regulations and the corresponding applications to electronic cigarettes in relation to the Benicia Municipal Code.

AREA REGULATED	BENICIA MUNICIPAL CODE	CORRESPONDING CALIFORNIA STATE CODE	DOES IT MATCH?	WHERE CAN I SMOKE A TOBACCO CIGARETTE?	WHERE CAN I USE AN ELECTRONIC CIGARETTE?
<p>1. Workplaces, Stores, Restaurants & Bars</p>	<p>BMC Section 9.06.030: prohibits smoking in enclosed areas available to public and retail food markets 9.06.040: prohibits smoking in common areas of employment and allows employer to establish own smoking policy for private and break areas 9.06.050: smoking optional areas include bars, restaurant designated smoking areas</p>	<p>California Labor Code Section 6404.5: no employer shall knowingly permit smoking in an enclosed space at a place of employment, enacted 100% indoor smoke-free law</p>	<p>NO</p>	<p>✓ Outside</p>	<p>✓ Outside</p> <p>✓ Private work areas or designated break areas as permitted by employer</p> <p>✓ Bars</p> <p>✓ Restaurants in designated “vaping” area</p> <p>*Owner or employer has the right to establish own “vaping” policies.</p>
<p>2. Multi-Unit Residences</p>	<p>BMC Section 9.06.040: prohibits smoking in meeting rooms, restrooms, hallways, and elevators in places of</p>	<p>California Labor Code Section 6404.5: in apartment, and condominium complexes, the indoor common areas (including hallways, stairwells, laundry rooms, and recreation</p>	<p>NO</p>	<p>✓ Outside</p> <p>✓ Private living areas, unless specified by lease.</p>	<p>✓ Outside</p> <p>✓ Private living areas, unless specified by lease.</p> <p>✓ Common</p>

	employment. Section 9.06.050: smoking optional: a private residence which may serve as a place of employment, but board facilities shall provide smoke-free living for non-smokers	rooms) are subject to the workplace prohibition as places of employment. California Civil Code Section 1947.5: A landlord may prohibit the smoking of tobacco products on the property, makes existing rights explicit.			rooms such as laundry and recreation rooms (not hallways, elevators, etc.) in designated areas as determined by landlord's smoking policy
3. State, County, and City Buildings	BMC Section 9.06.020: all enclosed facilities owned by city subject to provisions of this chapter. Section 9.06.030: prohibits smoking in public schools and other public facilities, under the control of public agency, which are available to and customarily used by the public.	California Government Code Sections 7596-7598: Smoking is prohibited inside a public building, which is a building owned and occupied, or leased and occupied, by the state, a county, a city, or a California community college district; in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building; and in a passenger vehicle owned by the state.	YES	✓ Outside, 20 feet from door or open window	✓ Outside, 20 feet from door or open window
4. Playgrounds	BMC Section 9.06.030: prohibits smoking in all enclosed areas which are available to and customarily used by the general public	California Health and Safety Code Section 104495: Smoking of tobacco products is prohibited within 25 feet of a playground or tot lot sandbox area. The disposal of tobacco-related waste, such as cigar and cigarette butts, in these areas is also prohibited. A playground is defined	NO	✓ Outdoor playground, at least 25 feet away ✓ Parks, 25 feet away from child play area	✓ Outdoor playgrounds ✓ Parks, anywhere

		as a park or recreation area specifically designed for children.			
5. Schools	BMC Section 9.06.030: prohibits smoking in public schools and other public facilities, under the control of public agency, which are available to and customarily used by the public.	20 United States Code Section 6083: It is illegal under federal law to permit smoking within any indoor facility utilized for kindergarten, elementary, or secondary education or library services for children.	YES	✓ Outside	✓ Outside
6. Day Care Facilities	BMC Section 9.06.050: smoking-optional: private residence which may serve as a place of employment except when used as a child care or health facility	California Health and Safety Code Sections 1596.765, 1596.890: California law prohibits smoking on the premises of a licensed day care center and in a licensed family day care home during the hours of operations as a family day care home and in those areas of the home where children are present.	YES	✓ Outside	✓ Outside
7. Smoking in Vehicles with Children	BMC Section 9.06.030: prohibits smoking in indoor services lines, buses taxicabs, and other means of public transit under the authority of the city while within boundaries of the county.	California Health and Safety Code Sections 118947-118949: It is illegal to smoke or possess a lighted pipe, cigar, or cigarette containing tobacco or any other plant in any motor vehicle; in which there is a minor (under 18 years of age) regardless of whether the vehicle is in motion or at rest.	NO	✓ Outside ✓ Inside vehicle, only if passenger not a minor	✓ Outside ✓ Inside private vehicle

<p>8. Public Transit Systems</p>	<p>BMC Section 9.06. 030: prohibits smoking in indoor services lines, buses taxicabs, and other means of public transit under the authority of the city while within boundaries of the county.</p>	<p>California Health and Safety Code Sections 118925-118945: Smoking is prohibited on public transportation systems and in any vehicle of any entity receiving assistance from the state. California Penal Code Section 640: Smoking is not allowed on public transportation in areas where it is prohibited by that system.</p>	<p>YES</p>	<p>✓Outside public vehicle</p>	<p>✓Outside public vehicle</p>
<p>9. Youth Buses and Public Paratransit Vehicles</p>	<p>BMC Section 9.06. 030: prohibits smoking in indoor services lines, buses taxicabs, and other means of public transit under the authority of the city while within boundaries of the county.</p>	<p>California Vehicle Code Sections 336, 680, 12523,13369: Drivers of a youth bus (a bus other than a school bus used to transport children) may not smoke while operating the bus. Operators of general public paratransit vehicles (motor vehicles designed to carry no more than 24 persons that provide local transportation to the public, including students at or below the 12th-grade level to or from a public or private school or school activity) may not smoke.</p>	<p>YES</p>	<p>✓Outside of public vehicle ✓Outside of public or private bus</p>	<p>✓Outside of public vehicle ✓Outside of public or private bus</p>



Hookahs

- [Overview \(#overview\)](#)
- [Compared with Cigarettes \(#compare\)](#)
- [Health Effects \(#effects\)](#)
- [References \(#ref\)](#)
- [For Further Information \(#info\)](#)

www.BeTobaccoFree.gov

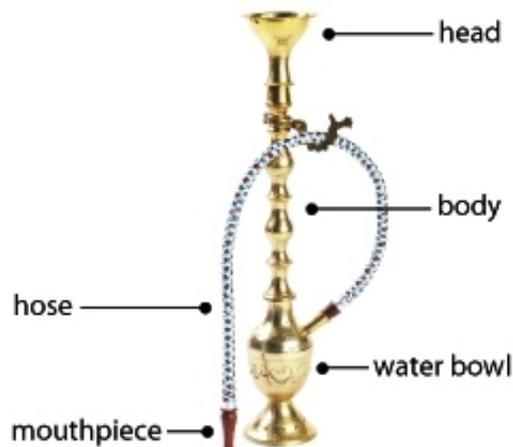
- [ABOUT TOBACCO](#)
- [HEALTH EFFECTS](#)
- [QUIT NOW](#)
- [DON'T START](#)
- [SAY IT - SHARE IT](#)

GET THIS WIDGET

Overview

- Hookahs are water pipes that are used to smoke specially made tobacco that is available in a variety of flavors (e.g., apple, mint, cherry, chocolate, coconut, licorice, cappuccino, and watermelon).^{1,2}
- Hookah is known by a number of different names, including *narghile*, *argileh*, *shisha*, *hubble-bubble*, and *goza*.^{1,2}
- Hookah smoking is typically practiced in groups, with the same mouthpiece passed from person to person.^{1,2,3,4}
- Hookahs originated in ancient Persia and India and have been used extensively for centuries.^{1,2,3,4} Today, hookah cafés are gaining popularity around the globe, including Britain, France, Russia, the Middle East, and the United States.¹ An estimated 300 hookah cafés operated in the United States

in 2006, and the numbers continue to grow.^{1,2,4}



- In recent years, there has been an increase in hookah use around the world, most notably among youth^{1,2,3} and among university students.⁵ The Monitoring the Future survey for 12th grade students found that in 2010, 17% of high school seniors in the United States had used hookahs in the past year. This rate was slightly higher among boys (19%) than girls (15%).⁵ Other small-scale studies on young adults indicate that hookah smoking is more prevalent among university students in the United States, with past-year use ranging from 22% to 40%.⁵
- Hookahs vary in size, shape, and composition.²
- A typical modern hookah comprises a head (with holes in the bottom), a metal body, a water bowl, and a flexible hose with a mouthpiece.^{3,4}
- New forms of hookah smoking, including steam stones and hookah pens, have been introduced. Like electronic cigarettes, these battery-powered devices turn liquid containing nicotine, flavorings, and other chemicals into a vapor, which is inhaled. Little information on their use and health risks is currently available.⁶

Compared with Cigarettes

While many hookah smokers may consider this practice less harmful than smoking cigarettes, hookah smoking carries many of the same health risks as cigarettes.^{1,2}

- Water pipe smoking delivers the addictive drug nicotine and is at least as toxic as cigarette smoke,² and some users of hookah report being dependent on

hookah and having difficulty quitting.⁴

- The tobacco in hookahs is combusted (exposed to high heat).¹
- Due to the mode of smoking—including frequency of puffing, depth of inhalation, and length of the smoking session—hookah smokers may absorb higher concentrations of the toxins found in cigarette smoke.^{1,2}
- A typical 1-hour-long hookah smoking session involves 200 puffs, while an average cigarette is 20 puffs. The volume of smoke inhaled during a typical hookah session is about 90,000 milliliters (ml), compared with 500–600 ml inhaled when smoking a cigarette.⁴
- Hookah smokers are at risk for the same kinds of diseases caused by cigarette smoking. These include oral cancer, lung cancer, stomach cancer, cancer of the esophagus, reduced lung function, and decreased fertility.^{3,4}

Hookah smoking is NOT a safe alternative to smoking cigarettes.¹

Health Effects

Hookah Smoke and Cancer

- The charcoal used to heat tobacco in the hookah increases the health risks by producing high levels of carbon monoxide, metals, and cancer-causing chemicals.^{1,4}
- Even after it has passed through water, the smoke produced by a hookah contains high levels of toxic compounds, including carbon monoxide, heavy metals, and cancer-causing chemicals.⁴
- Hookah tobacco and smoke contain numerous toxic substances known to cause lung, bladder, and oral cancers.^{1,4}
- Irritation from exposure to tobacco juices increases the risk of developing oral cancers. The irritation by tobacco juice products is likely to be greater among hookah smokers than among pipe or cigar smokers because hookah smoking is typically practiced (with or without inhalation) more often and for longer periods of time.^{4,7,8}

Other Health Effects of Hookah Smoke

- Hookah tobacco and smoke contain numerous toxic substances known to cause clogged arteries and heart disease.^{1,4}
- Infectious diseases may be transmitted by sharing a hookah.²
- Babies born to women who smoked one or more water pipes a day during pregnancy have lower birth weights (were at least 3½ ounces less) than babies born to nonsmokers and are at an increased risk for respiratory

diseases.⁵

Hookahs and Secondhand Smoke

- Secondhand smoke from hookahs poses a serious risk for nonsmokers, particularly because it contains smoke not only from the tobacco but also from the heat source (e.g., charcoal) used in the hookah.^{1,5,9}

Using a hookah to smoke tobacco poses a serious potential health hazard to smokers and others exposed to the smoke emitted.^{1,4,9}

References

1. American Lung Association. An Emerging Deadly Trend: Waterpipe Tobacco Use (http://www.lungusa2.org/embargo/slati/Trendalert_Waterpipes.pdf) . (PDF–222 KB) Washington: American Lung Association, 2007 [accessed 2013 June 14].
2. American Lung Association. Hookah Smoking: A Growing Threat to Public Health Issue Brief. (<http://www.lung.org/stop-smoking/tobacco-control-advocacy/reports-resources/cessation-benefits/reports/hookah-policy-brief.pdf>) . (PDF–1.34 MB) Smokefree Communities Project, 2011 [accessed 2013 June 14].
3. Akl EA, Gaddam S, Gunukula SK, Honeine R, Jaoude PA, Irani J. The Effects of Waterpipe Tobacco Smoking on Health Outcomes: A Systematic Review (<http://ije.oxfordjournals.org/content/39/3/834.long>) . International Journal of Epidemiology 2010;39:834–857 [accessed 2013 June 14].
4. Cobb CO, Ward KD, Maziak W, Shihadeh AL, Eissenberg T. Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3215592/>) . American Journal of Health Behavior 2010;34(3):275–5 [accessed 2013 June 14].
5. U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General (http://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm). Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Office on Smoking and Health, 2012 [accessed 2013 June 14].
6. U.S. Food and Drug Administration. Electronic Cigarettes (e-Cigarettes)

(<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>)
[accessed 2013 Jun 14].

7. Nuwayhid, I, Yamout, B., Ghassan, and Kambria, M. Narghile (Hubble-Bubble) Smoking, Low Birth Weight and Other Pregnancy Outcomes (<http://aje.oxfordjournals.org/cgi/content/abstract/148/4/375>) . American Journal of Epidemiology 1998;148:375–83 [accessed 2013 June 14].
8. El-Hakim Ibrahim E, Uthman Mirghani AE. Squamous Cell Carcinoma and Keratoacanthoma of the Lower Lips Associated with "Goza" and "Shisha" Smoking. International Journal of Dermatology 1999;38:108–10 [cited 2013 June 14].
9. Cobb CO, Vansickel AR, Blank MD, Jentink K, Travers MJ, Eissenberg T. Indoor Air Quality in Virginia Waterpipe Cafés. Tobacco Control 2012 Mar 24 doi:10.1136/tobaccocontrol-2011-050350 [cited 2013 June 14].

For Further Information

Centers for Disease Control and Prevention

National Center for Chronic Disease Prevention and Health Promotion

Office on Smoking and Health

E-mail: tobaccoinfo@cdc.gov (<mailto:tobaccoinfo@cdc.gov>)

Phone: 1-800-CDC-INFO

Media Inquiries: Contact CDC's Office on Smoking and Health press line at 770-488-5493.

Page last reviewed: June 14, 2013

Page last updated: June 14, 2013

Content source: Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion

Centers for Disease Control and Prevention 1600 Clifton Rd.
Atlanta, GA 30333, USA
800-CDC-INFO (800-232-4636) TTY: (888) 232-6348 -
[Contact CDC-INFO](http://www.cdc.gov)





Research

Open Access

The detrimental danger of water-pipe (Hookah) transcends the hazardous consequences of general health to the driving behavior

Wafa Elias¹, Nimer Assy², Ibrahim Elias², Tomer Toledo³, Mustafa Yassin⁴ and Abdalla Bowirrat^{5,*}

* Corresponding author: Abdalla Bowirrat bowirrat@netvision.net.il

¹ The Ran Naor Road Safety Research Center, Technion, Haifa, Israel

² Ziv Medical Center, Safed, Israel

³ Civil and Environmental Engineering, Technion, Haifa, Israel

⁴ Rabin Medical Center, Campus Hasharon, Israel

⁵ EMMS Nazareth-The Nazareth Hospital, Nazareth, Zip code: 16100, Israel

For all author emails, please [log on](#).

Journal of Translational Medicine 2012, **10**:126 doi:10.1186/1479-5876-10-126

The electronic version of this article is the complete one and can be found online at: <http://www.translational-medicine.com/content/10/1/126>

Received: 12 March 2012

Accepted: 23 May 2012

Published: 18 June 2012

© 2012 Elias et al.; licensee BioMed Central Ltd.

This is an Open Access article distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/2.0>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Abstract

Formula display: MathJax

Objective

To determine whether the consumption of tobacco used in Water-Pipe by drivers increases the risk of a motor vehicle collision as a consequence of hypoxia.

Design

Analytical case-control study.

Data sources

Seventy exclusive Water-Pipe smokers (Experimental Group - EG) - mean age \pm SD: 29.47 \pm 10.45 years; mean number of weekly WPS, (6.9 \pm 3.7); mean duration of WPS (WPS) is (7.5 \pm 2.1 years) - and thirty non-smoker (Control Group - CG; mean age \pm SD: 36.33 \pm 13.92 years) were recruited during 2011 from two Arab villages located in the Galilee, northern Israel.

Methods

We performed a case-control study exclusively among Water-Pipe smokers with an appropriate non smokers control group. Demographic questionnaire, Pulse Oxymeter for blood oxygenation measure and a driver simulator for measuring various participants driving behaviors were utilized. Statistical analysis for analyzing the different variables, Pearson's χ^2 analysis for the comparison of categorical variables, continuous variable is compared using Student's t-test and for testing the correlation between the different variables and bivariate correlation analysis were applied.

Results

In the (EG) following WPS, we observed increase in the pulse rate - from 80 to 95 ($t=11.84$, $p<0.05$) and decrease in saturation level from 97.9 to 97.32, the decrease is statistically significant ($t=3.01$, $p<0.05$) versus no change in (CG). An increased number of accidents among EG (OR is 1.333 with CI of 1.008-1.776), while in CG, an insignificant decrease ($t=3.08$, $p<0.05$). In EG an increase in centerline crossings (OR is 1.306 with CI of 1.016-1.679), also the total time not being within the lane was increased and the estimated (OR: 1.329; CI: 1.025-1.722). WPS increases the number of accidents by 33% and Hypoxia can cause driving behavioral turbulences.

Conclusion

The results show that WPS has a significant impact on driving behavior and on the risk of being involved in road accidents and causing driving to become riskier and less careful and stable. To the best of our knowledge, this is the first time such relationships have been tested. After WPS the total number of traffic accidents and driving violations increase. The results show a significant increase in the pulse rate immediately after WPS with a decrease in the saturation rate (the level of blood oxygenation); these changes continue half an hour after WPS.

Keywords: WPS; Driving behavior; Road crashes; Carbon monoxide

Background

Water-Pipe is a device for smoking, which operates by water filtration and indirect heat of tobacco. Evidently, WPS is a major public health challenge and its use is growing in popularity but despite its highly hazardous toxic behavior has spread globally to include the African and Asian continents, Australia, Europe, and North America [1-3]. Therefore, this dangerous phenomenon no more monopoly or confined to the Eastern Mediterranean regions as reported before [2] (Figure 1).



Figure 1. Water-Pipe store in an Arab village in northern Israel.

It has been estimated that more than hundred million people globally smoke Water-Pipe daily, [4] and the global tobacco epidemic may kill 10 million people annually in the next 20–30 years, with 70% of these deaths occurring in developing countries. The composition of the tobacco used in Water-Pipe is variable and not well standardized. Studies that have examined Water-Pipe smokers and the aerosol of Water-Pipe smoke have reported high concentrations of CO, nicotine, "tar," and heavy metals. These concentrations were as high as or higher than those among cigarette smokers. A study of CO in Water-Pipe and cigarette smoke found CO concentrations of 0.34% to 1.40% for Water-Pipe smoke and 0.41% for cigarette smoke [5]. Other studies reported elevated CO levels among Water-Pipe smokers, and the level of carboxyhemoglobin concentrations were higher among Water-Pipe smokers (10.1%) than among cigarette smokers (6.5%) or nonsmokers (1.6%), and a linear relationship was found between smoking intensity and carboxyhemoglobin concentration [5-7].

The nicotine content of Water-Pipe tobacco has been reported to be 2% to 4%, in comparison with 1% to 3% for cigarettes [8]. Other study revealed that, relative to a single cigarette, a single Water-Pipe session exposes the smoker to 1.7 times the nicotine, 3–9 times the CO, and 56-fold greater inhaled smoke volume [9-11].

As consequences of these findings, it is clear that WPS is an efficient means of delivering toxicants to the smoker. For example, after a single 45-minute WPS session, the mean plasma concentration of nicotine rose from 1.11 to 60.31 ng/mL, and cotinine rose from 0.79 to 51.95 ng/mL. Saliva nicotine concentration rose from 1.05 to 624.74 ng/mL, and cotinine rose from 0.79 to 283.49 ng/mL. The mean amounts of nicotine and cotinine excreted in a 24-hour urine sample after smoking were 73.59 µg and 249 µg, respectively [12]. According to another report, urinary cotinine concentrations were similar for Water-Pipe smokers (median of 2 pipes per day) and for cigarette smokers (median of 30 cigarettes per day) [13]. An analysis of mainstream smoke aerosol found that Water-Pipe smoke contains significant amounts of nicotine, "tar," and heavy metals [14]. Indeed, WPS harms almost all organs in the body, causing disease, reducing quality of life and life expectancy. The emerging health risk behavior data regarding the adverse health consequences of WPS point to hazard that are similar or higher to those associated with cigarette smoking: malignancy, impaired pulmonary function, low birth weight, cardiovascular diseases, chromosomal aberrations, brain disorders and the frequent addition of alcohol or psychoactive drugs to the tobacco [10,11,15-19].

A primary behavioral pathology in drug addiction is the overpowering motivational strength and decreased ability to control the desire to obtain drugs. Addiction to tobacco smoking is influenced by a myriad of social and contextual factors, as well as the pharmacology of tobacco. Although smoking addiction has been blamed on the social influences of familial smoking and peers, current thinking is that there is also a biologic basis for these behaviors [20-22]. There is a high correlation between smoking behavior and symptoms of depression, inattention and hyperactivity in adolescents and adults [21,22]. These symptoms are often intensified during nicotine deprivation [20,23,24]. While dopamine is critical for acute reward and initiation of addiction, end-stage addiction results primarily from cellular adaptations in anterior cingulate and orbitofrontal glutamatergic projections to the nucleus accumbens. Pathophysiological plasticity in excitatory transmission reduces the capacity of the prefrontal cortex to initiate behaviors in response to biological rewards and to provide executive control over drug seeking. Simultaneously, the prefrontal cortex is hyper-responsive to stimuli predicting drug availability, resulting in supra-physiological glutamatergic drive in the nucleus accumbens, where excitatory synapses have a reduced capacity to regulate neurotransmission. In fact, cellular adaptations in prefrontal glutamatergic innervations of the accumbens promote the compulsive character of drug seeking in addicts by decreasing the value of natural rewards, diminishing cognitive control (choice), and enhancing glutamatergic drive in response to drug-associated stimuli [25]. In addition to dopaminergic effects, nicotine and well as cocaine both stimulate release of hypothalamic-anterior pituitary-gonadal and-adrenal hormones. Preclinical studies suggest that these rapid hormonal changes may contribute to the abuse-related effects of these drugs [26,27]. An improved understanding of the complex neurobiology underlying nicotine addiction is important for achieving this goal [27]. Given its high nicotine content, Water-Pipe would be expected to have a great addictive potential [16,28,29]. However, nicotine increase extracellular dopamine levels by different mechanisms. The abuse-related effects of nicotine are mediated, in part, by stimulating nicotine acetylcholine receptors (nAChRs), on the cell bodies of mesolimbic dopamine neurons in the nucleus accumbens, [30-32] and by binding to nAChRs in the ventral tegmental area, leading to stimulation of the mesolimbic dopamine system [33].

Indeed, the primary molecular target of nicotine is nAChRs, which are members of the ligand-gated ion channel super-family that includes also gamma-aminobutyric-acid, glycine, and 5-hydroxytryptamine receptors [34].

Nicotine can both activate and desensitize neuronal nAChRs, which are widely expressed in the mammalian central nervous system that mediates the physiological effects of the neurotransmitter acetylcholine (ACh) [35,36].

Functional nAChRs result from the association of five subunits each contributing to the pore lining. The major neuronal nAChRs are heterologous pentamers of ($\alpha 4\beta 2$) subunits (brain), or ($\alpha 3\beta 4$) subunits (autonomic ganglia). Another class of neuronal receptors that are found both in the central and peripheral nervous system is the homomeric ($\alpha 7$) receptor. The muscle receptor subtypes comprise of ($\alpha \beta \delta$) (embryonal) or α (adult) subunits [37].

nAChRs are expressed by the first trimester in human brain and exhibit a complex pattern of developmental expression that is both region-specific and temporally regulated. In many brain areas there is a transient appearance of nAChRs during critical phases of development. Such findings suggest that acetylcholine, acting through nAChRs, may have an important functional role in modulating brain development, particularly during critical periods when brain maturation is most sensitive to perturbation. The great magnitude role of acetylcholine, acting via nAChRs, may have also vital and essential impact on the neurobiological mechanisms underlying different behavioral throughout the brain. In fact, Brody et al., reported that smoking a regular cigarette (1.2–1.4 mg nicotine) resulted in 88% occupancy of brain $\alpha 4\beta 2$ nicotinic acetylcholine receptors (nAChRs) [38-40].

Indeed, the neurobiological and neurocognition mechanisms underlying the actions of nicotine are complex, involving not only the direct action of nicotine at receptors for acetylcholine but also changes in the release of other neurotransmitters, such as dopamine and glutamate [32].

Compared to the substantial volume of research on the general health consequences associated with chronic tobacco consumption, dearth research has been specifically devoted to the investigation of its effects on human neurobiology and neurocognition. Chronic tobacco consumption appears to be associated with deficiencies in executive functions, cognitive flexibility, and general intellectual abilities, to abnormal decline in reasoning, influence behavioral and mood, learning and/or memory processing speed, and working memory [41-44]. Actually, chronic smoking is related to global brain atrophy and to structural and biochemical abnormalities in anterior frontal regions, subcortical nuclei and commissural white matter. Chronic smoking may also be associated with an increased risk for various forms of neurodegenerative diseases [45]. CO is a cellular poison. It binds to hemoglobin 200–300 times more tightly than oxygen, forming COHb. As such, it inhibits the release of oxygen from hemoglobin to peripheral tissues, causing tissue hypoxia. The half life of COHb is 4 to 5 h in a person breathing room air and changes to 60 min in the presence of 100% oxygen at sea level [46]. Recent studies showed that WPS increases the individual

one – CO in blood at least 5 times, compared to that from smoking a few cigarettes, and they claimed that this toxic substance can cause brain damage and loss of consciousness [47]. It is known that WPS produces more smoke than cigarette smoking. It has been estimated that smoke exposure could be as much as 100–200 cigarettes per session [48]. when the user inhales, smoke passes through the water and hose and into the lungs. Smoke inhalation can be substantial: a single Water-Pipe use episode can last 30–60min and can involve more than one hundred inhalations, each of approximately 500ml in volume [14,49]. Thus, while smoking a single cigarette might produce a total of approximately 500–600ml of smoke, a single Water-Pipe use episode might produce about 50,000ml of smoke [50]. The influence of hypoxia on physiological, behavioral, and psychological aspects of human beings has been known for decades. Hypoxia affects motor function such as abnormal motor function [51], reduced speed and precision in finger tapping. [52,53]

Also, the effects of hypoxia on cognitive functions are a typical performance decrement, difficulty in concentrating and faulty judgments [53].

For example many studies show that hypoxia prolongs the reaction time and increasing in error rates, [54] has a negative impact on cognitive abilities such as motor behavior, coordination, audition, vision and vigilance. [55-58]

In sum based on the literature, and after reviewing the impact of WPS throughout the body, we realized that Water-Pipe smokers testify to a more powerful negative effect compared to that of cigarette smoke which leads to vertigo from the very first puff. It is possible that WPS leads to stronger and deeper hypoxia which is conducive, among other things, inadequate driving, and cognitive, affective, addictive and behavioral effects changes. These changes may constitute an unconstructive influence on driving behavior and to increase risk of becoming involved in road crashes. However, according to the information available, there are no studies that have tried to explain the effect of WPS on driving and on the risk to becoming involved in road crashes. Recently a similar research related to this issue discussed but this time, the impact of other psychoactive substance (Cannabis) on driving behavior. The study demonstrated that cannabis consumption nearly doubles the risk of a collision resulting in serious injury or death [59]. The main goal of our research is to determine whether the consumption of tobacco by using Water-Pipe device by experimental group increases the risk of a motor vehicle crashes and to carry out a test of the effects of WPS on the concentration of oxygen and CO in the blood and the impact that this may have on driving behavior and the risk of becoming involved in motor vehicle collision.

Methods

A case-control study among Water-Pipe smokers with an appropriate non smokers control group was recruited. Seventy exclusive Water-Pipe smokers (Experimental Group - EG) - Mean age \pm SD, 29.47 \pm 10.4 years; mean number of weekly WPS, (6.9 \pm 3.7); mean duration of WPS (7.5 \pm 2.1 years) - and 30 non-smoker (Control Group - CG; mean age \pm SD: 36.33 \pm 13.92 years) were recruited from two Arab villages in the Galilee, Israel (Figure 2).



Figure 2. Describes and compares the age distribution for the experiment group and the control group.

Demographic questionnaire including [Marital status, year's average of driving, no cigarettes smoking, educational level, income, and work status, average number of cars in the household and availability of car for use (Table 1)] and Pulse Oxymeter for blood oxygenation measure in addition to a driver simulator for measuring various participants driving behaviors were utilized. Statistical analysis for analyzing the different variables, Pearson's χ^2 analysis for the comparison of categorical variables, continuous variable is compared using Student's *t*-test and for testing the correlation between the different variables and bivariate correlation analysis were applied.

Table 1. Demographic characteristics for experimental and control group

The methodology deals with the problem with an overall approach by employing a number of methods:

1. Testing the level of blood oxygenation using a special Pulse Oxymeter. The pulse and the level of blood oxygenation for the participants were measured three times: prior to WPS, immediately after the 30min of WPS and 30min subsequent to WPS.
2. Participants completed a questionnaire including questions regarding various demographic and socio economic characteristics of the participant in the experiment such as age, gender, marital status, education, employment, income, years of smoking experience and years of driving.
3. A driving simulator enabled the measurement of different participants' driving behavior.
4. In order to analyze the relationship between the different variables, descriptive statistics were employed. For a comparison between two groups, Pearson's χ^2 analysis is used for the comparison of categorical variables, while continuous variable is compared using Student's *t*-test. For testing the correlation between the different variables, bivariate correlation analysis was applied.

Since this study attempts to assess the effect of WPS on driving behavior, it is of great importance to establish active control for confounding variables that cannot be isolated from the main factors of interest.

5. The importance of the control group is to account for these confounding variables, representing various differences between the participants such as in socioeconomic and demographic characteristics, years of driving experience, and years of WPS. In addition, since the experiment includes three driving scenario changes in driving behavior, perhaps as a consequence of the learning process generated by driving simulator, a control group having similar characteristics was chosen for controlling to the confounding factors.

6. In order to estimate the effects of WPS on driving behavior, the standard epidemiological analysis of odds ratio was applied to obtain confidence intervals. The odds ratio is a way of comparing whether the probability of a certain event is the same for two groups. The odds ratio in this case is the odds of the incidents (crashes, violations) occurring in the experimental group, divided by the odds of the incidents occurring in the control group.

Equation 1 shows the typical calculation of the odds ratio

$$(3) \text{Odds ratio} = \frac{NA_{In} / NB_{In}}{NA_{Nin} / NB_{Nin}} \quad (1)$$

Where NA_{In} , is the number of incidents in the experimental group after WPS.

NB_{In} , is the number of incidents in the experimental group before WPS.; NA_{Nin} , is the number of incidents in the control group after WPS.; NB_{Nin} , is the number of incidents in the control group before the treatment (WPS)..

The experiment

At the first stage, it was important to determine rules and criteria for selecting the participants.

Criteria for selecting the study participants

1. Women and men aged 18–60years.
2. People who smoke a Water-Pipe (Experiment Group) and people who do not smoke a Water-Pipe (Control Group). Both groups are relatively similar (age, gender, driving experience, education level).
3. People who sign the agreement form.

People who could not participate in this experiment

1. People suffering from Asthma, COPD and are allergic to smoking.
2. People with anemia.
3. People having cardiac disease.
4. Sufferers from cirrhosis of the liver.
5. People with chronic renal failure.
6. People with malignancies.
7. Pregnant and breast feeding women.

The second stage was to prepare the driving scenarios. Three main scenarios were prepared for driving and a short scenario for the purpose of training drivers on the driving simulator. Every scenario included approximately 10 events. All the participants first drove the first scenario before smoking.

1. The first scenario for the purpose of training was 5km in length and included sections on inter-city and intra-city roads.
2. The second scenario was for the purpose of driving before WPS. The length of the scenario was 10km and included sections on inter-city and intra-city roads. The scenario additionally included a number of events (around ten) which could show changes in concentration and reaction time of drivers such as traffic lights, cars coming from a side road, pedestrians crossing the road, dogs crossing the road, cars entering the road in reverse, amounts of dirt, etc.
3. The third scenario was for the purpose of driving immediately after WPS, its length being ten kilometers. This scenario also included approximately ten incidents, but their locations were changed.
4. The last scenario was intended for driving half an hour after having smoked a Water-Pipe. Its length was 10km and included about ten incidents.

Each participant smoked one head of tobacco. It was arranged that everyone smoked the same Water-Pipe tobacco with the same apple flavor (called "Double Apple," popular in Israel and is imported from Egypt). In addition, it was important to use the same type of Water-Pipe, and of course, to smoke in the same type of environment. Also, before each scenario we examined the level of oxygen in the blood for each participant as well as the pulse rates. The outcome of the driving scenarios is a set of driving measures for every participant and every scenario. These measures indicate the changes in travel behavior.

Data analysis based on the study survey

Socio-economic and demographic characteristics (Table 1)

Results

Table 1. describes the demographic characteristics for EG and CG. It had showed no statistical significant effect between EG and CG, for the following variables: years of driving, education and income. P-value ($p=0.284$; $p=0.690$ and $p=0.503$ respectively).

The level of blood oxygenation (saturation rate) using a special Pulse Oxymeter for the participants were measured in three scenarios: prior to WPS, immediately following smoking and 30min subsequent to WPS (Table 2).

Table 2. The mean of the participants' pulse rates in given WPS scenarios and non smoker controls

In the experimental group, immediately following WPS, a statistically significant increase in the pulse rate was observed - from 80 to 95 ($t=11.84$, $p<0.05$), while in the control group a significant decrease in the pulse rate was observed - from 83 to 81 (Table 3). On the experimental group - even half an hour after WPS, the pulse rate continues to be higher than that prior to WPS, and the difference between the two scenarios is statistically significant ($t=5.54$, $p<0.05$). While in the control group, no significant change in the pulse rate was observed.

Table 3. Mean differences between the three scenarios

By using the Oxymeter, the level of blood oxygenation was tested. In the experimental group immediately following WPS, the saturation level decreased from 97.9 to 97.32, and the decrease is statistically significant ($t=3.01$, $p<0.05$); while in the control group, the no significant change in the saturation rate was observed.

Furthermore, in the experimental group, half an hour after WPS, the saturation rate continued to be higher than that prior to WPS and the difference is statistically significant ($t=3.02$), while in the control group, no change in the saturation rate was observed half an hour subsequent to WPS.

Driving behavior using the average of the measures in the three main driving scenarios (prior to WPS, immediately following WPS and half an hour subsequent to WPS) were calculated (Table 4). These measures are the outcome of the driving scenarios for every participant and every scenario.

Table 4. Mean of the various driving measures for the experimental group and control groups (using the various driving measures as experimental group without smoking)

The measures include total number of road crashes, road crashes (self crash), car accidents, pedestrian accidents, surpassing the speed limit (this measure

tested the number of times the driver exceeded the speed limit), the total number of traffic light violations, centerline crossings, road shoulder crossings and speed limit violations (%time). This measure indicates the percentage of time relative to the total driving time the driver surpasses the speed limit. The final measure was for not driving within the lane (%time) which showed the percentage of time relative to the total driving time the driver drove over the center divider and the shoulder boundary. Indeed, (Table 4) shows that the driving measures within both groups the experimental before WPS and the control "scenario-1" are relatively similar and the differences between the measures are statistically insignificant at a (p-value of 0.05). While immediately after WPS and half an hour after smoking all the driving measures were higher within the experimental group than the control group, which meaning more crashes, more violation and more risky driving.

Tables 5 and 6 present the mean differences for the driving measures between the first scenario and the second scenarios (prior to WPS and immediately following it) and between the first and third scenarios (prior to WPS and half an hour following it), respectively, for the experimental and the control groups.

Table 5. Differences in driving behavior prior to WPS and immediately following it

Table 6. Differences in driving behavior before smoking and half an hour following a Water-Pipe

The two tables include the mean differences, standard deviation, T-statistics and the confidence intervals of the differences. In (Table 5), it was expected that all the participants will gain experience. The experience gained by drivers was expected to decrease the number of pedestrian crashes!

One can see that there is an insignificant decrease in the number of road crashes immediately following WPS in both the experimental and control groups, although the decrease in the control group is higher. In the experimental group, an insignificant increase in the number of car crashes was observed, but in contrast, the control group experienced a decrease. For both groups, a significant decrease in the number of pedestrian accidents was observed, but the decrease among the control group was greater than among the experimental group explained by difficulties in coordination, dizziness, low energy, fatigue and sleepiness, for the EG which are the results of hypoxia.

In the latter group, there occurred an insignificant decrease in the total number of traffic light violations, while in the control group, a statistically significant decrease was observed ($t=3.08$, $p<0.05$).

(Table 6) shows the mean differences for the driving measures prior to, and half an hour following WPS. There were no significant changes pertaining to all the measures within the control group.

While in the experimental group, many significant changes in driving behavior were found, such as a decrease in the number of road crashes, a significant increase occurred in the number of car accidents, but a significant decrease in the number of pedestrian ones. In all these measures within the control group, the same direction of change was found, though this was not statistically significant. Within the experimental group, there was a significant increase in the number of incidents in which the driver exceeded the speed limit and a significant increase in the number of times the driver crossed the solid divider.

It is important to note that comparing means is not sufficient in examining the significance of the changes in driving behavior, since during the driving process, the participants - both those who smoke a hookah and those who do not, generate an experience. Therefore, to provide a control for the drivers' driving experience, the odds ratio test is used.

(Table 7) presents the odds ratio and the confidence interval. The odds ratio is a way of comparing whether the probabilities of the certain driving behavioral measures are the same for the two groups (the experimental and the control). An odds ratio of 1 implies that the event is equally likely in both groups. An odds ratio greater than one implies that the event is more likely in the first group, whereas an odds ratio less than one implies that the event is less likely in this group.

Table 7. Summary of the odds ratio test results

Upon comparing driving behavior before smoking a Water-Pipe and immediately after it, one can see from (Table 7) that there is a significant increase in the total number of traffic accidents and the estimated OR is 1.333 with CI of 1.008–1.776 and it is statistically significant because the confidence interval did not include 1.

The meaning of these results is that WPS significantly increased the total number of traffic crashes by 33%. Furthermore, immediately following the WPS, an increase in the number of the total number of traffic light tickets is found, but it is statistically significant at 0.1 and not at 0.05. The increase in measures, involvement in traffic crashes and the total number of traffic light violations indicate the risky driving of Water-Pipe smokers after having smoked a Water-Pipe.

Comparing driving behavior before WPS and half an hour following it, one can see from (Table 4) that there is an increase in the total number of crashes; this is not statistically significant at 0.05 as it is borderline, while a significant increase in centerline crossings and the estimated OR is 1.306 with CI of 1.016–1.679. In addition, the percentage of the total time not being within the lane relatively to the total driving time was increased and the estimated OR is 1.329 with CI of 1.025–1.722. The meaning of these results is that half an hour after WPS the centerline crossings increased by 31% and the total time not being within the lane increased by 33%. These two measures (the centerline crossing and not being within the lane) indicate driving stability, thus post smoking drivers are less stable and their driving more dangerous. In driving behavior, these can be explained by problems with coordination, concentration, dizziness, low energy, fatigue and sleepiness, which are the results of hypoxia.

Discussion

Consistent with previous research, [60] most water-pipe users believed erroneously that water-pipe use was neither as harmful nor as addictive as cigarette use. These perceptions of reduced risk may help explain why some individuals who do not smoke cigarettes are willing to engage in water-pipe tobacco use and, may also explain the overwhelming wave of proliferation of this phenomenon globally. International effort required to tackle the potentially hazardous health impact of this spreading jeopardy and to compact the lingering misunderstanding among the general public and especially the young group that WPS is less lethal than cigarette smoking which is no longer acceptable. The Nicotine, main stimulant psychoactive chemical ingredient in tobacco products exerts neurotoxic effects on brain. Chronic tobacco consuming appears to be associated with deficiencies in executive functions, general intellectual abilities, risk taking and sensation seeking behaviors, impairs performance of the cognitive and motor tasks necessary for safe driving and for reducing collision risk [61-64].

In addition, smoke-induced eye blurring and cough and the resultant fatigue [65,66] and even decreased vision of smokers due to deposited smoke on the automobile windshield [67].

Our results converge with recent data for road crashes that point to the increasing presence of drugs other than alcohol (especially chronic tobacco, cannabis and depressants of the central nervous system) in injured and fatally injured drivers [68-71].

Studies from Spain and also the United States have shown smokers to have a 50% higher risk of road crashes than nonsmokers [72,73].

Another study from Canada showed that 30–39-year old males who had been at-fault in crashes were 1.5 times more likely to be smokers [74].

Hence, in the context of this research, there is to shed light to the changes in the concentration of oxygen and CO in the blood following the WPS and the impact of these changes on brain function and on the risk of becoming involved in a road crash. It may be assumed that this is the first time such relationships have been tested in our area. The results show that WPS has a significant influence on driving behavior and on the risk of being involved in road crashes. Our study results also are consistent with the study hypothesis that WPS decreases the concentration of oxygen in the blood and causing general hypoxia. The results show a significant increase in the pulse rate immediately after WPS, with a decrease in the saturation rate. This result is similar to Al-Safi et al. [75] and Shafagoj & Mohammed [6] who showed that the heart rate changed from 76.40 ± 10.46 to 76.81 ± 10.19 . Unsurprisingly, the effect of WPS continued for half an hour following this activity, and the results show both the pulse and saturation rates were significantly higher half an hour after WPS. The continued impact of WPS is derived from the results that have been confirmed by many studies [76] - that WPS increases the individual one - carbon dioxide in blood for at least 5 times compared to those from smoking a few cigarettes. The most important fact about one - carbon dioxide is that it has a half-life in the blood of 4 to 6h.

Parallel to the changes in pulse and saturation rates and changes in driving behavior, it was found that immediately after WPS the total number of traffic crashes and traffic light tickets significantly increased. The increase in measures, involvement in road crashes and the total number of traffic light tickets indicate the risky driving of Water-Pipe smokers following the WPS.

This result can be explained by the stronger, deeper hypoxia caused as a result of WPS; this deeper hypoxia is conducive, among other things, to the sensation of euphoria and to inappropriate decision making and high risk talking.

The results additionally show that half an hour after WPS a significant increase in centerline crossings and the percentage of the total time not being within the lane relative to the total driving time were observed. These two measures (the centerline crossings and not being within the lane) indicate driving instability, so post WPS drivers are less stable, while their driving becomes more hazardous. Such driving behavior can be explained by problems with concentration, instability, loss of coordination, dizziness, low energy, fatigue and sleepiness which are caused as a result of the hypoxia (increase levels of CO in blood and hypoxia).

Conclusions

- 1) The results show that WPS has a significant impact on driving behavior and on the risk of being involved in road accidents and causing driving to become riskier and less careful and stable.
- 2) WPS smoking increases the number of accidents by 33% and Hypoxia can cause driving behavioral turbulences.
- 3) The results show a significant increase in the pulse rate immediately after WPS with a decrease in the saturation rate (the level of blood oxygenation); these changes continue half an hour after WPS.
- 4) In the context of this research, there is an attempt to examine the impact of changes on the neurobiology, neurocognition, driving behaviors and on the risk of becoming involved in a road crash.
- 5) These data could help inform policy-makers and interventions tackling road safety and raise public awareness of the collision risks when driving under the influence of high tobacco consumption by WPS.

Study limitations

As this is an initial study in exploring the relationship between WPS, driving behavior and the risk of being involved in road crashes, there is need for much future work in this direction. Moreover, there is a need to broaden the sample to include more participants in order to examine the effects of additional demographic and socio-economic characteristics, such as gender, age and occupation, on WPS and driving behavior.

Ethics approval

Ethical approval has been obtained for our manuscript.

Competing interests

The authors declare that they have no competing interests.

Authors' contributions

WE - carried out the study design and participating in the recruitment of patients in addition participate in editing the manuscript and finding the manuscript. NA - Participated in the study design, and performed part of the tables and helped in performing the statistical analysis. IE- participated in the collections of data and study design, editing the paper. TT - participated in writing part of the conclusion and study design, editing the manuscript. MY- participated in the study design and editing. AB- Conceived the study, and participated in its design and coordination and wrote almost all manuscript (introduction & discussion) and helped to draft the manuscript. All coauthors have read and approved the final manuscript.

Acknowledgments

This study was funded by: The Ran Naor Foundation, 22 Hanagar Str. Hod Hasharon, 45240, Israel. Phone: +972-9-7776137.

References

1. Kessler DA: **Nicotine addiction in young people.** *N Engl J Med* 1995, **333**:186-189. [PubMed Abstract](#) | [Publisher Full Text](#)
2. Maziak W, Ward KD, Afifi Soweid RA, Eissenberg T: **Tobacco smoking using a waterpipe: a re-emerging strain in a global epidemic.** *Tob Control* 2004, **13**:327-333. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)

3. Kulwicki A, Rice VH: **Arab American adolescent perceptions and experiences with smoking.**
Public Health Nurs 2003, **20**:177-183. [PubMed Abstract](#) | [Publisher Full Text](#)
4. Wolfram RM, Chehne F, Oguogho A, Sinzinger H: **Narghile (water pipe) smoking influences platelet function and iso- eicosanoids.**
Life Sci 2003, **74**:47-53. [PubMed Abstract](#) | [Publisher Full Text](#)
5. Sajid KM, Akhter M, Malik GQ: **Carbon monoxide fractions in cigarette and Water-Pipe (hubble bubble) smoke.**
J Pak Med Assoc 1993, **43**:179-182. [PubMed Abstract](#)
6. Shafagoj YA, Mohammed FI: **Levels of maximum end-expiratory carbon monoxide and certain cardiovascular parameters following hubble-bubble smoking.**
Saudi Med J 2002, **23**:953-958. [PubMed Abstract](#)
7. Zahran FM, Ardawi MSM, al-Fayez S: **Carboxyhaemoglobin concentrations in smokers of sheesha and cigarettes in Saudi Arabia.**
BMJ 1985, **291**:1768-1770. [PubMed Abstract](#) | [PubMed Central Full Text](#)
8. Kiter G, Ucan ES, Ceylan E, Kilinc O: **WPS and pulmonary functions.**
Respir Med 2000, **94**:891-894. [PubMed Abstract](#) | [Publisher Full Text](#)
9. Eissenberg T, Shihadeh A: **Waterpipe tobacco and cigarette smoking: direct comparison of toxicant exposure.**
Am J Prev Med 2009, **37**:518-23. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
10. Cobb CO, Shihaden A, Weaver MF, Eissenberg T: **Waterpipe tobacco smoking and cigarette smoking: a direct comparison of toxicant exposure and subjective effects nicotine.**
Tob Res 2011, **13**:78-87. [Publisher Full Text](#)
11. Akl EA, Gaddam S, Gunukula SK, Honeine R, Abou Jaoude P, Irani J: **The effects of waterpipe tobacco smoking on health outcomes: a systematic review.**
Int J Epidemiol 2010, **39**:834-857. [PubMed Abstract](#) | [Publisher Full Text](#)
12. Shafagoj YA, Mohammed FI, Hadidi KA: **Hubble-bubble (water pipe) smoking: levels of nicotine and cotinine in plasma, saliva and urine.**
Int J Clin Pharmacol Ther 2002, **40**:249-255. [PubMed Abstract](#)
13. Macaron C, Macaron Z, Maalouf MT, Macaron N, Moore A: **Urinary cotinine in narguila or chicha tobacco smokers.**
J Med Liban 1997, **45**:19-20. [PubMed Abstract](#)
14. Shihadeh A: **Investigation of mainstream smoke aerosol of the argileh water pipe.**
Food Chem Toxicol 2003, **41**:143-152. [PubMed Abstract](#) | [Publisher Full Text](#)
15. Bedwani R, el-Khwsy F, Renganathan E: **Epidemiology of bladder cancer in Alexandria, Egypt: tobacco smoking.**
Int J Cancer 1997, **73**:64-67. [PubMed Abstract](#) | [Publisher Full Text](#)
16. Maziak W, Ward WD, Eissenberg T: **Factors related to frequency of narghile (waterpipe) use: the first insights on tobacco dependence in narghile users.**
Drug Alcohol Depend 2004, **76**:101-106. [PubMed Abstract](#) | [Publisher Full Text](#)
17. Ward KD, Eissenberg T, Rastam S: **The tobacco epidemic in Syria.**
Tob Control 2006, **15**:24-29. [Publisher Full Text](#)
18. Jabbour S, El-Rouieheb Z, Sibai AM: **Narghile (Water-Pipe) smoking and incident coronary heart disease: a case-control study.**
Ann Epidemiol 2003, **13**:570.
19. Yadav JS, Thakur S: **Genetic risk assessment in Water-Pipe smokers.**
Cytobios 2000, **101**:101-113. [PubMed Abstract](#)
20. Jacobsen LK, Krystal JH, Mencil WE, Westerveld M, Frost SJ, Pugh KR: **Effects of smoking and smoking abstinence on cognition in adolescent tobacco smokers.**
Biol Psychiatry 2005, **57**:56-66. [PubMed Abstract](#) | [Publisher Full Text](#)
21. Spring B, Cook JW, Appelhans B, Maloney A, Richmond M, Vaughn J: **Nicotine effects on affective response in depression-prone smokers.**
Psychopharmacology (Berl) 2008, **196**:461-471. [Publisher Full Text](#)
22. Breslau N: **Psychiatric comorbidity of smoking and nicotine dependence.**
Behav Genet 1995, **25**:95-101. [PubMed Abstract](#) | [Publisher Full Text](#)
23. Jacobsen LK, Slotkin TA, Westerveld M, Mencil WE, Pugh KR: **Visuospatial memory deficits emerging during nicotine withdrawal in adolescents with prenatal exposure to active maternal smoking.**
Neuropsychopharmacology 2006, **31**:1550-1561. [PubMed Abstract](#) | [Publisher Full Text](#)
24. Glassman AH: **Cigarette smoking: implications for psychiatric illness.**
Am J Psychiatry 1993, **150**:546-553. [PubMed Abstract](#) | [Publisher Full Text](#)
25. Kalivas PW, Volkow ND: **The neural basis of addiction: a pathology of motivation and choice.**
Am J Psychiatry 2005, **162**:1403-13. [PubMed Abstract](#) | [Publisher Full Text](#)
26. Mendelson JH: **Cocaine, Hormones and Behavior: Clinical and Preclinical Studies.** In *Hormones, Brain and Behavior*. 2. Edited by Pfaff DW, Arnold AP, Etgen AM, Fahrbach SE, Rubin RT. Academic, San Diego, CA; 2009:3081-3139.

27. Mello NK: **Hormones, nicotine, and cocaine: clinical studies.**
Hormones and Behavior 2010, **58**:57-71. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
28. Maziak W, Fouad FM, Asfar T: **Prevalence and characteristics of narghile smoking among university students in Syria.**
Int J Tuberc Lung Dis 2004, **8**:882-889. [PubMed Abstract](#) | [Publisher Full Text](#)
29. Varsano S, Ganz I, Eldor N, Garenkin M: **Water-Pipe tobacco smoking among school children in Israel: frequencies, habits, and attitudes.**
Harefuah 2003, **142**:736-741. [PubMed Abstract](#)
30. Corrigan WA, Franklin KBI, Coen KM, Clarke PBS: **The mesolimbic dopamine system is implicated in the reinforcing effects of nicotine.**
Psychopharmacology 1992, **107**:285-289. [PubMed Abstract](#) | [Publisher Full Text](#)
31. Di Chiara G: **Role of dopamine in the behavioural actions of nicotine related to addiction.**
Eur J Pharmacol 2000, **393**:295-314. [PubMed Abstract](#) | [Publisher Full Text](#)
32. Watkins SS, Koob GF, Markou A: **Neural mechanisms underlying nicotine addiction: acute positive reinforcement and withdrawal.**
Nicotine Tob Res 2000, **2**:19-37. [PubMed Abstract](#) | [Publisher Full Text](#)
33. Laviolette SR, van der Kooy D: **The neurobiology of nicotine addiction: bridging the gap from molecules to behavior.**
Nat Rev Neurosci 2004, **5**:55-65. [PubMed Abstract](#) | [Publisher Full Text](#)
34. Champiaux N, Changeux JP: **Knockout and knockin mice to investigate the role of nicotinic receptors in the central nervous system.**
Prog Brain Res 2004, **145**:235-51. [PubMed Abstract](#)
35. Dani JA: **Overview of nicotinic receptors and their roles in the central nervous system.**
Biol Psychiatry 2001, **49**:166-74. [PubMed Abstract](#) | [Publisher Full Text](#)
36. Sher E, Chen Y, Sharples TJ, Broad LM, Benedetti G, Zwart R, McPhie GI, Pearson KH, Baldwinson T, De Filippi G: **Physiological roles of neuronal nicotinic receptor subtypes: new insights on the nicotinic modulation of neurotransmitter release, synaptic transmission and plasticity.**
Curr Top Med Chem 2004, **4**:283-97. [PubMed Abstract](#) | [Publisher Full Text](#)
37. Tassonyi E, Charpentier E, Muller D, Dumont L, Bertrand D: **The role of nicotinic acetylcholine receptors in the mechanisms of anesthesia.**
Brain Res Bull 2002, **57**:133-50. [PubMed Abstract](#) | [Publisher Full Text](#)
38. Brody AL, Mandelkern MA, Costello MR, Abrams AL, Scheibal D, Farahi J, London ED, Olmstead RE, Rose JE, Mukhin AG: **Brain nicotinic acetylcholine receptor occupancy: effect of smoking a denicotinized cigarette.**
Int J Neuropsychopharmacol 2009, **12**:305-316. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
39. Brody AL, Cook IA: **Manipulation of cigarette craving with transcranial magnetic stimulation.**
Biol Psychiatry 2011, **70**:702-703. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
40. Brody AL, Mandelkern MA, London ED, Khan A, Kozman D, Costello MR, Vellios EE, Archie MM, Bascom R, Mukhin AG: **Effect of secondhand smoke on occupancy of nicotinic acetylcholine receptors in brain.**
Arch Gen Psychiatry 2011, **68**:953-60. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
41. Durazzo TC, Meyerhoff DJ, Nixon SJ: **Chronic cigarette smoking: implication and brain neurobiology.**
Int J Environ Res Public Health 2010, **7**:3760-3791. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
42. Durazzo TC, Gazdzinski S, Meyerhoff DJ: **The neurobiological and neurocognitive consequences of chronic cigarette smoking in alcohol use disorders.**
Alcohol Alcohol 2007, **42**:174-85. [PubMed Abstract](#) | [Publisher Full Text](#)
43. Leonard S, Adler LE, Benhamou K, Berger R, Breese CR, Drebing C, *et al.*: **Smoking and mental illness.**
Pharmacol Biochem Behav 2001, **70**:561-570. [PubMed Abstract](#) | [Publisher Full Text](#)
44. Pomerleau OF, Pomerleau CS: **Neuroregulators and the reinforcement of smoking: towards a biobehavioral explanation.**
Neurosci Biobehav Rev 1984, **8**:503-513. [PubMed Abstract](#) | [Publisher Full Text](#)
45. Durazzo TC, Meyerhoff DJ, Nixon SJ: **Chronic cigarette smoking: implications for neurocognition and brain neurobiology.**
Int J Environ Res Public Health 2010, **7**:3760-91. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
46. Weaver LK, Howe S, Hopkins R, *et al.*: **Carboxyhemoglobin half-life in carbon monoxide-poisoned patients treated with 100% oxygen at atmospheric pressure.**
Chest 2000, **117**:801-808. [PubMed Abstract](#) | [Publisher Full Text](#)
47. Bacha ZA, Salameh P, Waked M: **Saliva cotinine and exhaled carbon monoxide levels in natural environment waterpipe smokers.**
Inhal Toxicol 2007, **19**:771-777. [PubMed Abstract](#) | [Publisher Full Text](#)
48. Salem ES, Abdel Hakim M, Hanafi A: **Gouza versus cigarette smoking among patients with pulmonary disease.**
Egypt J Chest Dis Tuberc 1973, **16**:9.
49. Shihadeh A, Saleh R: **Polycyclic aromatic hydrocarbons, carbon monoxide, "tar", and nicotine in the mainstream smoke aerosol of the narghile water pipe.**
Food Chem Toxicol 2005, **43**:655-661. [PubMed Abstract](#) | [Publisher Full Text](#)
50. Primack BA, Sidani J, Agarwal AA, Shadel WG, Donny EC, Eissenberg TE: **Prevalence of and associations with waterpipe tobacco smoking among U.S. University students.**
Ann Behav Med 2008, **36**:81-86. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)

51. Virués-Ortega J, Garrido E, Javierre C, Kloezeman CK: **Human behaviour and development under high-altitude conditions.** *Developmental Science* 2006, **9**:400-410. [PubMed Abstract](#) | [Publisher Full Text](#)
52. Hornbein TF, Townes BD, Schoene RB, Sutton JR, Houston CS: **The cost to the central nervous system of climbing to extremely high altitude.** *N Engl J Med* 1989, **321**:1714-1719. [PubMed Abstract](#) | [Publisher Full Text](#)
53. Hornbein TF: **The high-altitude brain.** *The Journal of Experimental Biology* 2001, **204**:3129-3132. [PubMed Abstract](#) | [Publisher Full Text](#)
54. Bolmont B, Bouquet C, Thullier F: **Relationships of personality traits with performance in reaction time, psychomotor ability, and mental efficiency during a 31-day simulated climb of Mount Everest in a hypobaric chamber.** *Percept Mot Skills* 2001, **92**:1022-1030. [PubMed Abstract](#)
55. Amitai Y, Zlotogorski Z, Golan-Katzav V, Wexler A, Gross D: **Neuropsychological impairment from acute low-level exposure to carbon monoxide.** *Arch Neurol* 1998, **55**:845-848. [PubMed Abstract](#) | [Publisher Full Text](#)
56. Beard RR, Wertheim GA: **Behavioural impairment associated with small doses of carbon monoxide.** *Am J Pub Health and The Nation's Health* 1967, **57**:2012-2022. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
57. Laties VG, Merigan WH: **Behavioural effects of carbon monoxide on animals and man.** *Ann Rev Pharmacol and Toxicol* 1979, **19**:357-392. [Publisher Full Text](#)
58. Benignus VA, Muller KE, Barton CN, Prah JD: **Effect of low level carbon monoxide on compensatory tracking and event monitoring.** *Neurotoxicology And Teratology* 1987, **9**:227-234. [PubMed Abstract](#) | [Publisher Full Text](#)
59. Asbridge M, Hayden JA, Cartwright JL: **Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis.** *BMJ* 2012, **344**:e536. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
60. Smith-Simone S, Maziak W, Ward KD, Eissenberg T: **Waterpipe tobacco smoking: knowledge, attitudes, beliefs, and behavior in two U.S. samples.** *Nicotine Tob Res* 2008, **10**:393-398. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
61. Ramaekers JG, Berghaus G, van Laar M, Drummer OH: **Dose-related risk of motor vehicle crashes after cannabis use.** *Drug Alcohol Depend* 2004, **73**:109-19. [PubMed Abstract](#) | [Publisher Full Text](#)
62. Berghaus G, Guo BL: **Medicines and driver fitness—findings from a meta-analysis of experimental studies as basic information to patients, physicians, and experts.** In *Alcohol, drugs, and traffic safety—T'95: Proceedings for the 13th International Conference on Alcohol, Drugs, and Traffic Safety*. Edited by Koedan CN, McLean AJ. University of Adelaide, ICADTS; 1995:295-300. [PubMed Abstract](#) | [Publisher Full Text](#)
63. Sacks JJ, Nelson DE: **Smoking and injuries: an overview.** *Prev Med* 1994, **23**:515-20. [PubMed Abstract](#) | [Publisher Full Text](#)
64. Zuckerman M, Ball S, Black J: **Influences of sensation seeking, gender, risk appraisal, and situational motivation on smoking.** *Addict Behav* 1990, **15**:209-20. [PubMed Abstract](#) | [Publisher Full Text](#)
65. Naus DMA, Engler V, Hetchyovsa M, Vavrackova D: **Work injuries and smoking.** *Indust Med Surg* 1966, **35**:880-881.
66. Karbakhsh S, Saadat M: **Association of waterpipe smoking and road traffic crashes.** *Saadat S, Karbakhsh M* 2010, **10**:102-106.
67. Brison RJ: **Risk of automobile accidents in cigarette smokers.** *Can J Public Health* 1990, **81**:102-106. [PubMed Abstract](#)
68. Mura P, Chatelain C, Dumestre V, Gaulier JM, Ghysel MH, Lacroix C, et al.: **Use of drugs of abuse in less than 30-year-old drivers killed in a road crash in France: a spectacular increase for cannabis, cocaine and amphetamines.** *Forensic Sci Int* 2006, **160**:168-72. [PubMed Abstract](#) | [Publisher Full Text](#)
69. Beasley EE, Porath-Waller DJ, Porath-Waller A: *A comparison of drug- and alcohol-involved motor vehicle driver fatalities electronic resource*. Canadian Centre on Substance Abuse, Ottawa, Ont; 2011.
70. Ryb GE, Dischinger P, Kufera J, Soderstrom C: **Smoking is a marker of risky behaviors independent of substance abuse in injured drivers.** *Traffic Inj Prev* 2007, **8**:248-52. [PubMed Abstract](#) | [Publisher Full Text](#)
71. Wen CP, Tsai SP, Cheng TY, Chan HT, Chung WS, Chen CJ: **Excess injury mortality among smokers: a neglected tobacco hazard.** *Tob Control* 2005, **14**:i28-32. [PubMed Abstract](#) | [Publisher Full Text](#) | [PubMed Central Full Text](#)
72. Buñuel Granados JM, Córdoba García R, Castillo Pardo MdM, Alvarez Pardo JL, Monreal Hajar A, Pablo Cerezuela F: **Smoking and nonfatal traffic accidents.** *Aten Primaria* 2003, **31**:349-53. [PubMed Abstract](#) | [Publisher Full Text](#)
73. DiFranza JR, Winters TH, Goldberg RJ, Cirillo L, Biliouris T: **The relationship of smoking to motor vehicle accidents and traffic violations.** *N Y State J Med* 1986, **86**:464-467. [PubMed Abstract](#)
74. Brison RJ: **Risk of automobile accidents in cigarette smokers.** *Can J Public Health* 1990, **81**:102-106. [PubMed Abstract](#)

Published in final edited form as:

Food Chem Toxicol. 2012 May ; 50(5): 1494–1498. doi:10.1016/j.fct.2012.02.041.

Does switching to a tobacco-free waterpipe product reduce toxicant intake? A crossover study comparing CO, NO, PAH, volatile aldehydes, tar and nicotine yields

Alan Shihadeh¹, Rola Salman¹, Ezzat Jaroudi¹, Najat Saliba², Elizabeth Sepetdjian², Melissa D. Blank³, Caroline O. Cobb³, and Thomas Eissenberg³

¹Mechanical Engineering Department, American University of Beirut, Beirut, Lebanon

²Chemistry Department, American University of Beirut, Beirut, Lebanon

³Department of Psychology, Virginia Commonwealth University, Richmond, VA, USA

Abstract

Waterpipe (hookah, narghile, shisha) use has become a global phenomenon, with numerous product variations. One variation is a class of products marketed as “tobacco-free” alternatives for the “health conscious user”. In this study toxicant yields from waterpipes smoked using conventional tobacco-based and tobacco-free preparations were compared. A human-mimic waterpipe smoking machine was used to replicate the puffing sequences of 31 human participants who completed two double-blind *ad libitum* smoking sessions in a controlled clinical setting: once with a tobacco-based product of their choosing and once with a flavor-matched tobacco-free product. Outcome measures included yields of carbon monoxide, nitric oxide, volatile aldehydes, nicotine, tar, and polycyclic aromatic hydrocarbons. Smoke from both waterpipe preparations contained substantial quantities of toxicants. Nicotine yield was the only outcome that differed significantly between preparations. These findings contradict advertising messages that “herbal” waterpipe products are a healthy alternative to tobacco products.

Keywords

hookah; narghile; shisha; nicotine; carbon monoxide; tobacco

1. Introduction

Waterpipe (hookah, narghile, shisha) tobacco smoking, long associated with the Eastern Mediterranean Region (Maziak et al., 2004), is becoming increasingly common among adolescents and young adults worldwide (e.g., Combrink et al., 2010; Dugas et al., 2010; Jackson & Aveyard, 2008; Parna et al., 2008). With a tobacco waterpipe, lit charcoal is used to heat sweetened and flavored tobacco that is placed in the “head”. When users inhale through the waterpipe mouthpiece, charcoal-heated air and associated charcoal combustion

© 2012 Elsevier Ltd. All rights reserved.

Corresponding author: Dr. Alan Shihadeh, American University of Beirut, PO Box 11-0236, Beirut, Lebanon 1107-2020, as20@aub.edu.lb, T: +961 1 350 000, F: +961 1 744 462.

Competing interests: The authors declare no competing interests.

Publisher's Disclaimer: This is a PDF file of an unedited manuscript that has been accepted for publication. As a service to our customers we are providing this early version of the manuscript. The manuscript will undergo copyediting, typesetting, and review of the resulting proof before it is published in its final citable form. Please note that during the production process errors may be discovered which could affect the content, and all legal disclaimers that apply to the journal pertain.

products are drawn through the tobacco, producing the mainstream smoke through a process of distillation and pyrolysis. The smoke, in turn, is drawn into the waterpipe body, bubbles through water in the bowl, and is then carried through the hose to the user (Shihadeh, 2003). This method of tobacco use is an important public health concern, given the toxicant content of waterpipe tobacco smoke.

As with cigarette smoke, waterpipe tobacco smoke contains toxicants like polycyclic aromatic hydrocarbons (PAH) that cause cancer, volatile aldehydes (VA) that cause lung disease, carbon monoxide (CO) that contributes to cardiovascular disease, and nicotine that causes dependence (Al Rashidi et al., 2008; Sepetdjian et al., 2008; Shihadeh, 2003). Depending on the toxicant in question (e.g. lead, chromium, benzo(a)pyrene), the amount in waterpipe smoke can be up to two orders of magnitude greater than the amount found in the smoke of a single cigarette (Shihadeh, 2003; Sepetdjian et al., 2008), suggesting that even occasional waterpipe users may be exposed to high toxicant levels. Furthermore, blood CO and nicotine levels rise during waterpipe use (Blank et al., 2011; Cobb et al., 2011), and metabolites of PAH and tobacco specific nitrosamines can be measured in the urine of waterpipe smokers (Jacob et al., 2011). Thus, waterpipe tobacco smoke contains toxicants to which users are exposed systemically.

Besides tobacco, some sweetened and flavored non-tobacco products are marketed for waterpipe use. Labeling of these products suggests reduced toxicant yield. For example, “Red Royal” manufactures “herbal shisha” in Canada that is marketed as “a healthier alternative to hookah molasses tobacco” (www.redroyal.ca). Also, “Soex” is a product line made in India that includes waterpipe preparations made from sugar cane and advertised for the “health conscious” user (soex.com/e/herbalmolasses.html) to provide “the same flavorful smoke found in other shisha without the harmful effects of tobacco” (www.texashookah.com/soex.html). Other companies marketing non-tobacco waterpipe products include Al Baraka (Australia), Bee Tobacco (Germany), and Zero N Zero (United States). Package labels for these products often include claims such as “0% nicotine, 0% tar, and 0% tobacco”.

To our knowledge only one study has addressed the smoke toxicants associated with using non-tobacco products in a waterpipe, and results showed that, relative to a tobacco product, smokers using a non-tobacco product (Soex) had equivalent exposure to CO but no nicotine exposure (Blank et al., 2011). Given that both product types are heated with charcoal, these results might be expected: while a non-tobacco product would likely not contain and therefore not expose users to nicotine, charcoal is the main source of waterpipe-delivered CO and PAH (Monzer et al., 2008). Also, the “molasses” added to the products results in a large fraction of the preparation being composed of sugars (Rees et al., 2007), which have been shown to form VA at the temperatures characteristic of waterpipe tobacco during smoking (Monzer et al., 2008; Bassilakis et al., 2001). Thus, while using a waterpipe to smoke sweetened and flavored non-tobacco products produces smoke with no nicotine, we hypothesize that the smoke contains other toxicants such as CO, NO, PAH, and VA. The purpose of this study was to test this hypothesis by comparing toxicant intake for waterpipe users when smoking tobacco and non-tobacco waterpipe products. To do so, we used a machine to reproduce the exact puffing sequences of 31 waterpipe users who smoked each product type, and analyzed the resulting nicotine, CO, NO, carcinogenic PAH, and VA content of the smoke produced.

2. Materials and Methods

This study involved recording the puffing behavior (i.e. puff topography) of participants who smoked a waterpipe under controlled conditions in a clinical laboratory, once using a

tobacco-based product, and once using a flavor-matched tobacco-free product. The recordings were then used to reproduce the smoke in the analytical laboratory using a digitally controlled waterpipe smoking machine. Smoke components were then analyzed.

2.1 Clinical laboratory procedure

Complete details of the clinical laboratory procedure, carried out at Virginia Commonwealth University, are reported elsewhere (Blank et al., 2011). Briefly, smoking behavior was recorded from 33 healthy waterpipe smokers (three African-American, six Asian, 17 Caucasian, one Hawaiian/Pacific Islander and six mixed/other ethnicity) who were between the ages of 18–50 (mean \pm standard error of the mean (SEM)=20.2 \pm 1.8 years) and reported using a waterpipe to smoke tobacco 2–5 times/month (3.7 \pm 1.0) for six months (20.7 \pm 13.5). Each participant completed two smoking sessions (separated by 48 hours) that differed by the product placed in the waterpipe head: 10 g preferred brand/flavor of tobacco or 10 g flavor-matched Soex™ non-tobacco preparation.

Participants were given a minimum of 45 minutes to smoke the waterpipe ad libitum (for other clinical laboratory details see Blank et al., 2011). In each session, smoking topography was measured via an orifice integrated into the waterpipe hose and connected to a pressure transducer whose signal is automatically acquired and digitized (Shihadeh et al., 2005). Instantaneous puff velocity (ml/s) is computed from the logged pressure transducer signal, and the saved record is used subsequently to reproduce the smoking session in the analytical laboratory using a human mimic smoking machine (Shihadeh & Azar, 2006). Importantly, there was no statistically significant difference observed across waterpipe preparation (tobacco; non-tobacco) on any topography measure including puff number (tobacco, mean \pm SEM = 66.3 \pm 7.3; non-tobacco, 71.2 \pm 8.5); total puff volume (tobacco, 57.0 \pm 7.9 l; non-tobacco, 55.7 \pm 5.6 l); and interpuff interval (tobacco 47.5 \pm 3. s; non-tobacco 45.8 \pm 4.9 s; Blank et al., 2011).

2.2 Analytical laboratory methods

A digitally controlled puff-replicating waterpipe smoking machine (Shihadeh & Azar, 2006) at the American University of Beirut was used to reproduce the flow data recorded for 31 of 33 participants in the clinical laboratory (two records could not be reproduced due to technical limitations; these two records were for participants who had smoked Nakhla double apple and its flavor-matched non-tobacco product). Each of the 62 smoking records (31 participants \times 2 sessions per participant) was reproduced one time. Procedures identical to those reported by Blank and colleagues (Blank et al., 2011) were followed to prepare each waterpipe prior to connecting it to the smoking machine. Tobacco and non-tobacco preparations were from the same batches used in the clinical laboratory and were stored in the dark at -4 C until 24 hours prior to their use, at which time they were placed in a darkened 22-23 C environment at 50-60% relative humidity. Three Kings™ (Holland) quick-light charcoal briquettes (33 mm diameter) identical to those used in the clinical laboratory were used. Waterpipe hoses in the clinical and analytical studies were of identical design and material (leather), and their porous wall infiltration rates varied between 1.0 and 1.8 lpm at a waterpipe mouthpiece flow rate of 12.2 lpm when connected to a waterpipe, as determined by the method described in Saleh & Shihadeh (2008).

During each machine smoking session, the smoke exiting the waterpipe mouthpiece (Figure 1) was split into four parallel streams and each stream drawn through a 47 mm glass fiber filter pad (Gelman type A/E). Because puffing behavior varied widely across participants, the total particulate matter generated at any point in time also varied widely when replicating the puffs of these participants. Therefore we could not predict at what point in time or at what puff number filters would need replacement to avoid overload during a

particular smoking session. To determine when filter changes were needed, an automatic filter friction coefficient (= pressure drop/flow rate) monitoring system was implemented in the smoking machine software and hardware; this involved installing pressure taps upstream and downstream of the filter assembly, and continuously monitoring the pressure drop across the filter assembly using the smoking machine data acquisition system. As particulate matter accumulates on a filter surface, the friction coefficient increases.

Prior to commencing the study, multiple experiments were conducted to correlate friction coefficient to particulate matter loading. A numerical value of the coefficient was determined which indicates a filter load approaching the 150 mg maximum allowed by the ISO standard smoking machine method (ISO 4387:1991). Thus during the study, when the friction coefficient approached this threshold the smoking session was paused for up to 15 s and the filters changed. Not more than two mid-session filter changes were needed during any of the smoking sessions.

NO, CO, nicotine, tar, VA, and PAH were quantified for each smoking session. NO was determined using a rapid-response EcoChem CLD 70S chemiluminescence analyzer. As shown in Figure 1, a small fraction of the smoke drawn during each puff was diverted from the mouthpiece into the NO analyzer, and the resulting instantaneous NO volume concentration signal was automatically logged by the smoking machine data acquisition system. NO yield was then computed as the average of the instantaneous NO concentration times the total drawn volume. The setup was validated by connecting the smoking machine inlet to a Teflon bag containing calibration gas with a NO concentration of 50 ppm, and allowing the machine to “puff” from the bag using widely varying puff topography parameters.

CO and nicotine were determined using electrochemical sensing and GC-MS, respectively, as described in Shihadeh & Saleh (2005). Tar, defined as the nicotine-free dry particulate matter, was computed as the total particulate matter (TPM) mass collected on the filters from a smoking session minus the mass of the water and nicotine found in the TPM. Thus “tar” includes PAH measured in the trapped particulate matter but excludes volatile aldehydes which were measured in the gas phase downstream of the filters. Water content in the TPM was determined using Karl-Fischer titration, as described in Shihadeh & Saleh (2005).

VA concentration was determined as in Al Rashidi et al. (2008) with minor modifications. First, for convenience only the vapor phase of the smoke was analyzed for VA; as shown in Figure 1, the DNPH cartridge used to trap and derivatize the VA is installed downstream of an ordinary particulate filter. Second, the HPLC DAD described by Al Rashidi et al. was also connected to an MS detector (Agilent LC/MSD Trap XCP) to confirm the identity of individual VA compounds. The MS analysis was conducted using negative atmospheric pressure photo-ionization. It should be noted that although we have previously measured significant quantities of acrolein in machine-generated waterpipe smoke (Al Rashidi et al., 2008) we found with the current study that in most smoke samples (for both the tobacco and non-tobacco products), the acrolein content was not detected or was below the limit of quantification, although all the other previously reported VA compounds were quantifiable. We therefore do not report acrolein in the current study.

PAH concentration was determined as in Sepetdjian et al. (2010). Filters were spiked with deuterated internal standards (acenaphthene-D10, phenanthrene-D10, chrysene-D12, and perylene-D12) and then sonicated in 10 ml toluene for 2 hours. The resulting extracts were cleaned using SPE silica cartridges and then concentrated under nitrogen before injection on GC-MS (Thermo Trace GC-Ultra equipped with ITQ-900 ion trap MS). Quantification was

done using calibration curves of PAH standards and deuterated PAH standards in the selected ion current profile. PAH of interest to this study were the 4-, 5-, and 6-ringed compounds which appear on the US EPA priority pollutants list and which are classified as “probable human carcinogens”: benz(a)anthracene, chrysene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene.

2.3 Data analysis

Mean and 95% confidence intervals were computed for all measures. Differences in means between measures for tobacco and non-tobacco preparations were analyzed for significance using a two-tailed, paired t-test.

3. Results

Results of all analyses are presented in Table 1. As can be seen from the table, there were substantial amounts of CO, NO, tar, PAH, and VA produced for both tobacco and non-tobacco waterpipe preparations, relative to those found in the smoke of a single cigarette. Furthermore, there were no statistically significant differences observed across waterpipe preparation for these smoke toxicants. However, for nicotine, the tobacco product yielded 1.04 mg, on average, while no nicotine was measurable in the smoke of the non-tobacco product. Data for cigarettes are included in Table 1 for perspective though it should be noted that typically cigarette smokers consume an order of magnitude greater number of cigarettes in a day than waterpipe users consume waterpipes.

4. Discussion

The purpose of this study was to compare toxicant yields when waterpipe users smoked a tobacco-based and non-tobacco based product. To do so, puffing behavior was recorded in a clinical laboratory with each participant once smoking a tobacco-based and once smoking a flavor matched non-tobacco based product; the puffs produced by each participant in each condition were then subsequently replicated on a unique digitally controlled waterpipe smoking machine. NO was determined for the first time in waterpipe smoke, and found to be present in substantial quantities.

Results were unambiguous: while only the smoke from the tobacco preparation contained the dependence-causing drug nicotine, smoke from both preparations contained nearly equal amounts of toxicants known to contribute to the risk of tobacco-caused cancer, cardiovascular disease, and lung disease. Accordingly, while using the non-tobacco product presents no risk of nicotine exposure, there is no reason to believe that inhaling smoke from the non-tobacco preparation presents any less disease risk than smoke from a tobacco preparation.

The finding that the non-nicotine toxicant yields that we examined from the two types of products did not differ is consistent with previous results demonstrating that charcoal is the primary contributor to waterpipe smoke CO and PAH (Monzer et al., 2008). The lack of any observed difference in VA yield between the two products may also indicate that the sources of these smoke toxicants are the charcoal as well as chemical transformation of the sweeteners present in both the tobacco and non-tobacco preparation. If the charcoal and sweeteners are the primary source for CO, PAH, and VA, then smoke from any charcoal-heated, sweetened, waterpipe preparation might be expected to contain these toxicants.

An important limitation of this study is that the smoke yield of only one brand of non-tobacco preparation was examined, though it is likely that the findings presented here will be applicable to other brands. Another limitation owing to our current instrumentation is that

the smoke was not examined for the presence of tobacco-specific nitrosamines, a group of potent carcinogens that has been found in waterpipe tobacco smoke, albeit at low levels (Schubert et al., 2011), and metabolites of these nitrosamines have been found in smokers' urine after a single waterpipe use (Jacob et al., 2011). Finally, the puff topography records used to program the smoking machine in this study were generated by occasional waterpipe users (see Blank et al., 2011). More experienced users might produce different puff topography (e.g., more puffs, greater volume, shorter interpuff interval as in Maziak et al., 2011 and Katurji et al., 2010); thus the resulting smoke toxicant yield for more experienced users might be expected to be greater than reported here (see Katurji et al. 2010, for CO, tar, and nicotine measured in smoke generated by café smokers in Beirut, Lebanon for comparison).

In sum, the fact that smoke from a non-tobacco waterpipe preparation yields near identical amounts of CO, PAH, and VA suggests that advertising depicting that the product provides “the same flavorful smoke found in other shisha without the harmful effects of tobacco” (www.texashookah.com/soex.html) is, at best, misleading. These results, taken together with others addressing the tar and nicotine content of waterpipe tobacco smoke (Nakkash & Khalil, 2010; Vansickel et al., 2011) should be used to support much-needed regulation of labeling for all waterpipe products.

Acknowledgments

The authors thank Barbara Kilgalen and Janet Austin for administering the clinical components of this study.

Funding: This work is supported by U.S. Public Health Service Grants R01CA120142, R01DA024876, and F31DA028102

References

- Al Rashidi M, Shihadeh A, Saliba NA. Volatile aldehydes in the mainstream smoke of the narghile waterpipe. *Food Chem Toxicol.* 2008; 46(11):3546–3549.10.1016/j.fct.2008.09.007 [PubMed: 18834915]
- Bassilakis R, Carangelo RM, Wójtowicz MA. TG-FTIR analysis of biomass pyrolysis. *Fuel.* 2001; 80(12):1765–1786.
- Blank MD, Cobb CO, Kilgalen B, Austin J, Weaver MF, Shihadeh A, Eissenberg T. Acute effects of waterpipe tobacco smoking: A double-blind, placebo-control study. *Drug Alcohol Depend.* 2011; 116(1-3):102–109.10.1016/j.drugalcdep.2010.11.026 [PubMed: 21277706]
- Cobb CO, Shihadeh A, Weaver MF, Eissenberg T. Water pipe tobacco smoking and cigarette smoking: a direct comparison of toxicant exposure and subjective effects. *Nicotine Tob Res.* 2011; 13(2):78–87.10.1093/ntr/ntq212 [PubMed: 21127030]
- Combrink A, Irwin N, Laudin G, Naidoo K, Plagerson S, Mathee A. High prevalence of hookah smoking among secondary school students in a disadvantaged community in Johannesburg. *S Afr Med J.* 2010; 100(5):297–9. <http://www.ncbi.nlm.nih.gov/pubmed/20460022>. [PubMed: 20460022]
- Dugas E, Tremblay M, Low NCP, Cournoyer D, O'Loughlin J. Water-pipe smoking among North American youths. *Pediatrics.* 2010; 125(6):1184–1189.10.1542/peds.2009-2335 [PubMed: 20457679]
- Intorp M, Purkis S, Whittaker M, Wright W. Determination of “Hoffmann Analytes” in cigarette mainstream smoke. The Coresta 2006 Joint Experiment. *Contrib Tob Res.* 2009; 23:161–202.
- Jackson D, Aveyard P. Waterpipe smoking in students: prevalence, risk factors, symptoms of addiction, and smoke intake. Evidence from one British university. *BMC Public Health.* 2008; 8:174.10.1186/1471-2458-8-174 [PubMed: 18498653]
- Jacob P III, Raddaha AHA, Dempsey D, Havel C, Peng M, Yu L, Benowitz NL. Nicotine, Carbon Monoxide, and Carcinogen Exposure after a Single Use of a Waterpipe. *Cancer Epidemiology Biomarkers and Prevention.* 2011 Sep 9.:2011. OnlineFirst.

- Katurji M, Daher N, Sheheitli H, Saleh R, Shihadeh A. Direct measurement of toxicants inhaled by water pipe users in the natural environment using a real-time in situ sampling technique. *Inhalation Toxicol.* 2010; 22(13):1101–1109.10.3109/08958378.2010.524265
- Liu C, Hu J, Mcadam KG. A feasibility study on oxidation state of arsenic in cut tobacco, mainstream cigarette smoke and cigarette ash by X-ray absorption spectroscopy. *Spectrochim Acta B: Atom Spectr.* 2009; 64:1294–1301.
- Maziak W, Rastam S, Ibrahim I, Ward KD, Shihadeh A, Eissenberg T. CO exposure, puff topography, and subjective effects in waterpipe tobacco smokers. *Nicotine Tob Res.* 2009; 11(7):806–811.10.1093/ntr/ntp066 [PubMed: 19420278]
- Maziak W, Rastam S, Shihadeh A, Bazzi A, Ibrahim I, Zaatari GS, Ward KD, Eissenberg T. Nicotine exposure in daily waterpipe smokers and its relation to puff topography. *Addictive Behaviors.* 2011; 36(4):397–399.10.1016/j.addbeh.2010.11.013 [PubMed: 21185126]
- Maziak W, Ward KD, Soweid Afifi RA, Eissenberg T. Tobacco smoking using a waterpipe: a re-emerging strain in a global epidemic. *Tob Control.* 2004; 13(4):327–333.10.1136/tc.2004.008169 [PubMed: 15564614]
- Monzer B, Sepetdjian E, Saliba N, Shihadeh A. Charcoal emissions as a source of CO and carcinogenic PAH in mainstream narghile waterpipe smoke. *Food Chem Toxicol.* 2008; 46(9):2991–2995.10.1016/j.fct.2008.05.031 [PubMed: 18573302]
- Nakkash R, Khalil J. Health warning labeling practices on narghile (shisha, hookah) waterpipe tobacco products and related accessories. *Tob Control.* 2010; 19(3):235–239.10.1136/tc.2009.031773 [PubMed: 20501497]
- Parna K, Usin J, Ringmets I. Cigarette and waterpipe smoking among adolescents in Estonia: HBSC survey results, 1994–2006. *BMC Public Health.* 2008; 8:392.10.1186/1471-2458-8-392 [PubMed: 19032756]
- Saleh R, Shihadeh A. Elevated toxicant yields with narghile waterpipes smoked using a plastic hose. *Food Chem Toxicol.* 2008; 46(5):1461–1466.10.1186/1471-2458-8-392 [PubMed: 18207299]
- Schubert J, Hahn J, Dettbarn G, Seidel A, Luch A, Schulz T. Mainstream Smoke of the Waterpipe: Does This Environmental Matrix Reveal As Significant Source of Toxic Compounds? *Toxicology Letters.* 2011; 205:279–284.10.1016/j.toxlet.2011.06.017 [PubMed: 21712083]
- Sepetdjian E, Shihadeh A, Saliba NA. Measurement of 16 polycyclic aromatic hydrocarbons in narghile waterpipe tobacco smoke. *Food Chem Toxicol.* 2008; 46(5):1582–1590.10.1016/j.fct.2007.12.028 [PubMed: 18308445]
- Sepetdjian E, Saliba N, Shihadeh A. Carcinogenic PAH in waterpipe charcoal products. *Food and Chemical Toxicology.* 2010; 48(11):3242–3245.10.1016/j.fct.2010.08.033 [PubMed: 20807559]
- Shihadeh A. Investigation of mainstream smoke aerosol of the argileh water pipe. *Food Chem Toxicol.* 2003; 41(1):143–152.10.1016/S0278-6915(02)00220-X [PubMed: 12453738]
- Shihadeh A, Antonios C, Azar S. A portable, low-resistance puff topography instrument for pulsating, high-flow smoking devices. *Behavior Research Methods.* 2005; 37(1):186–191. <http://www.ncbi.nlm.nih.gov/pubmed/16097360>. [PubMed: 16097360]
- Shihadeh A, Azar S. A closed-loop control “playback” smoking machine for generating mainstream smoke aerosols. *J Aerosol Med.* 2006; 19(2):137–147.10.1089/jam.2006.19.137 [PubMed: 16796538]
- Shihadeh A, Saleh R. Polycyclic aromatic hydrocarbons, carbon monoxide, “tar”, and nicotine in the mainstream smoke aerosol of the narghile water pipe. *Food Chem Toxicol.* 2005; 43(5):655–661.10.1016/j.fct.2004.12.013 [PubMed: 15778004]
- Tarrant JE, Mills K, Williard C. Development of an improved method for the determination of polycyclic aromatic hydrocarbons in mainstream tobacco smoke. *J Chromatogr A.* 2009; 1216:2227–2234.10.1016/j.chroma.2009.01.009 [PubMed: 19181324]
- Vansickel AR, Shihadeh A, Eissenberg T. Waterpipe tobacco products: nicotine labeling versus nicotine exposure. *Tob Control.* 2011.10.1136/tc.2010.042416

Research highlights

Smoke toxicant content was compared for tobacco and non-tobacco products

Smoke from both categories of products contained substantial quantities of toxicants

Tobacco-free products did not exhibit reduced PAH, volatile aldehydes, CO, NO, or “tar” yields

Only the tobacco-based products produced a nicotine-containing smoke

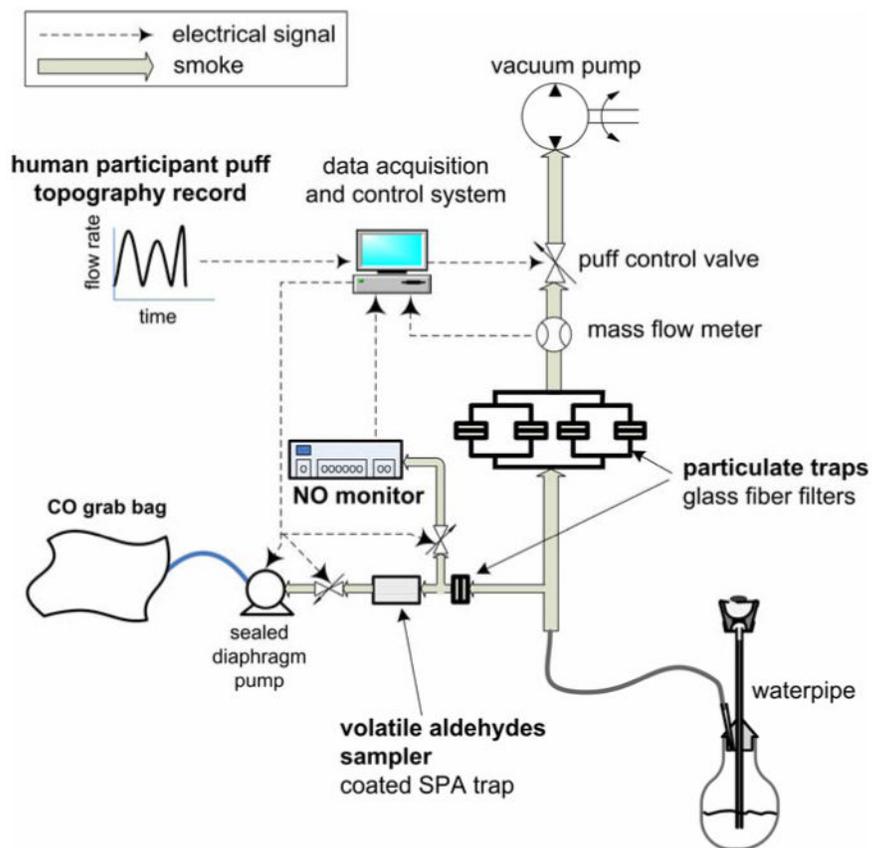


Figure 1.
Smoking machine and smoke sampling configuration.

Table 1

Mean (\pm 95% CI) mainstream smoke toxicant emissions per waterpipe use session for tobacco and non-tobacco waterpipe preparations. Smoke was generated by a machine that played back digital recordings of individual puff topography records generated by 31 waterpipe smokers who each smoked a tobacco and a non-tobacco preparation under controlled conditions (topography records did not differ by preparation smoked, see Blank et al., 2011). Toxicant emissions from previous studies of Kentucky Reference cigarettes (2R4F and 3R4F) are provided for comparison. Cigarette emissions data are given per cigarette smoked using 35 ml puff volume of 2 s duration at a frequency of 1 puff/min.

Toxicant	Waterpipe preparation (mean \pm 95% CI)			Ref. Cigarette
	tobacco	non-tobacco	<i>p</i>	
Nicotine, mg	1.04 \pm 0.30	< 0.01	< 0.001	0.73 ^a
Carbon monoxide, mg	155 \pm 49	159 \pm 42	n.s.	12.0 ^a
Nitric oxide, g	437 \pm 207	386 \pm 116	n.s.	218.1 ^c
Tar, mg	464 \pm 159	513 \pm 115	n.s.	9.4 ^a
TPM, mg	770 \pm 228	855 \pm 192	n.s.	11 ^a
Carcinogenic PAH, ng				
Benz (a)anthracene	86.4 \pm 15.2	113 \pm 46	n.s.	14.1 ^b
Chrysene	106 \pm 16	124 \pm 36	n.s.	16.2 ^b
Benzo(b+k)fluoranthenes	64.7 \pm 11.3	72.9 \pm 12.6	n.s.	7.6 ^b
Benzo(a)pyrene	51.8 \pm 12.9	66.1 \pm 17.8	n.s.	6.6 ^b
Indeno(1,2,3-cd)pyrene	47.3 \pm 10.7	44.3 \pm 10.4	n.s.	3.8 ^b
Volatile aldehydes, μg				
Formaldehyde	58.7 \pm 21.6	117.6 \pm 78.7	n.s.	20.6 ^c
Acetaldehyde	383 \pm 121	566 \pm 370	n.s.	587.4 ^c
Acetone	118 \pm 36	163 \pm 68	n.s.	270.4 ^c
Propionaldehyde	51.7 \pm 15.3	98.4 \pm 65.0	n.s.	49.0 ^c
Methacrolein	12.2 \pm 4.4	20.4 \pm 9.7	n.s.	

^a3R4F, Liu et al., 2009

^b3R4F, Tarrant et al., 2009

^c2R4F, Intorp et al., 2009

ORDINANCE NO. 13 - ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 9.06.010 (DEFINITIONS) OF CHAPTER 9.06 (SMOKING IN ENCLOSED PUBLIC PLACES) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) AND ADDING SECTION 9.06.120 (EXISTING TOBACCO SHOPS) AND SECTION 9.06.130 (PROHIBITION OF ALL SMOKE LOUNGES) TO TITLE 9 OF THE BENICIA MUNICIPAL CODE TO BAN HOOKAH AND SMOKE LOUNGES, AND REGULATE ELECTRONIC CIGARETTES AS TOBACCO PRODUCTS

WHEREAS, the City Council finds that this ordinance will serve the public necessity, convenience, and welfare for the reasons set forth below; and

WHEREAS, Goal 2.1 states “Preserve Benicia as a small-sized city”; and

WHEREAS, Goal 2.3 states “Ensure orderly and sensitive site planning and design for large undeveloped areas of the City, consistent with the land use designations and other policies in this General Plan”; and

WHEREAS, Goal 2.5 states “Facilitate and encourage new uses and development which provides substantial and sustainable fiscal and economic benefits to the City and the community maintaining health, safety, and quality of life”; and

WHEREAS, the General Plan also includes the following policies:

Policy 2.1.1: “Ensure that new development is compatible with adjacent existing development and does not detract from Benicia’s small town qualities and historic heritage, (and to the extent possible, contributes to the applicable quality of life factors noted above.)”

Policy 2.1.2 “Make efficient use of land in new development areas consistent with the surrounding neighborhood.”

WHEREAS, according to the California Department of Public Health “hookahs are glass or metal water pipes that are shaped somewhat like a bottle and have long, flexible hoses with tips that people put into their mouths to inhale tobacco smoke. In most hookahs, hot charcoal is placed on top of tobacco in a bowl to heat it. The tobacco, or shisha, is typically flavored, and contains the same chemicals found in all tobacco, including nicotine”; and

WHEREAS, hookahs may be used to smoke legal tobacco as well as marijuana and other illegal drugs; and

WHEREAS, a hookah lounge is a facility that may be either a stand-alone operation where only hookah smoking occurs or it may be combined with a bar and/or

restaurant; and

WHEREAS, the City Council finds that establishment of hookah lounges under the City's Current zoning ordinance will conflict with these Goals and Policies of the General Plan; and

WHEREAS, numerous studies have found that smoking hookah is just as harmful, or even more so, as smoking cigarettes concerning the inhaling of cancerous toxins, the addictive chemical nicotine, and carbon monoxide poisoning; and

WHEREAS, electronic smoking devices, commonly known as "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," etc., are battery operated devices designed to look like and to be used in the same manner as conventional tobacco products, that employ the use of a cartridge to deliver vaporized nicotine to users which can create the appearance of a puff of smoke when exhaled; and

WHEREAS, electronic cigarettes are an unregulated product that pose potential health risks to its users and to others through second hand vapor; and

WHEREAS, following the 2009 Supreme Court case, *Sottera Inc. v. Food and Drug Administration*, any product containing nicotine from tobacco, unless marketed for therapeutic purposes, is considered a *tobacco product by the FDA*; and

WHEREAS, the World Medical Association has determined that electronic smoking devices "are not comparable to scientifically-proven methods of smoking cessation" and that "neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established"; and

WHEREAS, the use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA HEREBY ORDAIN as follows:

Section 1.

Findings. The City Council incorporates the information in the recitals of this ordinance, staff report and the hearing on this item. After considering research of hookah smoking the City has concluded that hookah smoking and electronic cigarettes may be damaging to the community as well as the individual, hookah smoke being just as harmful as or more so than cigarette smoking, with emission of second hand smoke greater and more concentrated than that of an individual smoker, and further finds that the establishment of hookah and other smoke lounges poses a threat to the health and safety of the community and does not align with the General Plan of the City of Benicia.

Section 2.

Section 9.06.010 (Definitions) is amended, and Section 9.06.120 (Existing Tobacco Shops) and Section 9.06.130 (Prohibition of all Smoke Lounges) are added to Chapter 9.06 (Smoking in Enclosed Public Places) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code specifically to address electronic cigarettes and hookah lounges and are to read as follows:

9.06.010 Definitions

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it shall be apparent from the context that they have a different meaning.

"Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages on the premises.

"Electronic Cigarette" means any electronic device used for the inhalation of nicotine vapor or other substances, usually a battery powered device that contains liquid nicotine cartridges.

"Hookah" means the use of a water pipe, and any associated products and devices, in order to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

"Restaurant means an establishment that sells, prepares, and/or serves primarily food to its guests and the dining areas in which said food is consumed.

"Smoking" means holding or possession of a lighted or heated pipe, cigar, or cigarette of any kind, including use of an electronic cigarette, or any other lighted smoking equipment including hookah and other versions of water pipes. As well as the lighting, emitting or exhaling the smoke, fumes, or vapors from plant product, like tobacco, typically used in such devices.

"Smoke lounge" means any business where smoking is the primary activity and usually, but not always, accompanied by the sale of tobacco and other smoking paraphernalia, specifically, but not limited to cigar clubs and hookah lounges.

"Tobacco Shop" means a retail or wholesale store that stands independently from any restaurant, bar, or other place of amusement, whose exclusive purpose, and principal business, is in the sale of tobacco and tobacco related paraphernalia evidenced by more than 50 percent of the total floor and display area being devoted to the sale of

these products and more than 70 percent of gross sales deriving from the sale of said product.

9.06.120 Existing tobacco shops.

Tobacco shops shall not permit smoking on the premises. Convenience stores, as well as retail and wholesale stores that deal primarily in the sale of tobacco and smoking paraphernalia, are subject to the indoor smoking restrictions of this chapter.

9.06.130 Prohibition of all smoke lounges.

No person shall establish, maintain, manage or operate any smoke lounge or permit or allow any smoke lounge to be established, maintained, managed or operated within any building or structure owned, occupied, or controlled by him/her.

Section 3.

Severability. If any section, subsection, paragraph, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 4.

Certification. The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

On motion of Council Member _____, seconded by
Council Member _____, the foregoing ordinance was
introduced at a regular meeting of the City Council on the _____ day of _____, 2013, and
adopted at a regular meeting of the Council held on the _____ day of _____, 2013, by the
following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 17, 2013
CONSENT CALENDAR

DATE : August 8, 2013

TO : City Council

FROM : City Attorney

SUBJECT : **SECOND READING AND ADOPTION OF AN ORDINANCE TO ADD SECTION 8.24.260 (OWNERSHIP OF REFUSE, GREEN WASTE, AND RECYCLABLES) TO CHAPTER 8.24 (REFUSE MATTER DISPOSAL) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE**

RECOMMENDATION:

Adopt the ordinance updating the Benicia Municipal Code to include a section designating ownership of refuse materials.

EXECUTIVE SUMMARY:

The City Council introduced this ordinance at the first meeting in September to address concerns about reports of people removing items from waste collection containers that are not their own. This type of behavior can lead to crimes, such as trespassing and theft, in residential and commercial areas. In addition, it can increase waste collection rates and fees. Due to the increasing amount of this behavior, the existing chapter in the Benicia Municipal Code (BMC) pertaining to refuse matters needs to be updated to include a provision about the ownership of refuse materials.

BUDGET INFORMATION:

N/A

GENERAL PLAN:

Relevant General Plan provisions include:

Goal 4.6: Prevent and Reduce Crime in the Community

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

Goal 1.00: Protecting Community Health and Safety

ENVIRONMENTAL ANALYSIS:

Under CEQA Guidelines, Section 15061(b)(3), the proposed ordinance is exempt

from CEQA because the proposed ordinance will have no significant effect on the environment.

BACKGROUND:

The City of Benicia adopted the existing regulations on refuse waste disposal in 1989 and last updated the chapter in 2001. As of now, there are no local laws pertaining to the ownership of refuse material or prohibiting the removal of refuse material.

The act of removing materials from refuse containers can result in crime as it can be used as a cover for criminals to enter and wander around neighborhoods and commercial development without suspicion. This behavior can also lead to identity theft if a resident places sensitive information into their refuse containers. The proposed ordinance therefore helps prevent crime in residential neighborhoods and commercial areas. These reasons have been added to the ordinance as “whereas” per Council Member Schwartzman’s request.

In addition to preventing crime, the proposed ordinance can help keep refuse collection rates and fees low. The refuse collection company bases their fees and rates from the return they receive on recyclables collected. The removal of recyclables can result in a lower return for the collection company and can cause the company to need to raise their fees and rates.

Under California Public Resources Code sections 41950 and 41951, it is unlawful for any individual to remove any kind of recyclable material from residential and commercial collection containers and further specifies that those materials belong to the recycling collection company. However, under section 41955 of the same code, the removal of recyclables is only prosecutable if the value of the removed materials is more than \$50. Due to this provision, it is very difficult for the City’s Police Department to stop or in any way deter the removal of refuse material within the City. The proposed ordinance will apply to the removal of any and all refuse material no matter the amount, instead of only \$50 worth of recyclables. By broadening the provisions, the Police Department will be able to more easily detain and prosecute people who remove material from refuse containers.

Under California Public Resources Code section 41954, local governments are allowed “to adopt or enforce regulations or ordinances on the same matters of this article.” Therefore, the proposed ordinance complies with current state law and allows the Police Department to regulate this issue more effectively.

Attachment:

- Proposed Ordinance

CITY OF BENICIA

ORDINANCE NO. 13-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA TO ADD SECTION 8.24.260 (OWNERSHIP OF REFUSE, GREEN WASTE, AND RECYCLABLES) TO CHAPTER 8.24 (REFUSE MATTER DISPOSAL) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

WHEREAS, the act of removing materials from refuse containers can result in crime, as it can be used as a cover for criminals to enter and wander around neighborhoods and commercial development without suspicion; and

WHEREAS, this behavior can also lead to identity theft if a resident places sensitive information into the refuse containers.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Section 8.24.260 (Ownership of Refuse, Green Waste, and Recyclables) of Chapter 8.24 (Refuse Matter Disposal) of Title 8 (Health and Safety) of the Benicia Municipal Code is added to read as follows:

8.24.260 Ownership of refuse, green waste, and recyclables

A. All refuse, green waste, recyclables, and any other material deposited into approved waste containers, including both residential and commercial containers, are the property of the contractor when containers are placed out for collection services. This does not apply to any hazardous waste or other wastes that are not permitted by federal, state, or local laws and regulations to be deposited in refuse collection containers.

B. Prior to being placed out for collection, all material in approved waste containers belongs to the property owner(s)/tenant(s) in all areas of the City.

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 3rd of September 2013, and adopted at a regular meeting of the Council held on the 17th day of September, 2013 by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

Date

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 17, 2013
CONSENT CALENDAR

DATE : September 9, 2013

TO : City Manager

FROM : Acting Assistant City Manager

SUBJECT : **APPROVE THE AMENDMENT TO THE CONTRACT SERVICES AGREEMENT BETWEEN THE CITY OF BENICIA AND RENNE SLOAN HOLTZMAN SAKAI FOR FINANCIAL SERVICES**

RECOMMENDATION:

Adopt the resolution approving the amendment to the agreement with Renne Sloan Holtzman Sakai for financial services.

EXECUTIVE SUMMARY:

Staff is proposing to amend the contract with Renne Sloan Holtzman Sakai for financial services to allow for interim Finance Director services while the City conducts a recruitment for a Finance Director.

BUDGET INFORMATION:

The cost of this contract will be funded primarily from salary savings of the vacant Finance Director position.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:
Strategic Issue 3: Strengthening Economic and Fiscal Conditions

BACKGROUND:

The City is proposing to continue to contract with Renne Sloan Holtzman Sakai for the financial consulting services of Brenda Olwin during the period in which the City is recruiting for a Finance Director. Assuming the recruitment is successful, it is projected that a new Director will be hired on or before January. The proposed amendment extends Ms. Olwin's services through January 2014.

During the contract period, Ms. Olwin will be assisting the City with a number of Finance related activities, including completion of the 2012-13 audit, initiation of significant finance system implementations, and a number of accounting studies, which are needed for the City's budget stabilization plan.

Attachments:

- Proposed Resolution
- Proposed Amendment to Agreement

RESOLUTION NO. 13-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE CONTRACT WITH RENNE SLOAN HOLTZMAN SAKAI LLP FOR FINANCIAL SERVICES

WHEREAS, the City of Benicia's former Finance Director, Karan Reid, resigned from the City of Benicia in April 2013; and

WHEREAS, the City contracted with Renne Sloan Holtzman Sakai LLP for assistance with preparing the 2013-15 budget and related financial services; and

WHEREAS, the City desires to amend the agreement due to additional hours required for Interim Finance Director services until a new Finance Director is hired; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia approves the amendment to the contract in the amount not to exceed \$200,000 and authorizes the City Manager to sign the contract on behalf of the City, subject to approval by the City Attorney.

BE IT FURTHER RESOLVED THAT sufficient funds to cover this service contract, including budget transfers from vacant positions, exist in Account Nos. 010-3105-8100 (65%), 010-3205-8100 (15%), and 111-3101-8100 (20%).

On motion of Council Member _____, and seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of September, 2013, and adopted by the following vote.

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

AMENDMENT TO AGREEMENT

This Amendment of the Agreement, entered into this ____ day of September, 2013 by and between the City of Benicia, a municipal corporation (hereinafter "CITY") and Renne Sloan Holtzman Sakai LLP located at 350 Sansome Street, Suite 300 in San Francisco, CA 94101-1304 (hereinafter "CONSULTANT"), is made with reference to the following:

RECITALS:

A. On April 1, 2013 an agreement was entered into by and between CITY and CONSULTANT ("Agreement").

B. CITY and CONSULTANT desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

1. Paragraphs 1, 2 and 3 of the Agreement are modified to read as follows:

CONSULTANT shall perform interim Finance Director services as assigned by the Acting Assistant City Manager and City Manager.

The term of this Agreement shall be extended from September 30, 2013 to January 31, 2014 or upon reaching the "not to exceed" compensation amount, whichever occurs first.

This agreement may be terminated by giving written notice to the other party of that party's intention to so terminate. This Agreement shall be terminated two (2) days from and after the date of delivery or mailing of the notice, unless the notice specifies otherwise.

CITY agrees to pay CONSULTANT as full compensation for all services and duties performed, except as otherwise provided herein, the sum of \$110 per hour. The total compensation to be paid under this Agreement shall be increased by \$85,000 to cover the services and duties to be performed from September 30, 2013 – January 31, 2014. The total compensation for this agreement will not exceed \$200,000.

2. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

09/09/13

VII.F.5

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

CONSULTANT
Charles Sakai, on behalf of Renne Sloan
Holtzman Sakai LLP

CITY OF BENICIA
Brad Kilger, City Manager

By _____
Dated:

By _____
Dated:

APPROVED AS TO FORM:

City Attorney

09/09/13

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 17, 2013
BUSINESS ITEMS

DATE : September 9, 2013

TO : City Manager

FROM : Economic Development Manager

SUBJECT : **APPROVAL OF PROPOSED LEASE AGREEMENTS WITH CLEAR CHANNEL OUTDOOR FOR MODIFICATION AND OPERATION OF DIGITAL BILLBOARDS AT 3190 BAYSHORE ROAD AND 3300 PARK ROAD**

RECOMMENDATION:

Adopt proposed Resolution approving the proposed lease agreements with Clear Channel Outdoor to modify existing billboard signs at 3190 Bayshore Road and 3300 Park Road.

EXECUTIVE SUMMARY:

Clear Channel Outdoor proposes to extend two current lease agreements, which support existing billboard structures. Clear Channel Outdoor intends to modify the most Northern Structure at 3190 Bayshore immediately with an enhanced electronic digital LED screen and has until 2019 to convert the Southern structure, at 3300 Park Road, to a digital display.

BUDGET INFORMATION:

The proposed lease agreement is expected to provide the City of Benicia with annual lease revenue starting at approximately \$150,000 for the Northern Structure and \$50,000 for the Southern structure until such time it is converted to a digital display, which will increase the rent to mirror the rate of the Northern structure. The income generated from the lease is divided into two separate revenue streams, a guaranteed base rent and revenue share. The Initial annual Base (guaranteed) rent rate for the digital billboards will be \$150,000. The second revenue stream is a revenue sharing agreement where the City will share with Clear Channel Outdoor the net profit earned from advertisers. In year one of the Agreement, the City revenue share will be 15%. This share will escalate to 20% in Year four and 23% in year 16.

ENVIRONMENTAL ANALYSIS:

The Planning Commission, on November 29, 2012 reviewed the project and determined that, pursuant to the California Environmental Quality Act, with

implementation of mitigation measures, the proposed project will not have a significant effect on the environment.

The decision of the Planning Commission was appealed by two appellants to the City Council. Those appeal hearings were heard on January 15, 2013 and the City Council voted to sustain the Planning Commission decision.

GENERAL PLAN:

Relevant General Plan goals, policies and programs include the following, as discussed in the Summary section below:

- GOAL 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.
- GOAL 2.7: Attract and retain industrial facilities that provide fiscal and economic benefits to—and meet the present and future needs of—Benicia.
- GOAL 2.13: Support the economic viability of existing commercial centers.
 - GOAL 3.3: Increase public awareness of cultural resources and activities.
 - POLICY 3.3.1: Preserve and enhance cultural organizations, resources and activities.
 - Program 3.3.A: Utilize the City's web page and other information sources to advertise cultural activities.
 - Program 3.3.E: Develop promotional materials that increase community awareness of the Camel Barn museum.
- GOAL 3.5: Promote events with wide community attraction.
 - POLICY 3.5.1: Support community-wide and special events, such as arts in the park, a farmers' market, and open studios.
- GOAL 3.6: Support and promote the arts as a major element in Benicia's community identity.
- GOAL 3.9: Protect and enhance scenic roads and highways.
 - POLICY 3.9.1: Preserve vistas along I-780 and I-680.
 - Program 3.9.A: Inventory scenic resources along I-780 and I-680.
 - Program 3.9.B: Investigate and apply for State Scenic highway designation of Interstate Highways I-780 and I-680.

STRATEGIC PLAN:

- Strategic Issue 3 – Strengthening Economic and Fiscal Conditions
 - Strategy No. 5: Increase economic viability of industrial park and other commercial areas, while preserving existing economic strengths and historic resources

BACKGROUND:

1986 the City via the Surplus Property Authority of the City of Benicia entered into an addendum to Land Lease and Consent to Sublease for the erection of two billboards structures to Viaduct Associates, then sold to Eller Media and now owned by Clear Channel Outdoor. Clear Channel Outdoor is proposing to amend its lease with the City of Benicia, which owns the land, to allow upgrading and alteration of the two existing, illuminated billboards.

City staff and Clear Channel Representatives have been in discussion and negotiations for over two years developing the proposed agreement. As negotiations were being finalized, staff reviewed, in Closed Session on January 15th, April 2nd, May 21st, August 20th, and September 3rd the key lease terms and received direction from Council.

Once the lease negotiations reached a point where consummation of an agreement seemed promising, City staff began engaging stakeholders and the community on the proposed agreement. Staff discussed or provided updates to the Planning Commission on June 14, 2012, met with the Chamber of Commerce Board of Directors on October 23, 2012, the Economic Development Board on November 15, 2012, and the Benicia Industrial Park Association (BIPA) Board of Directors on November 21, 2012.

Clear Channel Outdoor is proposing to enter into a lease for a term of twenty-five years (25) years with the City of Benicia, which owns the land, to allow upgrading and alteration of the existing signs. As additional consideration for the lease, the City will also receive, on a space available basis, free digital advertising on for its own messages and programs. Both the City and Clear Channel estimate that there will almost always be space available for City content. The industry standard assumes an 85% occupancy rate. Therefore, assuming there is not 100% occupancy, the City will display, on both digital screens, one advertising spot for a period of two weeks every 13 week quarter. The duration of each digital display is eight seconds. Thus, during the two-week period for which the City spot is running, City content will be displayed, on both screens, once every 64 seconds.

As noted above, the proposal from Clear Channel consists of two lease extensions. The two agreements are near mirror images of one another save for a few exceptions. First, the Northern Structure shall be converted immediately

and upon conversion the City will begin receiving its monthly compensation of \$12,500, equally \$150,000 per year plus its revenue share, which is paid in single annual payment. The Southern Structure shall have until March 31, 2019 to convert to a digital display, during which time the City shall receive monthly income of \$4,166.67, equally \$50,000 per year. Obviously, the City will not display digital City content on the Southern structure until that structure has been converted to a digital board.

The second difference between the two lease agreements is directly related to the first. If Clear Channel Outdoor elects not to convert the Southern Structure to a digital display then the City has the right to terminate that lease agreement or renegotiate the terms. If the City chooses to terminate the lease agreement, then Clear Channel Outdoor shall remove the Southern Structure. Furthermore, upon termination of the Southern Structure agreement Clear Channel will immediately increase the base rent of the Northern Structure to \$200,000 per year and increase the City's advertising content from one spot for two-weeks per quarter to three spots each running for two-weeks per quarter.

For convenience, the following key lease terms have been listed:

 **Lease Term:** 25 years

 **Rent Rate:**

- Annual Base (guaranteed) Rent Rate: \$150,000
- Revenue Share: 15% in Year one. Escalate to 23% in Year 16.
- Annual Base Rent Rate for non-converted Southern Structure: \$50,000

 **Mutually Agreed Prohibited Content:**

- tobacco
- sexually oriented or adults only entertainment
- pawn shops
- payday loans or check cashing establishments
- bail bond sellers
- medical marijuana dispensaries

 **City of Benicia Advertising:**

- One spot two-week spot for each 13 week quarter on a space-available basis

If the proposed lease agreement is approved, it is estimated that the structure will be constructed and operational in the first quarter of 2014. Staff recommends approval of the proposed lease agreements.

ATTACHMENTS:

- Proposed Resolution
- Proposed Lease Agreements

RESOLUTION NO. 13-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF BENICIA AND CLEAR CHANNEL OUTDOOR, A DELEWARE CORPORATION, TO MODIFY EXISTING BILLBOARDS AT 3190 BAYSHORE ROAD AND 3300 PARK ROAD, BY REPLACING AND OPERATING NEW LED DIGITAL BILLBOARD STRUCTURES

WHEREAS, On September 9, 2012, Bruce Qualls on behalf of Clear Channel Outdoor requested use permit approval to modify the existing billboards at 3190 Bayshore Road and 3300 Park Road; and

WHEREAS, the Planning Commission, at a special meeting on November 29, 2012, conducted a public hearing and reviewed the proposed project; and

WHEREAS, the Planning Commission approved the proposed project and adopted Resolution No. 12-9 to modify the existing billboards to an LED display and adopted the Mitigated Negative Declaration; and

WHEREAS, on December 13, 2012, Craig Andres and Ed Ruszel separately filed an appeal of the approval of the modification of the existing billboards to the City Council; and

WHEREAS, the City Council, at their regular meeting on January 15, 2013, reviewed the appeals to modify the existing billboard; and

WHEREAS, at their regular meeting on January 15, 2013 the appeals of Craig Andres and Ed Ruszel were denied; and

WHEREAS, the proposed location of the structure and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the City because the sign alteration is required to be approved by Caltrans and subject to Caltrans permitting enforcement consistent with State and national regulations for placement, luminance, and safety; and

WHEREAS, the proposed use will comply with the provisions of Title 17 as they apply, and consistent with Title 18, the Sign Ordinance; and

WHEREAS, the proposed use is consistent with General Plan Goals 2.5, 2.7, 2.13, 3.3, 3.5, 3.6, and 3.9.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves Lease Agreements between the City of Benicia and Clear

Channel Outdoor, a Delaware Company to replace, install and operate new LED digital billboard at 3190 Bayshore Road and 3300 Park Road, and authorize the City Manager to execute the agreements on behalf of the City, subject to approval by the City Attorney.

* * * * *

On a motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 17th day of September, 2013, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

Date: _____

**LEASE AGREEMENT ~ CLEAR CHANNEL OUTDOOR
NORTHERN STRUCTURE**

This Lease Agreement (this "Lease") is dated _____, 2013 (the "Effective Date"), by and between the City of Benicia, a California municipal corporation (the "City" or "Lessor") and Clear Channel Outdoor, Inc., a Delaware corporation ("CCO" or "Lessee").

Recitals

WHEREAS, the City owns an easement on a portion of the real property along Interstate 680 with an Assessor's Parcel Number of 0080-080-530 with an address of 3190 Bayshore Road, as more particularly described on Exhibit A attached hereto (the "Property" or "the Premises");

WHEREAS, CCO owns and operates an existing advertising structure on the Property, containing back-to-back (panel Nos. 1298 and 1299 – I-680 SS 30' w/o Industrial Way) traditional 14' x 48' displays (the "Sign" or "the Facilities") on the Property.

WHEREAS, CCO and the City desire and agree that CCO shall convert the existing traditional displays ("Traditional Displays") on the Sign to back-to-back 14' x 48' LED (Light Emitting Diode) displays that rotate advertising messages for a duration of not less than four (4) seconds per message ("Digital Displays") , subject to the terms of this Lease.

WHEREAS, CCO and the City have entered, or desire to enter, a separate Lease Agreement providing for the lease by the City to CCO of a real property parcel nearby the Premises, such parcel identified as I-680 SS 50' e/o Bayshore Way (the "Southern Structure Lease").

NOW, THEREFORE, for the better promotion of civic purposes and commerce, and for and in consideration of the faithful performance of the City and CCO of the terms, covenants and conditions hereof and of the payments herein provided to be made by CCO, the City and CCO hereby agree as follows:

Agreements

1. **Use.** This Lease shall be in effect from the Effective Date until the end of the Term (as defined below) or earlier termination hereof. The City hereby leases to Lessee the Premises for the duration of the Term and LESSEE shall use the Premises for the sole purpose of erecting, constructing, installing, maintaining, securing and operating LESSEE's advertising sign thereon, including supporting structures, illumination facilities and connections, back up panels, service ladders, cameras, communications equipment, and other appurtenances and ancillary equipment (collectively, the "Facilities"), provided that Lessee may enter the Premises following the Effective Date until the beginning of the Term for the sole purpose of erecting, constructing, installing, maintaining, and securing the Facilities. Notwithstanding anything to the contrary in this Lease, it is understood and agreed that the Facilities shall at all times, during the term hereof or

thereafter, be and remain the sole and exclusive property of LESSEE no matter what their degree of attachment to the Premises and the Property. The Sign shall be a double-sided electronic message board (also known as a “digital display”) of approximately 14’ x 48’ (display area of each face) in size. The Facilities may be configured as required by LESSEE, provided LESSEE obtains all permits and approvals required by LESSOR and/or any other public agency having jurisdiction thereof. Lessee shall not attach or cause to be attached any radio, wireless or cellular type equipment except that which is directly related to the operation of the Facilities as a message center.

A. LESSOR agrees that LESSEE’s ability to use the Premises is dependent upon LESSEE’s obtaining all necessary certificates, permits and/or other approvals which may be required from any federal, state or local authority. LESSOR agrees to cooperate with LESSEE as to LESSEE’s obtaining such certificates, permits or other approvals.

B. LESSEE shall not do nor permit anything to be done in or about the Premises nor bring or keep anything therein which will cause cancellation of any insurance policy covering the Premises. For standard risks associated with the operation of LESSEE’s business on the Premises, LESSEE agrees to pay any material increase in the rate of fire, commercial general liability or other insurance policy covering the Premises which arises as a result of LESSEE’s leasing or use of the Premises, or provide for such insurance itself. LESSEE agrees to defend, hold harmless and indemnify LESSOR for any and all claims arising from LESSEE’S use of the property.

C. LESSEE shall operate the Facilities in conformance with the approvals described in Paragraph 1A above at all times during the Term of this Lease; provided, however, that if, due to no failure on LESSEE’s part, LESSEE has been unable to obtain the Governmental Approvals (as defined below), commencement of operations may be delayed for a reasonable period. LESSEE shall, at its own expense, maintain the Facilities and Premises in a commercially reasonable manner during the Term hereof. LESSEE shall be responsible, at its sole cost and expense, for maintaining the Facilities to LESSOR’s reasonable satisfaction and in compliance with all applicable law. For the purposes of this Paragraph, “maintenance” shall include, but not be limited to, keeping all electronic parts of the Facilities in good working order, and replacing light emitters/bulbs, electronic face panels or any worn or damaged lettering or art on the Facilities.

D. PROHIBITED CATEGORIES OF ADVERTISING. Lessee shall not accept or display on the subject sign display faces commercial advertising that falls into any of these categories: tobacco, pawn shops, payday loans or check cashing establishments, bail bonds, sexually oriented or adults only entertainment, or medical marijuana dispensaries.

2. Term.

A. The term of this Lease shall be for ten (10) years (each such year and each year during any extension of this Lease, a “Lease Year”), commencing on the later of: (a) the date on which the Sign has been converted to LED and the Digital Displays are fully operational; and (b) the ninetieth (90th) day following the date on which CCO receives all local and state approvals and permits necessary to convert the faces on the Sign to Digital Displays and all appeal periods with respect to same have expired (the “Commencement Date”), and ending on the tenth anniversary of the Commencement Date (the “Term”), subject to three (3) conditional options to

renew for additional periods of five (5) years each pursuant to Paragraph 2.B. below. This Lease shall terminate without further notice upon the expiration of the Term, or any agreed upon extension thereof, and any holding over by LESSEE after the expiration of the Term shall not constitute a renewal hereof nor give LESSEE any rights hereunder in or to the Premises.

B. Provided LESSEE is not then in default in the performance of any term, condition, covenant or provision of this Lease, subject to any applicable cure period, upon the expiration of the Term, as then in effect, this Lease shall automatically renew for three (3) additional periods of five (5) years each (each, an "Extension"), unless Lessee provides written notice to Lessor, at least ninety (90) days prior to such expiration, that Lessee elects not to exercise the applicable Extension.

C. Upon the expiration or earlier termination of the Term of this Lease, both parties shall be relieved of any further obligations hereunder (except for those duties or obligations accruing prior to such expiration or earlier termination, and except for those duties or obligations which expressly survive the expiration or earlier termination of this Lease), although each party shall continue to have available all remedies for any breach of this Lease occurring prior to the date of expiration or earlier termination.

D. Prior to the Commencement Date, in the event LESSEE reasonably determines that it will be unable to secure or maintain any required permit or license from any appropriate governmental authority or that any federal, state or local statute, ordinance, regulation or other governmental action precludes or materially limits use of the Premises for outdoor advertising purposes, LESSEE may terminate this Lease on thirty (30) days' written notice.

E. As of the Effective Date, that certain Lease Agreement, dated June 19, 1986, between the parties and relating to the Sign shall be automatically terminated and replaced by this Lease.

3. **Permits.** CCO agrees to use commercially reasonable efforts, at its sole cost and expense, to obtain the necessary governmental approvals, consents and permits (the "Governmental Approvals"), including from the City and CalTrans. The City shall reasonably cooperate with CCO to obtain the Governmental Approvals. All current and future Governmental Approvals related to the Sign are and shall be owned by CCO. If CCO does not receive the Governmental Approvals within one (1) year following the Effective Date, either party may terminate this Lease by providing written notice to the other party within 15 days following such deadline.

4. **Conversion to Digital Displays.**

4.1 The applications for the Governmental Approvals necessary to convert the displays on the Sign to Digital Displays shall reasonably conform with the plans and specifications for the physical upgrade and conversion of the Sign, including the design, height and location on the Property, set forth on Exhibit B. Upon the receipt of the Governmental Approvals necessary to convert the displays on the Sign to Digital Displays, and the expiration of all related appeal periods, CCO shall use commercially reasonable diligence to commence the conversion of the Sign to back-to-back Digital Faces having an orientation showing to Interstate 680.

4.2 CCO shall have the right at any time during the Term to convert Digital Displays back to Traditional Displays and to modify the Sign in any way deemed necessary by CCO in connection therewith, by providing to the City prior notice thereof. Upon the City's receipt of such notice, the parties shall negotiate in good faith a change in rental and other applicable provisions herein in connection with such conversion. If the parties are unable to reach agreement on such new terms and conditions within thirty (30) days of the City's receipt of such notice, CCO shall have the right to terminate this Lease by written notice to the City and, upon such termination, if any, the City shall refund to CCO any rental payment paid in advance.

5. **Compliance with Law.** LESSEE shall not use the Premises nor permit anything to be done in or about the Premises which will in any way conflict with any federal, state or local law, statute, ordinance or other governmental rule or regulation now in force or which may hereinafter be enacted or promulgated. LESSEE shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and other governmental rules, regulations or requirements now in force or which may hereinafter be enacted or promulgated, relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by LESSEE's improvements or acts.

6. **Alterations and Additions.** Other than as expressly required or permitted herein, LESSEE shall not make or suffer to be made any alterations, additions or improvements in or to or about the Premises or any part thereof without the written consent of LESSOR first had and obtained. Excepting only the installation of the Facilities and related equipment (which shall remain the property of LESSEE in accordance with Section 1) and any subsequent conversion from Traditional Operation to Digital Operation or vice versa permitted hereunder, any alterations, additions or improvements to the Premises desired by LESSEE, other than those expressly required or permitted herein, shall require LESSOR's prior written consent, and shall be made by LESSEE at LESSEE's sole cost and expense and in a good and workmanlike manner, free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. If LESSEE makes any alterations to the Premises as provided herein, the alterations shall not be commenced until fifteen (15) days after LESSOR has received notice from LESSEE stating the date that construction of the alterations is to commence, so that LESSOR can post an appropriate notice of non-responsibility. Upon completion of the alterations to LESSOR's satisfaction, a notice of completion shall be recorded.

7. **Claims Against Premises.** LESSEE shall not suffer or permit to be enforced against the Premises, or any portion thereof, any mechanic's, materialman's, contractor's or subcontractor's liens arising from, or any claim for any work of construction, repair, restoration, replacement or improvement of or to the Premises or any other similar claim or demand arising from the act or omission of LESSEE or anyone acting by, through, or under LESSEE. LESSEE shall pay or cause to be paid any and all such claims or demands before any action is brought to enforce the same against the Premises. LESSEE agrees to indemnify, defend, protect and hold LESSOR and LESSOR parties and the Premises free and harmless of all liability for any and all such claims and demands, together with LESSOR's reasonable attorneys' fees and all reasonable costs and expenses in connection therewith.

8. **Rent.**

A. Minimum Base Rent

LESSEE agrees to pay to LESSOR as base rent, without notice or demand, Twelve Thousand Five Hundred and no/100ths Dollars (\$12,500.00) (“Minimum Base Rent”), on or before the first day of each and every calendar month during the Term, provided however that in the event that LESSOR terminates the separate lease between the parties (LEASE AGREEMENT – CLEAR CHANNEL OUTDOORS SOUTHERN STRUCTURE, dated _____) pursuant to and in compliance with Section 4.2 of said separate lease, the Minimum Base Rent hereunder shall increase to Sixteen Thousand Six Hundred and Sixty Dollars and Sixty-Seven Cents (\$16,666.67) per month. In the event the separate lease is not terminated pursuant to and in compliance with Section 4.2 of said lease, the Minimum Base Rent hereunder shall remain Twelve Thousand Five Hundred and no/100ths Dollars (\$12,500.00).

LESSEE’s obligation to pay Minimum Base Rent shall commence on the Commencement Date. Minimum Base Rent shall be paid to LESSOR without deduction or offset, in lawful money of the United States of America and at such place as LESSOR may from time to time designate in writing. Minimum Base Rent for any period that is less than one (1) month shall be a prorated portion of the monthly installment herein based on a thirty (30) day month.

B. Percentage Rent

1) **Annual Percentage Rent.** In addition to Minimum Base Rent, LESSEE agrees to pay to LESSOR additional amounts (“Percentage Rent”) as follows:

- (i) With respect to each of the first three (3) Lease Years of the Term, if the amount that is fifteen percent (15%) of Net Revenues (as defined below) exceeds the Minimum Base Rent paid to Lessor for the respective Lease Year, Lessee shall pay to Lessor the difference between the two amounts;
- (ii) With respect to each year beginning in the fourth (4th) Lease Years of the Term until and including the fifteenth (15th) Lease Year of the Term (subject to the extension of the Term as provided herein), if the amount that is twenty percent (20%) of Net Revenues exceeds the Minimum Base Rent paid to Lessor for the respective Lease Year, Lessee shall pay to Lessor the difference between the two amounts; and
- (iii) With respect to each year beginning in the sixteenth (16th) Lease Year of the Term until and including the twentieth (20th) Lease Year of the Term (subject to the extension of the Term as provided herein), if the amount that is twenty-three percent (23%) of Net Revenues exceeds the Minimum Base Rent paid to Lessor for the respective Lease Year, Lessee shall pay to Lessor the difference between the two amounts.

2) **Net Revenues Defined.** For the purposes of this Lease, “Net Revenues” shall mean all revenue received by LESSEE for use of the Sign less: (i) commissions actually paid to advertising agencies or media buyers that are not affiliated with Lessee or any other company, corporation or

firm with crossover ownership with Lessee, provided that no commissions shall exceed 16.67%, less taxes, if any, imposed by the City thereon; and (ii) any tax imposed by the City on Lessee's revenues or gross receipts, not including any applicable possessory interest taxes, whether now in effect or later adopted.

3) **Payment of Percentage Rent.** Percentage Rent shall be paid once annually, but no later than the last day of February for the prior calendar year. LESSEE shall, with the submission of its Percentage Rent payment, provide the LESSOR with a copy of reasonable records documenting its revenue and payments to advertising agencies or media buyers. LESSEE shall keep records related to its business operations including, but not limited to, its calculations of its Net Revenue in a commercially reasonable form and detail, and in accordance with standard practices used in the outdoor advertising industry. All documents, books and accounting records kept by LESSEE relating to revenue generated by the Facilities under this Lease shall be open to inspection by LESSOR or its authorized representative at LESSEE's market office during reasonable business hours during the Lease Term and for one (1) year thereafter. Such documents shall remain with Lessee and their contents shall be deemed confidential and shall not be disclosed by LESSOR other than to its staff auditor or legal counsel, except as needed to enforce the terms of this Lease, discovery requests or demands in pending litigation or as required by court order or the California Public Records Act.

C. **Additional Digital Rent.** During all periods when CCO is operating Digital Displays on the Sign, CCO agrees to provide to the City, at no cost to the City and as additional rent hereunder (the "Additional Rent"), pre-emptible advertising spots (each, a "City Spot") in accordance with the following:

(i) Except as provided in Section 8(C)(ii), upon the request of the City, CCO agrees to provide one City Spot in a standard rotation of eight on each of the two (2) Digital Faces during each quarter of each Lease Year, with each spot remaining in such rotation for two (2) weeks in duration (the "Standard Spots");

(ii) If LESSOR terminates the Southern Structure Lease in accordance with Section 4.2 thereof, CCO agrees to provide to the City, beginning in the quarter immediately following the effective date of such termination and for the remainder of the Term, in lieu of the Standard Spots, three City Spots in a standard rotation of sixteen (16) across the two (2) Digital Faces combined during each quarter of each Lease Year, with each such City Spot remaining in such rotation for six (6) weeks in duration (the "Alternative Spots");

(iii) The City shall provide the requested time periods for the City Spots for each Lease Year at least one (1) month prior to the beginning of such Lease Year, provided that the City shall not request any overlapping periods, except that the City shall provide requested time periods for any Alternative Spots during the remaining Lease Year in which the termination of the Southern Structure Lease occurs immediately following such termination;

(iv) The City Spots may be used by the City to promote any, non-commercial, City-related purpose, including City community events, public awareness campaigns and non-profit programs within the City. The City, at its own expense, shall supply proposed advertising to

CCO in “camera ready” form that meets CCO’s format and graphic-arts standards. The posting of advertising copy for the City is subject to the following conditions and parameters: all copy must be submitted to CCO at least five (5) days before the proposed display date and will be subject to CCO’s standard advertising copy rejection and removal policies, which allow CCO, in its sole discretion, to approve or disapprove copy and to remove copy once posted or displayed; and

(v) All City Spots shall be pre-emptible if the respective spots are sold or offered by CCO to another client or for emergency messaging from federal, state, or local agencies. Nothing contained herein shall be deemed to prevent or prohibit CCO from using spots for promoting CCO’S business, using such spots for promoting charitable enterprises, or actively seeking advertisers for unsold or unused spots. If the City fails to use any such City Spots during the corresponding quarter for which such spots were provided, such unused City Spots shall not roll over and shall be forfeited.

9. **Maintenance.** CCO is the owner of the Sign and shall remove the entirety of the above ground portions of the Sign Structure during or within one hundred twenty (120) days following the termination of this Lease. CCO shall at its sole cost, keep and maintain the Sign, all advertising thereon and appurtenances and every part thereof. The City shall not be required to repair or maintain any portion of the Sign. If for any reason (other than voluntary removal by CCO) the Sign is removed, materially damaged or destroyed, all rent payments shall cease until the Sign is rebuilt.

10 **Insurance.**

A. Commercial General Liability Insurance. Throughout the Term, at LESSEE’s sole cost and expense, LESSEE shall keep or cause to be kept in full force and effect, commercial general liability insurance against claims and liability for personal injury, death, or property damage or advertising injury arising from its operations or acts or omissions with respect to its use or occupancy of the Premises, improvements thereon, or adjoining areas or ways, providing protection of at least Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury or death, and at least Five Hundred Thousand Dollars (\$500,000.00) for property damage.

B. Policy Form, Contents and Insurer. All insurance required by express provision of this Lease shall be carried only by financially responsible insurance companies licensed to do business in the State of California with a current A.M. Best rating of no less than A:VII. All such policies shall contain language to the effect that: (1) the policies are primary and noncontributing with any insurance that may be carried by LESSOR, with respect to the liabilities assumed by LESSEE under this Agreement; (2) the policies cannot be canceled, terminated or materially altered except after such prior notice to LESSOR by the insurer as it customarily provides; (3) LESSOR and each of LESSOR’s elected officials, officers and employees are additional insureds thereunder with respect to the liabilities assumed by Lessee herein; (4) any failure by LESSEE to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect the required coverage; and (5) the required insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability. LESSEE shall

furnish LESSOR with certificates evidencing the insurance. LESSEE may effect for its own account any insurance not required under this Lease.

C. Failure to Maintain Insurance; Proof of Compliance. LESSEE shall deliver to LESSOR, in the manner required for notices to all insurance policies required by this Lease, within the following time limits: (1) For insurance required at the commencement of this Lease, within ten (10) days after execution of this Lease and prior to LESSEE's occupancy of, or performance of any construction on, the Premises; (2) For insurance becoming required at a later date, at least ten (10) days before that requirement takes effect, or as soon thereafter as the requirement, if new, takes effect; (3) For any renewal or replacement of a policy already in existence, before expiration or other termination of the existing policy.

If LESSEE fails or refuses to procure or maintain insurance as required by this Lease, or fails or refuses to furnish LESSOR with required proof that the insurance has been procured and is in full force and effect and paid for, then LESSOR shall have the right, at LESSOR's election and upon five (5) days' notice, to procure and maintain such insurance. The premiums paid by LESSOR shall be treated as added rent due from LESSEE with interest at the rate of nine percent (9%) per year or the maximum allowable legal rate in effect in the State of California on the date when the premium is paid, whichever is lesser, to be paid on the first day of the month following the date on which the premium was paid. LESSOR shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the effective date of coverage until reimbursed by LESSEE.

11. **Hazardous Materials.** No goods, merchandise or material shall be kept, stored or sold in said Premises which are unreasonably hazardous; and nothing shall be done on said Premises which will suspend the insurance upon the Sign owned by CCO; provided, however, that nothing in this Section 11 shall preclude CCO from bringing, keeping or using on or about said Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out its outdoor advertising so long as such materials and their use comply with applicable environmental laws.

12. **Obstruction.** City and City's agents, employees or other persons acting on City's behalf, shall not place or maintain any object on the Premises or Property owned or controlled by City which, in CCO's sole opinion, would obstruct the view to the faces on the Sign. If City fails to remove the obstruction within five (5) days after notice from CCO, CCO may in its sole discretion: (a) remove the obstruction at City's expense; (b) cancel this Lease, remove the Sign, and receive any portion of any prepaid rent, if any, amortized over the remaining unexpired term of this Lease; or (c) reduce all rents hereunder, including the collective amount of Minimum Base Rent, Percentage Rent, Additional Digital Rent and any rent charged for Traditional Displays, as applicable, to One Hundred Dollars (\$100.00) per year while the obstruction continues. CCO may trim any trees and vegetation currently on the Premises and on any neighboring Property owned or controlled by the City as often as CCO in its sole discretion deems appropriate to prevent obstructions. Additionally, the City shall not permit the Premises or any neighboring Property owned or controlled by City to be used for off-premise advertising.

13. **Interference.** If, in CCO's sole opinion: (a) the view of the Sign's advertising messages becomes entirely or partially obstructed, (b) electrical service is unavailable; (c) the Premises cannot safely be used for the erection or maintenance of the Sign for any reason; (d) the Premises become unsightly; (e) there is a diversion, reduction or change in directional flow of traffic from the street or streets currently adjacent to or leading to or past the Premises; (f) the Sign's value for advertising purposes is diminished; (g) CCO is unable to obtain or maintain any necessary permit for the erection, use and/or maintenance of the Sign; or (h) the Sign's use is prevented or restricted by law, or CCO is required by any governmental entity, regulation or ordinance to reduce the number of billboards operated by it in the city, county or state in which the Sign is located (whether or not CCO is specifically required to remove the Sign); then CCO may immediately at its option either: (i) reduce rent in direct proportion to the loss suffered; or (ii) cancel this Lease.

14. **Utilities.** LESSEE shall pay the cost of any and all water, electrical, gas or other utility services delivered to the Premises pertaining to LESSEE'S use hereunder during the Term and shall have such utilities installed underground and/or connected if already installed, and maintained at LESSEE's sole cost and expense and subject to LESSOR's reasonable approval. LESSEE shall submit plans for underground construction of required utility lines to LESSOR for review prior to commencement of construction thereof. LESSOR shall approve or disapprove of same in writing within fourteen (14) days of its receipt of such plans. Detailed reasons for any disapproval shall be included in the written disapproval.

15 **Taxes.** LESSEE shall pay without abatement, deduction, or offset possessory interest taxes levied on or assessed against the Premises, the improvements located on the Premises, equipment, fixtures and personal property located on or in the land or improvements, the leasehold estate, or any subleasehold estate which are attributable to this LEASE or LESSEE's use of the Premises, to the full extent of installments falling due during the Term, whether belonging to or chargeable against LESSOR or LESSEE. LESSEE shall make all such payments directly to the charging authority at least thirty (30) days before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their non-payment. If, however, the law expressly permits the payment of any or all of the above items in installments, LESSEE may, at LESSEE's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency. LESSEE agrees that, without prior demand or notice by LESSOR, LESSEE shall, not less than fifteen (15) days prior to the day upon which any such possessory interest or other such tax is due, provide LESSOR with proof of payment of such tax.

16. **Entry by LESSOR.** LESSEE hereby agrees that representatives of the LESSOR, as designated by LESSOR's City Manager, shall, during normal business hours (except in the event of an emergency), have the right to enter the Premises and inspect the same to determine if the same complies with each and every term and condition of this Lease and with all applicable City, County, State and Federal laws, rules, ordinances and regulations relating to outdoor signage and the conduct of LESSEE's business. LESSOR hereby agrees that it shall not unreasonably disturb or interfere with LESSEE's operation on the Premises.

17. **Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by LESSEE:

A. Abandonment of the Premises by LESSEE where the same shall continue without cure by LESSEE for a period of thirty (30) days after written notice thereof by LESSOR to LESSEE; the parties agree that failure to post electronic copy on the Sign, by itself, shall not constitute abandonment;

B. The failure by LESSEE to make any payment of rent or any other payment required to be made by LESSEE hereunder (including but not limited to Percentage Rent, taxes, assessments, insurance premiums, liens, claims or other charges), as and when due, where such failure shall continue for a period of ten (10) days without cure by LESSEE after written notice thereof by LESSOR to LESSEE;

C. A failure by LESSEE to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by LESSEE, other than as described in subparagraph 17.A or 17.B., above, where such failure shall continue without cure by LESSEE for a period of thirty (30) days after written notice thereof by LESSOR to LESSEE; provided, however, that if the nature of the default involves such that more than thirty (30) days are reasonably required for its cure, then LESSEE shall not be deemed to be in default if LESSEE commences such cure within such thirty (30) day period and thereafter diligently prosecutes said cure to completion;

D. The occurrence of any of the following events: (1) the making by LESSEE of any general assignment or general arrangement for the benefit of creditors; (2) the filing by or against LESSEE of a petition to have LESSEE adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against LESSEE, the same is dismissed within sixty (60) days); (3) the appointment of a trustee or a receiver to take possession of substantially all of LESSEE's assets located in or about the Premises or of LESSEE's interest in this Lease, where possession is not restored to LESSEE within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of LESSEE's assets located in or about the Premises or of LESSEE's interest in this Lease, where such seizure is not discharged in thirty (30) days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect and shall not affect the validity of the remaining provisions of this Lease;

E. The assignment or sublease of all or any portion of the Premises or of LESSEE'S interest in this Lease without the prior written consent of LESSOR, except as permitted by Section 21 below;

F. The failure to use, maintain, and operate the Premises as herein required, or the committing of waste on the Premises, or the maintaining, committing, or permitting the maintenance or commission of a nuisance on the Premises; or

G. The use of the Premises for any purpose not permitted by this Lease, or the use of the Premises for any unlawful purpose, whether or not such purpose is in addition to or in lieu of the use(s) herein permitted.

18. **Remedies Upon Lessee's Default.** In the event of any default or breach by LESSEE, subject to any applicable cure period, as defined in Paragraph 17 above, LESSOR may at

any time thereafter and without notice or demand and, without limiting LESSOR in the exercise of a right or remedy LESSOR may have by reason of such default or breach:

A. Terminate LESSEE's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and LESSEE shall immediately surrender possession of the Premises to LESSOR. In such event, LESSOR shall be entitled to recover from LESSEE:

- 1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;
- 2) The worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that LESSEE proves could have reasonably been avoided;
- 3) The worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that LESSEE proves could be reasonably avoided; and
- 4) Unpaid installments of rent or other sums shall bear interest from due date thereof at the rate of eighteen percent (18%) per annum or at the maximum legal rate then in effect in California, whichever is less.

B. Pursue any other remedy now or hereafter available to LESSOR under the laws or judicial decisions of the State of California. Furthermore, LESSEE agrees that no election by LESSOR as to any rights or remedies available hereunder or under or pursuant to any law or judicial decision of the State of California shall be binding upon LESSOR until the time of trial of any such action or proceeding.

C. Notwithstanding anything to the contrary herein, LESSOR shall have a duty to reasonably mitigate damages.

19. **Eminent Domain** If more than fifty percent (50 %) of the Premises or such portion that LESSEE cannot make use the Premises for the purpose specified herein in paragraph 4.A shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, including the LESSOR, either party hereto shall have the right, at its option, to terminate this Lease. In any such proceeding LESSEE may at LESSEE's option negotiate separately with the condemning authority, and shall be entitled to all proceeds attributable LESSEE'S interest taken. This Agreement does not constitute a waiver or limitation on the LESSOR'S power of eminent domain; such power is reserved by the LESSOR and may be exercised at any time and in any manner that is consistent with California law.

20. **Estoppel Certificate**. LESSOR or LESSEE shall, at any time and from time to time upon not less than ten (10) days' prior written notice from the other party, execute, acknowledge and deliver to the other party a statement in writing (a) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect, and the date to which the rental and other charges are paid in advance, if any, and (b) acknowledging that there are not, to the knowledge of the party delivering the estoppel, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective

purchaser or encumbrancer of all or any portion of the Premises, or of any larger parcel of real property of which the Premises are a part.

21. **Assignment and Subletting.** Except as otherwise set forth herein, LESSEE shall not assign or transfer this Lease or any right hereunder to any other party or parties nor shall LESSEE assign or sublet all or any portion of the Premises without first obtaining the written consent of LESSOR. LESSOR shall not unreasonably withhold, condition or delay such consent, provided that the proposed assignee has the financial capacity, relevant industry experience, and sufficient staffing reasonably necessary to perform LESSEE's obligations hereunder, and provided further that the assignee does not plan any material aesthetic modifications to the Facilities. Notwithstanding the foregoing, with prior written notice to LESSOR, LESSEE may assign or sublet to any entity controlled, controlling, or under common control with Lessee or the purchaser of a majority of LESSEE's assets in the local market without approval of LESSOR. Any assignment or subletting of the Premises without such prior written consent, except as provided for herein, shall be null and void. LESSEE may additionally grant or transfer rights to sign panels on any terms otherwise consistent with, and do not exceed the term and conditions of this Lease. In the event of a prohibited assignment or subletting, LESSOR may, at its option, declare a forfeiture of the same in any manner provided by law. Consent to any such assignment or subletting shall not be unreasonably withheld by LESSOR, and LESSOR agrees to exercise reasonable discretion in considering the same for approval. LESSEE covenants that LESSEE and such approved assignee or sublessee shall execute a written agreement, in form and content reasonably acceptable to LESSOR, provided that such agreement does not materially change the parties' obligations hereunder.

22. **Attorneys' Fees.** In the event any action or proceeding is brought between the parties hereto seeking interpretation or enforcement of any of the terms and provisions of this Lease, the prevailing party in such action shall be entitled to have and to recover its actual attorneys' fees and other expenses in connection with such action or proceeding, in addition to its recoverable court costs, from the losing party.

23. **Fixtures.** All Facilities, trade fixtures and/or temporary facilities installed or placed on the Premises by LESSEE shall be the property of LESSEE and may be removed by LESSEE at any time during the Term and after the expiration or termination thereof in accordance with Section 9, so long as the same may be removed without permanent damage to the Premises. LESSEE shall repair all damage which may result therefrom, at LESSEE's sole cost and expense, to the reasonable satisfaction of LESSOR. Upon the termination of this Agreement, LESSEE shall have the right, but not the obligation, to remove all fixtures.

24. **Indemnification.** LESSEE agrees to defend, protect, indemnify and hold LESSOR and LESSOR and its officials, employees and contractors free and harmless from any and all claims for damage to persons or property by reason of LESSEE's breach of this Lease, LESSEE's negligence or LESSEE's acts or omissions in connection with the Facilities and/or the Premises or those of LESSEE's employees, or agents, excepting only liability arising out of negligence or willful misconduct of LESSOR, its officials, employees or contractors. Further, in the event of litigation brought by non-parties to this Lease, which asserts illegality or invalidity of the entire

Lease, or any portion(s) or aspect(s) thereof, LESSEE shall defend the LESSOR at LESSEE'S expense, unless LESSOR informs LESSEE that the LESSOR wishes to arrange for its own defense.

25. **Waiver.** The waiver by either party of any term, provision, covenant or condition herein contained shall not be deemed to be a waiver of such term, provision, covenant or condition on any subsequent breach of the same or any other term, provision, covenant or condition herein contained. The subsequent payment or acceptance of rent hereunder shall not be deemed to be a waiver of any preceding breach by the party so acting, of any term, provision, covenant or condition of this Lease, other than the payment or failure to pay the particular rental so paid or accepted, regardless of the aggrieved party's knowledge of such preceding breach at the time of payment or acceptance of such rent.

26. **Nuisance.** This Agreement does not constitute a waiver or limitation on the City's power to declare and abate a nuisance in any manner provided by California law.

27. **Time.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

28. **Late Charges.** LESSEE hereby acknowledges that late payment by LESSEE to LESSOR of rent or other sums due hereunder will cause LESSOR to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or of a sum due from LESSEE shall not be received by LESSOR or LESSOR's designee within ten (10) days after written notice that said amount is past due, then LESSEE shall pay to LESSOR a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represented a fair and reasonable estimate of the cost that LESSOR will incur by reason of the late payment by LESSEE. Acceptance of such late charge by LESSOR shall in no event constitute a waiver of LESSEE's default with respect to such overdue amount, nor prevent LESSOR from exercising any of the other rights and remedies granted hereunder or available at law or in equity.

29. **Force Majeure.** This Lease and the obligations of the parties hereunder shall not be affected or impaired because one such party, or both of them, is unable to fulfill any of its or their obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, war, civil insurrection, acts of God, governmental action, or any other cause beyond the reasonable control of the parties hereto, or either of them. Any prevention, delay or stoppage due to any Force Majeure delay shall excuse the performance of the party affected only for a period of time equal to any such prevention, delay or stoppage (except the obligations of either party to pay money to the other party), which period shall commence to run from the time of the commencement of the cause provided that written notice of such cause is given to the other party within ten (10) days after the commencement of the cause. In times of energy shortage, natural disasters or civil emergencies, the LESSOR may order LESSEE to reduce the operational times of the sign(s), or reduce the power consumption, or display emergency message for the benefit of the public. LESSEE shall comply with all such orders.

30. **Successors.** Subject to the provisions of this Lease with respect to assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the respective parties.

31. **Notices.** All notices required or permitted to be given under this Lease shall be sufficiently given if personally delivered, or mailed by registered or certified United States mail, postage prepaid, addressed to the party as specified on below:

CCO:

Clear Channel Outdoor, Inc.
Attention: President and General Manager, Northern California Division
555 12th Street, Ste. 950
Oakland, CA 94607
Telephone: (510) 835-5900
Facsimile: (510) 834-9410

CITY :
City of Benicia
Attn: City Manager
250 East L Street
Benicia CA 94510

If mailed, the written notice shall be deemed received and shall be effective on the earlier of the date of actual receipt by the addressee or three (3) business days after deposit in the United States mail in the State of California. If either party gives notice in writing to the other party of any change in said address, then and in that event such notice shall be given at the changed address specified in such notice.

32. **Authority.**

City represents that it is the owner of an easement over the Premises, and has the right to enter into this Lease. City further warrants that the activities and Signs contemplated herein are within the easement rights reserved to the City and no further approvals or grants from the owner of the property underlying the Property are necessary for the City to enter into this Lease and accomplish the terms of this Lease. The City acknowledges that this representation is material to CCO's determination to enter into this Lease and shall indemnify and hold CCO harmless from any action brought by the owner of the property underlying the Property related to the purpose and scope for said easement. The parties signing below warrant that they have the specific authority from their respective principals to execute this Lease on their behalf and agree to provide such resolutions or other documents reasonably necessary to satisfy the other party of such authority. This Lease is binding upon the heirs, assigns and successors of both City and CCO. CCO shall have the absolute right to assign or sublet. Neither City nor CCO shall be bound by any terms, conditions or oral representations that are not set forth in this Lease, the

Relocation Agreement of which it is a part, and the respective exhibits. This Lease represents the entire agreement of CCO and City with respect to the terms stated herein.

33. **Execution by Lessor Not a Waiver.** LESSEE understands and agrees that LESSOR, by entering into and executing this Lease, shall not have waived any right, duty, privilege, obligation or authority vested in the City of Benicia to approve, disapprove or conditionally approve any application which LESSEE may be required to make under any laws, rules, ordinances or regulations now or hereafter in effect which said LESSOR may be empowered to apply, including but not limited to any use permit or approval, whether similar in nature or not.

34. **Entire Agreement.** This Lease contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all negotiations, representations, or oral or written agreements made prior to the execution of this Lease. No promise, representation, warranty, or covenant not included in this Lease has been or is relied upon by either party. Each party has relied on its own examination of this Lease, the counsel of its own advisors, and the warranties, representations, and covenants in this Lease itself. The failure or refusal of either party to inspect the Premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

35. **Interpretation.** This Lease is to be interpreted and construed according to the laws of the State of California.

36. **Captions.** The captions in the headings of the paragraphs of this Lease are for convenience only and are not part of the substantive terms of this Lease.

37. **Amendments.** This Lease may be modified only by a written instrument signed by the parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the rent or other charges payable under this Lease.

38. **Severability.** Each and every provision of this Lease is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Lease or the application thereof shall to any extent be held to be invalid or unenforceable as determined by a court of competent jurisdiction, the remainder of this Lease, or the application of such term or provision to circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected hereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

39. **Memorandum of Lease.** LESSOR and LESSEE shall execute, acknowledge and record a Memorandum of Lease in the form attached as Exhibit C with respect to LESSEE's lease of the Premises in the official records of the county in which the Premises is located.

40. **Counterparts.** This Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Lease, facsimile signatures shall be deemed to

be original signatures, and shall be followed by the immediate overnight delivery of original signature pages.

IN WITNESS WHEREOF, the parties, duly authorized, have executed this Agreement the day and year first above written.

“CITY ”

City of Benicia, a
California Municipal Corporation

Dated: _____, 2013

By _____
City Manager

Approved As To Form

By _____
City Attorney

“CCO”

Clear Channel Outdoor, Inc., a
Delaware Corporation

Dated: _____, 2013

By _____
President and General Manager
Clear Channel Outdoor, Inc.
Northern California Division

EXHIBIT "A"
THE PREMISES

EXHIBIT B

PLANS AND SPECIFICATIONS FOR CONVERSION TO DIGITAL FACES

EXHIBIT “C”

FORM OF MEMORANDUM OF LEASE

[Attached]

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO AND MAIL
TAX STATEMENTS TO:

City of Benicia
250 East L Street
Benicia, CA 94510
Attn: City Clerk

(SPACE ABOVE FOR RECORDER'S USE ONLY)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made as of _____, 2012, by and between the CITY OF BENICIA, a California municipal corporation ("**Lessor**"), and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation ("**Lessee**"), with respect to the following recitals:

RECITALS

A. Lessee and Lessor have entered into that certain Lease of even date herewith (the "**Lease**"), pursuant to which Lessor has agreed to lease and demise to Lessee, and Lessee has agreed to lease and accept from Lessor, a portion of that certain real property located in the City of Benicia, County of Solano, State of California, commonly known as City Easement and more particularly described on Exhibit A attached hereto (the "**Premises**"), as provided in the Lease.

B. Pursuant to Section 37 of the Lease, Lessee and Lessor now desire to enter into this Memorandum to provide record notice of the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessee and Lessor agree as follows:

1. Lease. Lessor hereby leases and demises to Lessee, and Lessee hereby leases and accepts from Lessor, the property defined as the "Premises" in the Lease for an initial term of ten (10) years at the rental and upon the other terms and conditions set forth in the Lease, which terms and conditions are incorporated herein by this reference.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

) ss.

COUNTY OF _____)

On _____, before me,
_____, a notary public, personally appeared
_____ 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.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

) ss.

COUNTY OF _____)

On _____, before me,
_____, a notary public, personally appeared
_____ 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.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me,
_____, a notary public, personally appeared
_____ 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.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me,
_____, a notary public, personally appeared
_____ 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.

Signature _____

(seal)

EXHIBIT A
LEGAL DESCRIPTION OF PREMISES

**LEASE AGREEMENT ~ CLEAR CHANNEL OUTDOOR
SOUTHERN STRUCTURE**

This Lease Agreement (this "Lease") is dated _____, 2013 (the "Effective Date"), by and between the City of Benicia, a California municipal corporation (the "City" or "Lessor") and Clear Channel Outdoor, Inc., a Delaware corporation ("CCO" or "Lessee").

Recitals

WHEREAS, the City owns an easement on a portion of the real property along Interstate 680 with an Assessor's Parcel Number of 0080-080-530 with an address of 3190 Bayshore Road, as more particularly described on Exhibit A attached hereto (the "Property" or "the Premises");

WHEREAS, CCO owns and operates an existing advertising structure on the Property, containing back-to-back (panel Nos. 1292 and 1294 – I-680 SS 50' e/o Bayshore Way) traditional 14' x 48' displays (the "Sign" or "the Facilities") on the Property.

WHEREAS, CCO and the City desire and agree that CCO may convert the existing traditional displays ("Traditional Displays") on the Sign to back-to-back approximately 14' x 48' LED (Light Emitting Diode) displays that rotate advertising messages for a duration of not less than four (4) seconds per message ("Digital Displays"), subject to the terms of this Lease.

NOW, THEREFORE, for the better promotion of civic purposes and commerce, and for and in consideration of the faithful performance of the City and CCO of the terms, covenants and conditions hereof and of the payments herein provided to be made by CCO, the City and CCO hereby agree as follows:

Agreements

1. **Use.** The City hereby leases to Lessee the Premises from the Effective Date until the end of the Term (as defined below) and LESSEE shall use the Premises for the sole purpose of erecting, constructing, installing, maintaining, securing and operating LESSEE's advertising Sign thereon, including supporting structures, illumination facilities and connections, back up panels, service ladders, cameras, communications equipment, and other appurtenances and ancillary equipment as deemed necessary in Tenant's sole discretion (collectively, the "Facilities"). Notwithstanding anything to the contrary in this Lease, it is understood and agreed that the Facilities shall at all times, during the term hereof or thereafter, be and remain the sole and exclusive property of LESSEE no matter what their degree of attachment to the Premises and the Property. From the Effective Date until the earlier of the Conversion Date (as defined below), if any, or any termination or expiration of this Lease, the Sign shall be a double-sided, traditional message board ("Traditional Operation") of approximately 14' x 48' (display area of each face) in size. The Facilities may be configured as required by LESSEE, provided LESSEE obtains all permits and approvals required by LESSOR and/or any other public agency having jurisdiction thereof. Lessee shall not attach or

cause to be attached any radio, wireless or cellular type equipment except that which is directly related to the operation of the Facilities as a message center.

A. LESSOR agrees that LESSEE's ability to use the Premises is dependent upon LESSEE's obtaining all necessary certificates, permits and/or other approvals which may be required from any federal, state or local authority. LESSOR agrees to cooperate with LESSEE as to LESSEE's obtaining such certificates, permits or other approvals.

B. LESSEE shall not do or permit anything to be done in or about the Premises or bring or keep anything therein which will cause cancellation of any insurance policy covering the Premises. For standard risks associated with the operation of LESSEE's business on the Premises, LESSEE agrees to pay any material increase in the rate of fire, commercial general liability or other insurance policy covering the Premises which arises as a result of LESSEE's leasing or use of the Premises, or provide for such insurance itself. LESSEE agrees to defend, hold harmless and indemnify LESSOR for any and all claims arising from LESSEE'S use of the property.

C. LESSEE shall operate the Facilities in conformance with the approvals described in Paragraph 1A above at all times during the Term of this Lease; provided, however, that if, due to no failure on LESSEE's part, LESSEE has been unable to obtain the Governmental Approvals (as defined below), commencement of operations may be delayed for a reasonable period. LESSEE shall, at its own expense, maintain the Facilities and Premises in a commercially reasonable manner during the Term hereof. LESSEE shall be responsible, at its sole cost and expense, for maintaining the Facilities to LESSOR's reasonable satisfaction and in compliance with all applicable law. For the purposes of this Paragraph, "maintenance" shall include, but not be limited to, keeping all electronic parts of the Facilities in good working order, and replacing light emitters/bulbs, electronic face panels or any worn or damaged lettering or art on the Facilities.

D. PROHIBITED CATEGORIES OF ADVERTISING. Lessee shall not accept or display on the subject sign display faces commercial advertising that falls into any of these categories:, tobacco, pawn shops, payday loans or check cashing establishments, bail bonds, sexually oriented or adults only entertainment, or medical marijuana dispensaries.

2. Term.

A. The term of this Lease shall be for ten (10) years (each such year and each year during any extension of this Lease, a "Lease Year"), commencing on the Effective Date, and ending on the tenth anniversary of the Effective Date (the "Term"), subject to three (3) conditional options to renew for additional periods of five (5) years each pursuant to Paragraph 2.B. below. This Lease shall terminate without further notice upon the expiration of the Term, or any agreed upon extension thereof, and any holding over by LESSEE after the expiration of the Term shall not constitute a renewal hereof nor give LESSEE any rights hereunder in or to the Premises.

B. Provided LESSEE is not then in default in the performance of any term, condition, covenant or provision of this Lease, subject to any applicable cure period, upon the expiration of the Term, as then in effect, this Lease shall automatically renew for three (3) additional periods of five (5) years

each (each, an “Extension”), unless Lessee provides written notice to Lessor, at least ninety (90) days prior to such expiration, that Lessee elects not to exercise the applicable Extension.

C. Upon the expiration or earlier termination of the Term of this Lease, both parties shall be relieved of any further obligations hereunder (except for those duties or obligations accruing prior to such expiration or earlier termination, and except for those duties or obligations which expressly survive the expiration or earlier termination of this Lease), although each party shall continue to have available all remedies for any breach of this Lease occurring prior to the date of expiration or earlier termination.

D. Prior to the Effective Date, in the event LESSEE reasonably determines that it will be unable to secure or maintain any required permit or license from any appropriate governmental authority or that any federal, state or local statute, ordinance, regulation or other governmental action precludes or materially limits use of the Premises for outdoor advertising purposes, LESSEE may terminate this Lease on thirty (30) days’ written notice.

E. As of the Effective Date, that certain Lease Agreement, dated June 19, 1986, between the parties and relating to the Sign shall be automatically terminated and replaced by this Lease.

3. **Permits.** To the extent CCO elects, or is required, to obtain governmental approvals, consents and permits, including from the City and CalTrans, with respect to the operation of the Sign (the “Governmental Approvals”), the City shall cooperate with the reasonable requests of CCO in connection therewith. All current and future Governmental Approvals related to the Sign are and shall be owned by CCO.

4. **Conversion to Digital Displays.**

4.1 At any time during the Term, CCO, at CCO’s sole option, may elect to convert the Sign from Traditional Operation to a double-sided electronic message board (also known as “digital display”) of approximately 14’ x 48’ (display area of each face) in size (“Digital Operation”) by providing Lessor prior written notice thereof (a “Digital Conversion Notice”).

4.2 Any provision of this Lease to the contrary notwithstanding, if Lessee has not delivered a Digital Conversion Notice to Lessor before 5:00 p.m. (PDT or PST, as applicable) on March 31, 2019 (the “Digital Notice Deadline”), Lessor may renegotiate the lease terms or terminate this Lease by delivering to Lessee 30 days’ prior written notice thereof on or before 5:00 p.m. (PDT or PST, as applicable) on June 30, 2019 (the “Digital Termination Deadline). If Lessee fails to deliver a Digital Conversion Notice prior to the Digital Notice Deadline and Lessor fails to terminate this Lease prior to the Digital Termination Deadline, this Term shall continue until any subsequent termination or expiration of this Lease in accordance with the terms hereof, provided that Lessee’s right to convert the Sign to Digital Operation shall continue during the Term.

4.3 If CCO elects to convert the Sign to Digital Operation, the applications for the Governmental Approvals necessary therefor shall reasonably conform to the plans and

specifications for the physical upgrade and conversion of the Sign, including the design, height and location on the Property, set forth on Exhibit B.

4.4 If CCO converts the Sign to Digital Operation, CCO shall have the right thereafter, at any time during the Term, to convert Sign back to Traditional Operation and to modify the Sign in any way deemed necessary by CCO in connection therewith, by providing to the City prior notice thereof.

5. **Compliance with Law.** LESSEE shall not use the Premises nor permit anything to be done in or about the Premises which will in any way conflict with any federal, state or local law, statute, ordinance or other governmental rule or regulation now in force or which may hereinafter be enacted or promulgated. LESSEE shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and other governmental rules, regulations or requirements now in force or which may hereinafter be enacted or promulgated, relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by LESSEE's improvements or acts.

6. **Alterations and Additions.** Other than as expressly required or permitted herein, LESSEE shall not make or suffer to be made any alterations, additions or improvements in or to or about the Premises or any part thereof without the written consent of LESSOR first had and obtained. Excepting only the installation of the Facilities and related equipment (which shall remain the property of LESSEE in accordance with Section 1) and any subsequent conversion from Traditional Operation to Digital Operation or vice versa permitted hereunder, any alterations, additions or improvements to the Premises desired by LESSEE, other than those expressly required or permitted herein, shall require LESSOR's prior written consent, and shall be made by LESSEE at LESSEE's sole cost and expense and in a good and workmanlike manner, free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. If LESSEE makes any alterations to the Premises as provided herein, the alterations shall not be commenced until fifteen (15) days after LESSOR has received notice from LESSEE stating the date that construction of the alterations is to commence, so that LESSOR can post an appropriate notice of non-responsibility. Upon completion of the alterations to LESSOR's satisfaction, a notice of completion shall be recorded.

7. **Claims Against Premises.** LESSEE shall not suffer or permit to be enforced against the Premises, or any portion thereof, any mechanic's, materialman's, contractor's or subcontractor's liens arising from, or any claim for any work of construction, repair, restoration, replacement or improvement of or to the Premises or any other similar claim or demand arising from the act or omission of LESSEE or anyone acting by, through, or under LESSEE. LESSEE shall pay or cause to be paid any and all such claims or demands before any action is brought to enforce the same against the Premises. LESSEE agrees to indemnify, defend, protect and hold LESSOR and LESSOR parties and the Premises free and harmless of all liability for any and all such claims and demands, together with LESSOR's reasonable attorneys' fees and all reasonable costs and expenses in connection therewith.

8. **Rent.**

8.1 Traditional Operation.

A. **Monthly Rent.**

So long as the Sign is Traditional Operation, including following any re-conversion back to Traditional Operation after a period of Digital Operation, and up to the Digital Commencement Date (as defined below), if any, LESSEE agrees to pay to LESSOR as the total amount of rent to be paid hereunder, without notice or demand, Four Thousand One Hundred Sixty Six and 67/100ths Dollars (\$4,166.67) (“Traditional Rent”), on or before the first day of each and every calendar month during the Term. LESSEE’s obligation to pay Traditional Rent shall commence on the Effective Date. In the event the Sign is converted to Traditional Operation after a period of Digital Operation, the obligation to pay Traditional Rent shall commence immediately upon the cessation of Digital Operation. Traditional Rent shall be paid to LESSOR without deduction or offset, in lawful money of the United States of America and at such place as LESSOR may from time to time designate in writing. Traditional Rent for any period that is less than one (1) month shall be a prorated portion of the monthly installment herein based on a thirty (30) day month.

8.2 Digital Operation.

A. **Minimum Base Rent**

Beginning on the Digital Commencement Date and so long as the Sign is Digital Operation, LESSEE agrees to pay to LESSOR as base rent, without notice or demand, Twelve Thousand Five Hundred and no/100ths Dollars (\$12,500.00) (“Minimum Base Rent”), on or before the first day of each and every calendar month during the Term. LESSEE’s obligation to pay Minimum Base Rent shall commence on the Commencement Date. Minimum Base Rent shall be paid to LESSOR without deduction or offset, in lawful money of the United States of America and at such place as LESSOR may from time to time designate in writing. Minimum Base Rent for any period that is less than one (1) month shall be a prorated portion of the monthly installment herein based on a thirty (30) day month.

B. **Percentage Rent**

1) Annual Percentage Rent. In addition to Minimum Base Rent, beginning on the Digital Commencement Date and so long as the Sign is Digital Operation, LESSEE agrees to pay to LESSOR additional amounts (“Percentage Rent”) as follows:

- (i) With respect to each of the first three (3) Lease Years of the Term, if the amount that is fifteen percent (15%) of Net Revenues (as defined below) exceeds the Minimum Base Rent paid to Lessor for the respective Lease Year, Lessee shall pay to Lessor the difference between the two amounts;
- (ii) With respect to each year beginning in the fourth (4th) Lease Years of the Term until and including the fifteenth (15th) Lease Year of the Term (subject to the extension of the Term as provided herein), if the amount that is twenty percent (20%) of Net Revenues exceeds the Minimum Base Rent paid to Lessor for the respective Lease Year, Lessee shall pay to Lessor the difference between the two amounts; and

- (iii) With respect to each year beginning in the sixteenth (16th) Lease Year of the Term until and including the twentieth (25th) Lease Year of the Term (subject to the extension of the Term as provided herein), if the amount that is twenty-three percent (23%) of Net Revenues exceeds the Minimum Base Rent paid to Lessor for the respective Lease Year, Lessee shall pay to Lessor the difference between the two amounts.

2) **Net Revenues Defined.** For the purposes of this Lease, “Net Revenues” shall mean all revenue received by LESSEE for use of the Sign during a period of Digital Operation less: (i) commissions actually paid to advertising agencies or media buyers that are not affiliated with Lessee or any other company, corporation or firm with crossover ownership with Lessee, provided that no commissions shall exceed 16.67%, less taxes, if any, imposed by the City thereon; and (ii) any tax imposed by the City on Lessee’s revenues or gross receipts, not including any applicable possessory interest taxes, whether now in effect or later adopted.

3) **Payment of Percentage Rent.** Percentage Rent, if owed, shall be paid once annually for each calendar year during which the Sign was, partially or fully, Digital Operation, but no later than the last day of February for the prior calendar year. LESSEE shall, with the submission of its Percentage Rent payment, if any, provide the LESSOR with a copy of reasonable records documenting its revenue and payments to advertising agencies or media buyers. LESSEE shall keep records related to its business operations including, but not limited to, its calculations of its Net Revenue in a commercially reasonable form and detail, and in accordance with standard practices used in the outdoor advertising industry. All documents, books and accounting records kept by LESSEE relating to revenue generated by the Facilities under this Lease in connection with Digital Operatoin shall be open to inspection by LESSOR or its authorized representative at LESSEE’s market office during reasonable business hours during the Lease Term and for one (1) year thereafter. Such documents shall remain with Lessee and their contents shall be deemed confidential and shall not be disclosed by LESSOR other than to its staff auditor or legal counsel, except as needed to enforce the terms of this Lease, discovery requests or demands in pending litigation or as required by court order or the California Public Records Act.

4) **Digital Commencement Date Defined.** As used herein, “Digital Commencement Date” means the date, following CCO’s delivery of a Digital Conversion Notice, that is the later of: (a) the date on which the Sign has been converted to Digital Operation and the digital displays are fully operational; and (b) the ninetieth (90th) day following the date on which CCO receives all local and state approvals and permits necessary to convert the faces on the Sign to Digital Operation and all appeal periods with respect to same have expired.

C. **Additional Digital Rent.** During all periods when CCO is the Sign is Digital Operation, as additional rent and at the request of the City, CCO agrees to provide to the City, at no cost to the City, one pre-emptible spot in a standard rotation of eight on each of the two (2) Digital Faces during each quarter of each Lease Year, with each spot remaining in such rotation for two (2) weeks in duration (“Additional Digital Rent”). The City shall provide the requested time periods for each Lease Year at least one (1) month prior to the beginning of such Lease Year, provided that the City shall not request any overlapping periods. Such spot

may be used by the City to promote any, non-commercial, City-related purpose, including City community events, public awareness campaigns and non-profit programs within the City. The City, at its own expense, shall supply proposed advertising to CCO in “camera ready” form that meets CCO’s format and graphic-arts standards. The posting of advertising copy for the City is subject to the following conditions and parameters: all copy must be submitted to CCO at least five (5) days before the proposed display date and will be subject to CCO’s standard advertising copy rejection and removal policies, which allow CCO, in its sole discretion, to approve or disapprove copy and to remove copy once posted or displayed.

All spots provided to the City shall be pre-emptible if the spots are sold or offered by CCO to another client or for emergency messaging from federal, state, or local agencies. Nothing contained herein shall be deemed to prevent or prohibit CCO from using spots for promoting CCO’S business, using such spots for promoting charitable enterprises, or actively seeking advertisers for unsold or unused spots. If the City fails to use any such spots during the corresponding quarter for which such spots were provided, such unused spots shall not roll over and shall be forfeited.

9. **Maintenance.** CCO is the owner of the Sign and shall remove the entirety of the above ground portions of the Sign Structure during or within one hundred twenty (120) days following the termination of this Lease. CCO shall at its sole cost, keep and maintain the Sign, all advertising thereon and appurtenances and every part thereof. The City shall not be required to repair or maintain any portion of the Sign. If for any reason (other than voluntary removal by CCO) the Sign is removed, materially damaged or destroyed, all rent payments shall cease until the Sign is rebuilt.

10. **Insurance.**

A. Commercial General Liability Insurance. Throughout the Term, at LESSEE’s sole cost and expense, LESSEE shall keep or cause to be kept in full force and effect, commercial general liability insurance against claims and liability for personal injury, death, or property damage or advertising injury arising from its operations or acts or omissions with respect to its use or occupancy of the Premises, improvements thereon, or adjoining areas or ways, providing protection of at least Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury or death, and at least Five Hundred Thousand Dollars (\$500,000.00) for property damage.

B. Policy Form, Contents and Insurer. All insurance required by express provision of this Lease shall be carried only by financially responsible insurance companies licensed to do business in the State of California with a current A.M. Best rating of no less than A:VII. All such policies shall contain language to the effect that: (1) the policies are primary and noncontributing with any insurance that may be carried by LESSOR, with respect to the liabilities assumed by LESSEE under this Agreement; (2) the policies cannot be canceled, terminated or materially altered except after such prior notice to LESSOR by the insurer as it customarily provides; (3) LESSOR and each of LESSOR’s elected officials, officers and employees are additional insureds thereunder with respect to the liabilities assumed by Lessee herein; (4) any failure by LESSEE to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect the required coverage; and (5) the required insurance applies separately to each insured against whom claim is

made or suit is brought, except with respect to the limits of the insurer's liability. LESSEE shall furnish LESSOR with certificates evidencing the insurance. LESSEE may effect for its own account any insurance not required under this Lease.

C. Failure to Maintain Insurance; Proof of Compliance. LESSEE shall deliver to LESSOR, in the manner required for notices to all insurance policies required by this Lease, within the following time limits: (1) For insurance required at the commencement of this Lease, within ten (10) days after execution of this Lease and prior to LESSEE's occupancy of, or performance of any construction on, the Premises; (2) For insurance becoming required at a later date, at least ten (10) days before that requirement takes effect, or as soon thereafter as the requirement, if new, takes effect; (3) For any renewal or replacement of a policy already in existence, before expiration or other termination of the existing policy.

If LESSEE fails or refuses to procure or maintain insurance as required by this Lease, or fails or refuses to furnish LESSOR with required proof that the insurance has been procured and is in full force and effect and paid for, then LESSOR shall have the right, at LESSOR's election and upon five (5) days' notice, to procure and maintain such insurance. The premiums paid by LESSOR shall be treated as added rent due from LESSEE with interest at the rate of nine percent (9%) per year or the maximum allowable legal rate in effect in the State of California on the date when the premium is paid, whichever is lesser, to be paid on the first day of the month following the date on which the premium was paid. LESSOR shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the effective date of coverage until reimbursed by LESSEE.

11. **Hazardous Materials.** No goods, merchandise or material shall be kept, stored or sold in said Premises which are unreasonably hazardous; and nothing shall be done on said Premises which will suspend the insurance upon the Sign owned by CCO; provided, however, that nothing in this Section 11 shall preclude CCO from bringing, keeping or using on or about said Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out its outdoor advertising so long as such materials and their use comply with applicable environmental laws.

12. **Obstruction.** City and City's agents, employees or other persons acting on City's behalf, shall not place or maintain any object on the Premises or Property owned or controlled by City which, in CCO's sole opinion, would obstruct the view to the faces on the Sign. If City fails to remove the obstruction within five (5) days after notice from CCO, CCO may in its sole discretion: (a) remove the obstruction at City's expense; (b) cancel this Lease, remove the Sign, and receive any portion of any prepaid rent, if any, amortized over the remaining unexpired term of this Lease; or (c) reduce all rents hereunder, including the collective amount of all Traditional Rent, Minimum Base Rent, Percentage Rent and Additional Digital Rent, as applicable, to One Hundred Dollars (\$100.00) per year while the obstruction continues. CCO may trim any trees and vegetation currently on the Premises and on any neighboring Property owned or controlled by the City as often as CCO in its sole discretion deems appropriate to prevent obstructions. Additionally, the City shall not permit the Premises or any neighboring Property owned or controlled by City to be used for off-premise advertising.

13. **Interference.** If, in CCO's sole opinion: (a) the view of the Sign's advertising messages becomes entirely or partially obstructed, (b) electrical service is unavailable; (c) the Premises cannot safely be used for the erection or maintenance of the Sign for any reason; (d) the Premises become unsightly; (e) there is a diversion, reduction or change in directional flow of traffic from the street or streets currently adjacent to or leading to or past the Premises; (f) the Sign's value for advertising purposes is diminished; (g) CCO is unable to obtain or maintain any necessary permit for the erection, use and/or maintenance of the Sign; or (h) the Sign's use is prevented or restricted by law, or CCO is required by any governmental entity, regulation or ordinance to reduce the number of billboards operated by it in the city, county or state in which the Sign is located (whether or not CCO is specifically required to remove the Sign); then CCO may immediately at its option either: (i) reduce rent in direct proportion to the loss suffered; or (ii) cancel this Lease.

14. **Utilities.** LESSEE shall pay the cost of any and all water, electrical, gas or other utility services delivered to the Premises pertaining to LESSEE'S use hereunder during the Term and shall have such utilities installed underground and/or connected if already installed, and maintained at LESSEE's sole cost and expense and subject to LESSOR's reasonable approval. LESSEE shall submit plans for underground construction of required utility lines to LESSOR for review prior to commencement of construction thereof. LESSOR shall approve or disapprove of same in writing within fourteen (14) days of its receipt of such plans. Detailed reasons for any disapproval shall be included in the written disapproval.

15 **Taxes.** LESSEE shall pay without abatement, deduction, or offset possessory interest taxes levied on or assessed against the Premises, the improvements located on the Premises, equipment, fixtures and personal property located on or in the land or improvements, the leasehold estate, or any subleasehold estate which are attributable to this LEASE or LESSEE's use of the Premises, to the full extent of installments falling due during the Term, whether belonging to or chargeable against LESSOR or LESSEE. LESSEE shall make all such payments directly to the charging authority at least thirty (30) days before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their non-payment. If, however, the law expressly permits the payment of any or all of the above items in installments, LESSEE may, at LESSEE's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency. LESSEE agrees that, without prior demand or notice by LESSOR, LESSEE shall, not less than fifteen (15) days prior to the day upon which any such possessory interest or other such tax is due, provide LESSOR with proof of payment of such tax.

16. **Entry by LESSOR.** LESSEE hereby agrees that representatives of the LESSOR, as designated by LESSOR's City Manager, shall, during normal business hours (except in the event of an emergency), have the right to enter the Premises and inspect the same to determine if the same complies with each and every term and condition of this Lease and with all applicable City, County, State and Federal laws, rules, ordinances and regulations relating to outdoor signage and the conduct of LESSEE's business. LESSOR hereby agrees that it shall not unreasonably disturb or interfere with LESSEE's operation on the Premises.

17. **Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by LESSEE:

A. Abandonment of the Premises by LESSEE where the same shall continue without cure by LESSEE for a period of thirty (30) days after written notice thereof by LESSOR to LESSEE; the parties agree that failure to post electronic copy on the Sign, by itself, shall not constitute abandonment;

B. The failure by LESSEE to make any payment of rent or any other payment required to be made by LESSEE hereunder (including but not limited to Percentage Rent, taxes, assessments, insurance premiums, liens, claims or other charges), as and when due, where such failure shall continue for a period of ten (10) days without cure by LESSEE after written notice thereof by LESSOR to LESSEE;

C. A failure by LESSEE to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by LESSEE, other than as described in subparagraph 17.A or 17.B., above, where such failure shall continue without cure by LESSEE for a period of thirty (30) days after written notice thereof by LESSOR to LESSEE; provided, however, that if the nature of the default involves such that more than thirty (30) days are reasonably required for its cure, then LESSEE shall not be deemed to be in default if LESSEE commences such cure within such thirty (30) day period and thereafter diligently prosecutes said cure to completion;

D. The occurrence of any of the following events: (1) the making by LESSEE of any general assignment or general arrangement for the benefit of creditors; (2) the filing by or against LESSEE of a petition to have LESSEE adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against LESSEE, the same is dismissed within sixty (60) days); (3) the appointment of a trustee or a receiver to take possession of substantially all of LESSEE's assets located in or about the Premises or of LESSEE's interest in this Lease, where possession is not restored to LESSEE within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of LESSEE's assets located in or about the Premises or of LESSEE's interest in this Lease, where such seizure is not discharged in thirty (30) days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect and shall not affect the validity of the remaining provisions of this Lease;

E. The assignment or sublease of all or any portion of the Premises or of LESSEE'S interest in this Lease without the prior written consent of LESSOR, except as permitted by Section 21 below;

F. The failure to use, maintain, and operate the Premises as herein required, or the committing of waste on the Premises, or the maintaining, committing, or permitting the maintenance or commission of a nuisance on the Premises; or

G. The use of the Premises for any purpose not permitted by this Lease, or the use of the Premises for any unlawful purpose, whether or not such purpose is in addition to or in lieu of the use(s) herein permitted.

18. **Remedies Upon Lessee's Default.** In the event of any default or breach by LESSEE, subject to any applicable cure period, as defined in Paragraph 17 above, LESSOR may at any time thereafter and without notice or demand and, without limiting LESSOR in the exercise of a right or remedy LESSOR may have by reason of such default or breach:

A. Terminate LESSEE's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and LESSEE shall immediately surrender possession of the Premises to LESSOR. In such event, LESSOR shall be entitled to recover from LESSEE:

- 1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;
- 2) The worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that LESSEE proves could have reasonably been avoided;
- 3) The worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that LESSEE proves could be reasonably avoided; and
- 4) Unpaid installments of rent or other sums shall bear interest from due date thereof at the rate of eighteen percent (18%) per annum or at the maximum legal rate then in effect in California, whichever is less.

B. Pursue any other remedy now or hereafter available to LESSOR under the laws or judicial decisions of the State of California. Furthermore, LESSEE agrees that no election by LESSOR as to any rights or remedies available hereunder or under or pursuant to any law or judicial decision of the State of California shall be binding upon LESSOR until the time of trial of any such action or proceeding.

C. Notwithstanding anything to the contrary herein, LESSOR shall have a duty to reasonably mitigate damages.

19. **Eminent Domain** If more than fifty percent (50 %) of the Premises or such portion that LESSEE cannot make use the Premises for the purpose specified herein in paragraph 4.A shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, including the LESSOR, either party hereto shall have the right, at its option, to terminate this Lease. In any such proceeding LESSEE may at LESSEE's option negotiate separately with the condemning authority, and shall be entitled to all proceeds attributable LESSEE'S interest taken. This Agreement does not constitute a waiver or limitation on the LESSOR'S power of eminent domain; such power is reserved by the LESSOR and may be exercised at any time and in any manner that is consistent with California law.

20. **Estoppel Certificate.** LESSOR or LESSEE shall, at any time and from time to time upon not less than ten (10) days' prior written notice from the other party, execute, acknowledge and deliver to the other party a statement in writing (a) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect, and the date to which the rental and other charges are paid in advance, if any, and (b) acknowledging that there are not, to the knowledge of the party delivering the estoppel, any uncured defaults on the part of the other party hereunder, or specifying

such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Premises, or of any larger parcel of real property of which the Premises are a part.

21. **Assignment and Subletting.** Except as otherwise set forth herein, LESSEE shall not assign or transfer this Lease or any right hereunder to any other party or parties nor shall LESSEE assign or sublet all or any portion of the Premises without first obtaining the written consent of LESSOR. LESSOR shall not unreasonably withhold, condition or delay such consent, provided that the proposed assignee has the financial capacity, relevant industry experience, and sufficient staffing reasonably necessary to perform LESSEE's obligations hereunder, and provided further that the assignee does not plan any material aesthetic modifications to the Facilities. Notwithstanding the foregoing, with prior written notice to LESSOR, LESSEE may assign or sublet to any entity controlled, controlling, or under common control with Lessee or the purchaser of a majority of LESSEE's assets in the local market without approval of LESSOR. Any assignment or subletting of the Premises without such prior written consent, except as provided for herein, shall be null and void. LESSEE may additionally grant or transfer rights to sign panels on any terms otherwise consistent with, and do not exceed the term and conditions of this Lease. In the event of a prohibited assignment or subletting, LESSOR may, at its option, declare a forfeiture of the same in any manner provided by law. Consent to any such assignment or subletting shall not be unreasonably withheld by LESSOR, and LESSOR agrees to exercise reasonable discretion in considering the same for approval. LESSEE covenants that LESSEE and such approved assignee or sublessee shall execute a written agreement, in form and content reasonably acceptable to LESSOR, provided that such agreement does not materially change the parties' obligations hereunder.

22. **Attorneys' Fees.** In the event any action or proceeding is brought between the parties hereto seeking interpretation or enforcement of any of the terms and provisions of this Lease, the prevailing party in such action shall be entitled to have and to recover its actual attorneys' fees and other expenses in connection with such action or proceeding, in addition to its recoverable court costs, from the losing party.

23. **Fixtures.** All Facilities, trade fixtures and/or temporary facilities installed or placed on the Premises by LESSEE shall be the property of LESSEE and may be removed by LESSEE at any time during the Term and after the expiration or termination thereof in accordance with Section 9, so long as the same may be removed without permanent damage to the Premises. LESSEE shall repair all damage which may result therefrom, at LESSEE's sole cost and expense, to the reasonable satisfaction of LESSOR. Upon the termination of this Agreement, LESSEE shall have the right, but not the obligation, to remove all fixtures.

24. **Indemnification.** LESSEE agrees to defend, protect, indemnify and hold LESSOR and LESSOR and its officials, employees and contractors free and harmless from any and all claims for damage to persons or property by reason of LESSEE's breach of this Lease, LESSEE's negligence or LESSEE's acts or omissions in connection with the Facilities and/or the Premises or those of LESSEE's employees, or agents, excepting only liability arising out of negligence or willful misconduct of LESSOR, its officials, employees or contractors. Further, in the event of

litigation brought by non-parties to this Lease, which asserts illegality or invalidity of the entire Lease, or any portion(s) or aspect(s) thereof, LESSEE shall defend the LESSOR at LESSEE'S expense, unless LESSOR informs LESSEE that the LESSOR wishes to arrange for its own defense.

25. **Waiver.** The waiver by either party of any term, provision, covenant or condition herein contained shall not be deemed to be a waiver of such term, provision, covenant or condition on any subsequent breach of the same or any other term, provision, covenant or condition herein contained. The subsequent payment or acceptance of rent hereunder shall not be deemed to be a waiver of any preceding breach by the party so acting, of any term, provision, covenant or condition of this Lease, other than the payment or failure to pay the particular rental so paid or accepted, regardless of the aggrieved party's knowledge of such preceding breach at the time of payment or acceptance of such rent.

26. **Nuisance.** This Agreement does not constitute a waiver or limitation on the City's power to declare and abate a nuisance in any manner provided by California law.

27. **Time.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

28. **Late Charges.** LESSEE hereby acknowledges that late payment by LESSEE to LESSOR of rent or other sums due hereunder will cause LESSOR to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or of a sum due from LESSEE shall not be received by LESSOR or LESSOR's designee within ten (10) days after written notice that said amount is past due, then LESSEE shall pay to LESSOR a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represented a fair and reasonable estimate of the cost that LESSOR will incur by reason of the late payment by LESSEE. Acceptance of such late charge by LESSOR shall in no event constitute a waiver of LESSEE's default with respect to such overdue amount, nor prevent LESSOR from exercising any of the other rights and remedies granted hereunder or available at law or in equity.

29. **Force Majeure.** This Lease and the obligations of the parties hereunder shall not be affected or impaired because one such party, or both of them, is unable to fulfill any of its or their obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, war, civil insurrection, acts of God, governmental action, or any other cause beyond the reasonable control of the parties hereto, or either of them. Any prevention, delay or stoppage due to any Force Majeure delay shall excuse the performance of the party affected only for a period of time equal to any such prevention, delay or stoppage (except the obligations of either party to pay money to the other party), which period shall commence to run from the time of the commencement of the cause provided that written notice of such cause is given to the other party within ten (10) days after the commencement of the cause. In times of energy shortage, natural disasters or civil emergencies, the LESSOR may order LESSEE to reduce the operational times of the sign(s), or reduce the power consumption, or display emergency message for the benefit of the public. LESSEE shall comply with all such orders.

30. **Successors.** Subject to the provisions of this Lease with respect to assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the respective parties.

31. **Notices.** All notices required or permitted to be given under this Lease shall be sufficiently given if personally delivered, or mailed by registered or certified United States mail, postage prepaid, addressed to the party as specified on below:

CCO:

Clear Channel Outdoor, Inc.
Attention: President and General Manager, Northern California Division
555 12th Street, Ste. 950
Oakland, CA 94607
Telephone: (510) 835-5900
Facsimile: (510) 834-9410

CITY :
City of Benicia
Attn: City Manager
250 East L Street
Benicia CA 94510

If mailed, the written notice shall be deemed received and shall be effective on the earlier of the date of actual receipt by the addressee or three (3) business days after deposit in the United States mail in the State of California. If either party gives notice in writing to the other party of any change in said address, then and in that event such notice shall be given at the changed address specified in such notice.

32. **Authority.**

City represents that it is the owner of an easement over the Premises, and has the right to enter into this Lease. City further warrants that the activities and Signs contemplated herein are within the easement rights reserved to the City and no further approvals or grants from the owner of the property underlying the Property are necessary for the City to enter into this Lease and accomplish the terms of this Lease. The City acknowledges that this representation is material to CCO's determination to enter into this Lease and shall indemnify and hold CCO harmless from any action brought by the owner of the property underlying the Property related to the purpose and scope for said easement. The parties signing below warrant that they have the specific authority from their respective principals to execute this Lease on their behalf and agree to provide such resolutions or other documents reasonably necessary to satisfy the other party of such authority. This Lease is binding upon the heirs, assigns and successors of both City and CCO. CCO shall have the absolute right to assign or sublet. Neither City nor CCO shall be bound by any terms, conditions or oral representations that are not set forth in this Lease, the Relocation Agreement of which it is a part, and the respective exhibits. This Lease represents the entire agreement of CCO and City with respect to the terms stated herein.

33. **Execution by Lessor Not a Waiver.** LESSEE understands and agrees that LESSOR, by entering into and executing this Lease, shall not have waived any right, duty, privilege, obligation or authority vested in the City of Benicia to approve, disapprove or conditionally approve any application which LESSEE may be required to make under any laws, rules, ordinances or regulations now or hereafter in effect which said LESSOR may be empowered to apply, including but not limited to any use permit or approval, whether similar in nature or not.

34. **Entire Agreement.** This Lease contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all negotiations, representations, or oral or written agreements made prior to the execution of this Lease. No promise, representation, warranty, or covenant not included in this Lease has been or is relied upon by either party. Each party has relied on its own examination of this Lease, the counsel of its own advisors, and the warranties, representations, and covenants in this Lease itself. The failure or refusal of either party to inspect the Premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

35. **Interpretation.** This Lease is to be interpreted and construed according to the laws of the State of California.

36. **Captions.** The captions in the headings of the paragraphs of this Lease are for convenience only and are not part of the substantive terms of this Lease.

37. **Amendments.** This Lease may be modified only by a written instrument signed by the parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the rent or other charges payable under this Lease.

38. **Severability.** Each and every provision of this Lease is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Lease or the application thereof shall to any extent be held to be invalid or unenforceable as determined by a court of competent jurisdiction, the remainder of this Lease, or the application of such term or provision to circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected hereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

39. **Memorandum of Lease.** LESSOR and LESSEE shall execute, acknowledge and record a Memorandum of Lease in the form attached as Exhibit C with respect to LESSEE's lease of the Premises in the official records of the county in which the Premises is located.

40. **Counterparts.** This Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Lease, facsimile signatures shall be deemed to be original signatures, and shall be followed by the immediate overnight delivery of original signature pages.

IN WITNESS WHEREOF, the parties, duly authorized, have executed this Agreement the day and year first above written.

“CITY ”

City of Benicia, a
California Municipal Corporation

Dated: _____, 2013

By _____
City Manager

Approved As To Form

By _____
City Attorney

“CCO”

Clear Channel Outdoor, Inc., a
Delaware Corporation

Dated: _____, 2013

By _____
President and General Manager
Clear Channel Outdoor, Inc.
Northern California Division

EXHIBIT "A"
THE PREMISES

EXHIBIT B

PLANS AND SPECIFICATIONS FOR CONVERSION TO DIGITAL FACES

EXHIBIT “C”
FORM OF MEMORANDUM OF LEASE
[Attached]

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO AND MAIL
TAX STATEMENTS TO:

City of Benicia
250 East L Street
Benicia, CA 94510
Attn: City Clerk

(SPACE ABOVE FOR RECORDER'S USE ONLY)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made as of _____, 2013, by and between the CITY OF BENICIA, a California municipal corporation ("**Lessor**"), and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation ("**Lessee**"), with respect to the following recitals:

RECITALS

A. Lessee and Lessor have entered into that certain Lease of even date herewith (the "**Lease**"), pursuant to which Lessor has agreed to lease and demise to Lessee, and Lessee has agreed to lease and accept from Lessor, a portion of that certain real property located in the City of Benicia, County of Solano, State of California, commonly known as City Easement and more particularly described on Exhibit A attached hereto (the "**Premises**"), as provided in the Lease.

B. Pursuant to Section 37 of the Lease, Lessee and Lessor now desire to enter into this Memorandum to provide record notice of the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessee and Lessor agree as follows:

1. Lease. Lessor hereby leases and demises to Lessee, and Lessee hereby leases and accepts from Lessor, the property defined as the "Premises" in the Lease for an initial term of ten (10) years at the rental and upon the other terms and conditions set forth in the Lease, which terms and conditions are incorporated herein by this reference.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me,
_____, a notary public, personally appeared
_____ 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.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me,
_____, a notary public, personally appeared
_____ 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.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me,
_____, a notary public, personally appeared
_____ 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.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me,
_____, a notary public, personally appeared
_____ 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.

Signature _____

(seal)

EXHIBIT A
LEGAL DESCRIPTION OF PREMISES

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 17, 2013
BUSINESS ITEMS

DATE : September 10, 2013

TO : City Council

FROM : City Attorney

SUBJECT : **AMENDMENT OF THE COUNCIL'S RULES OF PROCEDURES REGARDING THE APPOINTMENT PROCESS**

RECOMMENDATION:

Adopt the resolution amending the Rules of Procedure.

EXECUTIVE SUMMARY:

At the September 3, 2013 meeting, the City Council discussed various ways to make the appointment process to City Boards, Commissions and Committees more transparent. The City Council agreed to modify the current procedure. The resolution reduces the possibility of a Brown Act violation while still providing some cover for applicants who may be too timid to interview in public.

BUDGET INFORMATION:

There is no budget impact from this item.

GENERAL PLAN:

STRATEGIC PLAN:

BACKGROUND:

The Council's Rules of Procedure currently provide that a subcommittee of two council members interview applicants to various city boards, commissions and committees. The recommendations are then forwarded to the Mayor who then makes the appointment subject to the Council's confirmation of the appointment. The City Council discussed ways to eliminate the Brown Act violation potential. The attached procedure retains the subcommittee format so potential appointees do not have to be interviewed in public. It provides a safe guard against a potential Brown Act violation by keeping the recommendation of the subcommittee away from any other Council members including the Mayor until the agenda is published. The recommendation of the subcommittee will be posted on the agenda. The subcommittee may also

provide verbal or oral comments. My notes indicated that I was to draft the two options (oral or written). The Council should indicate whether it prefers oral or written comments. This change will then be made in the adopted version of the rules.

Attachments:

- Resolution
- Rules of Procedure

RESOLUTION NO. 13-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE RULES OF PROCEDURE FOR THE CONDUCT OF CITY COUNCIL MEETINGS BY AMENDING THE APPOINTMENT PROCESS

WHEREAS, the City Council of the City of Benicia desires to have all citizens fully participate in the proceedings of the City Council; and

WHEREAS, the City Council must consider many public matters which vitally affect the interest of the citizens of Benicia and it is both necessary and desirable that these meetings be regulated in order to permit the Council to give consideration and public discussion to the more important public issues; and

WHEREAS, it is the purpose of this resolution to provide for the orderly and expeditious conduct of Council meetings in a manner, which will give adequate consideration and public discussion to all matters affecting the City; and

WHEREAS, Government Code Sections 36813 and 54954.3 give the City Council discretion to adopt reasonable regulations concerning the proceedings and order of business of City Council meetings; and

WHEREAS, the City Council previously adopted Resolution No. 10-99 regarding the procedure for appointments to City Boards, Commissions and Committees; and

WHEREAS, the appointment process has been incorporated into the Rules of Procedure.

NOW, THEREFORE, BE IT RESOLVED BY the City Council of the City of Benicia as follows:

Section 1. The City Council of the City of Benicia approves and adopts the Rules of Procedure attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 2. This resolution shall supersede any and all Rules of Procedure previously adopted by the City Council.

On motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of September 2013, and adopted by the following vote:

Ayes:

Noes:

Absent:

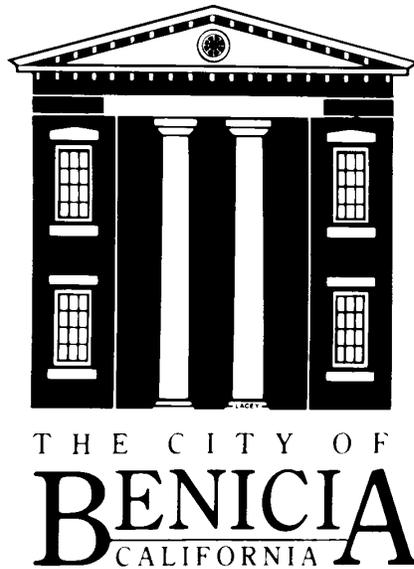
Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date: _____

City Council Rules of Procedure



Created July 17, 2012

INTRODUCTION.....	4
I. MEETINGS.....	4
A. REGULAR MEETINGS.....	4
B. SPECIAL MEETINGS.....	4
C. STUDY SESSIONS.....	4
D. CONDUCT AT MEETINGS.....	5
E. ADJOURNMENT.....	5
II. AGENDAS.....	5
A. PREPARATION.....	5
B. TWO-STEP PROCESS.....	5
C. LEGISLATIVE SUPPORT OR OPPOSITION.....	5
D. REVIEW OF POLICY ITEM CONSIDERED IN PREVIOUS YEAR.....	6
E. POLICY CALENDAR PROCESS.....	6
F. PLACEMENT OF AGENDA ITEMS.....	7
G. AGENDA PACKETS.....	7
H. REGULAR AGENDA.....	7
I. SPECIAL MEETING AGENDA.....	8
III. PUBLIC PARTICIPATION.....	9
A. FUNDAMENTAL RIGHT.....	9
B. RECOGNITION.....	9
C. ADDRESSING THE COUNCIL.....	9
D. ACTION ON NON-AGENDIZED ITEMS.....	10
E. TIME LIMITS FOR PUBLIC COMMENT.....	10
F. QUESTIONS.....	11
G. PRESENTATIONS SUBMITTED IN WRITING.....	11
H. POWER POINT PRESENTATIONS.....	11
IV. BUSINESS ITEM PROCEDURES.....	11
A. ONE HOUR FOR HEARINGS.....	11
B. PUBLIC HEARING AND APPEALS PROCEDURES.....	11
V. CREATION OF COMMITTEES, BOARDS AND COMMISSIONS.....	12
A. CITIZEN COMMITTEES, BOARDS AND COMMISSIONS.....	12
B. MEMBERSHIP SELECTION.....	12
C. REMOVAL OF MEMBERS OF COMMITTEES, BOARDS AND COMMISSIONS.....	13

VI. RULES OF ORDER.....13

 A. QUORUM. 14

 B. RIGHT TO THE FLOOR..... 14

 C. ORDINANCES, RESOLUTIONS AND MOTIONS – PRECEDENTS.. 14

 1. MOTION TO ADJOURN. 14

 2. MOTION TO TABLE. 14

 3. MOTION TO CLOSE DEBATE. 14

 4. MOTION TO REFER. 15

 5. MOTION TO AMEND..... 15

 6. DIVISION OF THE QUESTION. 15

 7. RECONSIDERATION. 15

 D. VOTING..... 15

VII. STAFF SUPPORT.....15

VIII. FAILURE TO OBSERVE RULES OR PROCEDURES.....15

IX. REVIEW OF THE RULES OF PROCEDURE.....16

APPENDIX A: COUNCIL MEMBER REQUESTED AGENDA ITEM17

INTRODUCTION.

These rules are assembled to make it easier for people to access city government so that they may be more informed about what the City is doing and so that they may be involved in a more meaningful and knowledgeable way. Open meetings and ethical guidelines help increase the public trust and confidence in the city government and will increase the public awareness and knowledge about their government. A well-educated public and ethical officials are essential to good government.

I. MEETINGS.

A. REGULAR MEETINGS.

The City Council holds regular meetings for the conduct of the City's business on the first, third, and fourth Tuesday of each month unless the meeting is cancelled. The first and third Tuesday regular meetings of the City Council are held in the City Council Chamber at City Hall unless the City Council Chamber are unavailable or inappropriate for the items proposed for the Council's agenda. The fourth Tuesday regular meeting is held in the Community Center unless it is unavailable or inappropriate for the items proposed for the agenda. The City Manager, in consultation with the Mayor, shall determine an alternative location if necessary.

B. SPECIAL MEETINGS.

The City Council holds special meetings as necessary. Special meetings may be used for Closed Session items and for other items of business that require scheduling at a special meeting due to the need to take action prior to a regular meeting or that require a meeting devoted to the subject matter proposed for the meeting.

C. STUDY SESSIONS.

The purpose of a study session is to meet with staff and various people, Boards, Commissions and Committees to receive briefings and background information and discuss policy issues and provide staff direction. A study session allows a range of meeting formats depending on the topic and allows for general discussion of major or controversial items before formal City Council action is required. The fourth Tuesday of the month is reserved for study sessions. Additional dates for study sessions may be scheduled as necessary. Study sessions may be scheduled as regular, adjourned regular or special meetings. Presentations to the City Council will be made by staff members, consultants, representatives of the City's Boards, Commissions and Committees or of other public agencies, and/or by any other person expressly invited for that purpose. Public comment on the item under consideration is allowed. No motions will be offered and no formal action by the City Council will be taken at the study session. The study session allows the Council Members to ask questions and express personal opinions about the item under consideration.

D. CONDUCT AT MEETINGS.

In addition to complying with the Code of Conduct, City Council members shall refrain from electronic communications during a meeting in order to avoid potential Brown Act or due process issues.

E. ADJOURNMENT.

It is the desire of the City Council to adjourn their meetings by 11 p.m. Therefore, no new business will be taken up by the Council after 11 p.m. unless the City Council adopts a motion to continue. The remaining items will be placed on the next regular Council meeting in the appropriate section of the agenda, unless the City Council calls for a special meeting to consider one or more of the continued items. The Council shall review the agenda at approximately 9 p.m. to see if it is likely the agenda items will be completed by 11 p.m. or if items will probably be continued to the next regular meeting. If it appears items will be continued, the Council will let the audience know as soon as is practical. The Open Government Ordinance requirement for public comment on the item will occur when the item is scheduled unless a majority agrees to move it up.

II. AGENDAS.

A. PREPARATION.

The Mayor and the City Manager shall prepare an agenda for each meeting of the Council. Items to be included on the agenda must be submitted to the City Manager in writing by noon on the 7th working day preceding the regular meeting and on the 5th working day preceding a special meeting.

B. TWO-STEP PROCESS.

City Council Members may request that a policy matter be considered by the City Council using the Two-Step Process. A Council Member submits the Council Member Requested Agenda Item form ([Appendix A](#)) to the City Manager. The Council Member shall fill out the form as completely as possible and indicate a desired date for agendization of Step 1 and for Step 2. Once Step 1 is agendized, the City Council shall vote whether or not to pursue study or action on the policy matter. If there is interest by a majority of the City Council, the policy proposal shall be directed to the Policy Calendar Process for scheduling a study session (see Section II.E below) or to an upcoming agenda for action if the subject of the request is time sensitive (Step 2). The Council Member submitting the request shall inform the Council if the item is time-sensitive.

C. LEGISLATIVE SUPPORT OR OPPOSITION.

The City Manager, or City Attorney in the case of legal issues, is authorized to provide support or opposition on legislative matters provided that the support or opposition is

consistent with the position taken by the League of California Cities and/or the Solano City/County Coordinating Council (4 C's). Typically, copies of this correspondence will be sent to Council via email in advance of distribution. Should a Council Member have a question or concern, that member will then have the opportunity to contact the City Manager prior to distribution. Occasionally same-day requests from the League of California Cities for letters, emails or faxes expressing support or opposition are received, and in these instances, advance distribution to Council would not be feasible.

In those cases where no position has been taken by either the League or 4 C's, then the request shall be agendaized for Council review and direction. If timing is such that the request cannot be agendaized prior to the specified response date, then the draft response will be emailed to the City Council in advance of distribution. Should a Council member have a question or concern with the proposed response, that member may then contact the City Manager or City Attorney for clarification and/or to request that the item be agendaized for discussion. All letters authorized by the Council shall be signed by the Mayor.

D. REVIEW OF POLICY ITEM CONSIDERED IN PREVIOUS YEAR.

City Council Members may request that the full City Council review a policy matter that has been decided in the last year by following the procedures set forth in Section II.B. A brief write-up of the matter and the date of last action must be included on the Council Member Requested Agenda Item form ([Appendix A](#)). The request for review will be placed in the appropriate section of the agenda.

E. POLICY CALENDAR PROCESS.

Council Members may request that a policy item be placed on a list of policy issues to be considered at a Quarterly Policy Issues Study Session Meeting. At this quarterly meeting, proposals are selected by majority vote of the Council for placement on the Policy Calendar.

At the quarterly meeting, the Council shall consider the following when deciding which policy proposals shall be calendared for Council consideration:

1. Time required for understanding by Council Members,
2. Time required for sufficient deliberation,
3. Time required for analysis and preparation of staff reports,
4. Time required for public understanding,
5. Council interest in subject,
6. Public interest in subject,
7. Conservation of staff time, and
8. Relationship to Council Priorities.

F. PLACEMENT OF AGENDA ITEMS.

The Mayor and City Manager shall consider whether an item is time-sensitive, likely to generate a large number of public speakers, or is controversial when determining the order of the agenda items. These items will be placed earlier on the agenda in the appropriate section of the agenda. Items that have been continued from a prior meeting or items for reconsideration shall also be placed as early as possible on the agenda in the appropriate section of the agenda.

G. AGENDA PACKETS.

The City Manager shall prepare and provide to each Council Member and the City Attorney, an agenda packet not later than the Thursday preceding each regular meeting or two working days preceding each special meeting. The City Manager shall mail a copy of the agenda or a copy of all the documents constituting the agenda packet to every person who has requested the same in writing during the preceding year, has provided stamped self-addressed envelopes and has paid the applicable fee, if the request is to receive the packet by mail. A paper copy of the agenda packet will be available for those persons so requesting at the time the agenda is posted or upon distribution to all, or a majority of, the Council Members upon payment of the applicable fee. To the extent feasible, the agenda packet shall be available on-line.

H. REGULAR AGENDA.

The first and third Tuesday regular meeting agenda shall consist of the following sections in order. The fourth Tuesday regular meeting agenda may omit items 2, 4, and 7 if not needed and item 8 may be changed to Workshop.

1. CALL TO ORDER.
2. CLOSED SESSION.
3. CONVENE OPEN SESSION.
 - Roll Call
 - Pledge of Allegiance
 - Reference to the Fundamental Rights of the Public

4. ANNOUNCEMENTS, PROCLAMATIONS, APPOINTMENTS, PRESENTATIONS. This section includes announcements by the Mayor or Council members, appointments to City boards and commissions, and scheduled presentations. Presentations are limited to a maximum of ten minutes to allow the Council to have adequate time to address the agenda items of business. Proclamations are made before presentations for public convenience.

5. ADOPTION OF AGENDA. The Council, by majority vote, shall adopt the agenda as final. Following such adoption, agenda items may not be added,

removed or their order changed unless by the unanimous consent of the Council Members present at the time the agenda was adopted as final. All matters shall be considered by the Council in the order listed on the agenda adopted as final, to the extent of time available. Only matters on the agenda as adopted final or modified under this section may be considered. Agenda items not considered or completed at a meeting for lack of time become agenda items at the following meeting per Section II.F.

6. OPPORTUNITY FOR PUBLIC COMMENT.

a. Written: All written communications suitable for the agenda, received since the preparation of the subject agenda, addressed to or intended for the City Council and not otherwise included in the agenda, shall be listed in this section in the order received.

b. Public Comment: This section of the agenda is for members of the public to make comments to the City Council regarding non-agendized matters of general interest to the citizens of Benicia in accordance with the procedures set forth in Section III below.

7. CONSENT CALENDAR. Items listed under the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from a Council Member, staff, or a member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar. Routine agenda items that are under \$50,000 and/or are already included in the budget may be listed under the Consent Calendar.

8. BUSINESS ITEMS. This section of the agenda is for the business items of the City Council including Public Hearings, appeals, and status or informational reports from staff and the Council. Council Member requests for future agenda items under the two-step, legislative or consideration of items heard in the last year will be agendized here.

9. ADJOURNMENT.

I. SPECIAL MEETING AGENDA.

A special meeting agenda shall consist of the following sections in order:

1. CALL TO ORDER.
2. CONVENE OPEN SESSION.
 - Roll Call
 - Pledge of Allegiance
 - Reference to the Fundamental Rights of the Public

3. ADOPTION OF THE AGENDA. (if multiple items are on the agenda)

4. OPPORTUNITY FOR PUBLIC COMMENT.

a. Written: All written communications suitable for the agenda, received since the preparation of the subject agenda, addressed to or intended for the City Council and not otherwise included in the agenda, shall be listed in this section in the order received.

b. Public Comment: This section of the agenda is for members of the public to make comments to the City Council regarding non-agendized matters of general interest to the citizens of Benicia in accordance with the procedures set forth in Section III below.

5. BUSINESS ITEMS. This section of the agenda is for the City Council for the Closed Session, action items or study session matters.

6. CLOSED SESSION.

7. ADJOURNMENT.

III. PUBLIC PARTICIPATION.

A. FUNDAMENTAL RIGHT.

The City Council promulgates these rules in recognition of the public's fundamental right to speak on agenda items for a meaningful amount of time.

B. RECOGNITION.

No person may address the Council without the permission of the Presiding Officer, or a majority of the quorum, or as otherwise required by law. Except as required by law, the Presiding Officer is obligated to recognize members of the Council and staff prior to opening up items for public comment.

C. ADDRESSING THE COUNCIL.

Those persons desiring to speak on an agendized matter or under Opportunity for Public Comment are requested to, but not required to, complete a Speaker's Card and present it to the City Clerk at the beginning of the meeting or upon their arrival in the Council Chambers. The Presiding Officer shall recognize speakers on an agendized matter, including Announcements, Appointments, Presentations, Proclamations, when that item is before the City Council for consideration.

The Presiding Officers shall recognize speakers on matters not on the agenda under the Opportunity for Public Comment portion of the agenda. Persons addressing the

Council shall do so only at the speakers' rostrum and should begin, but are not required to do so, by stating their name and address for the records. All remarks shall be addressed to the Council as a body and not to any member thereof, or to staff, or the public.

No person shall be permitted to enter into any discussion without the permission of the Presiding Officer.

D. ACTION ON NON-AGENDIZED ITEMS.

Any item raised by a member of the public which is not agendized, but may require Council action, shall be automatically referred to the City Staff for investigation and disposition, unless the item requires action to be taken by the Council at the meeting during which it was raised and constitutes an emergency or the need to take such action arose after the posting of the agenda within the meaning of Government Code §54954.2(b). In either event the Council is entitled to discuss the matter before making the determination required under said Government Code provision, and if either finding is made, may take action thereon.

E. TIME LIMITS FOR PUBLIC COMMENT.

1. In order to allow the Council to have adequate time to address the agendized items of business, public comment under Opportunity for Public Comment will be limited to not more than five (5) minutes per speaker on non-agendized items. If a large number of the public desire to speak, the Council may agree to limit the time for each speaker to less than 5 minutes to allow the Council to address the agendized items of business.

2. The Presiding Officer may allow up to 10 minutes for a speaker to speak on multiple agenda items under Opportunity for Public Comment.

3. Each speaker shall speak only once on an agenda item and limit his/her remarks to not more than five (5) minutes when speaking at the time of the agendized item unless a shorter time is authorized by Council.

4. In accordance with the Open Government Ordinance and to promote time efficiency, the Presiding Officer may request spokespersons be designated to represent similar views. A designated spokesperson has 15 minutes to speak.

5. The time for speaking may be extended by the Presiding Officer with the consent of a majority of the Council.

6. Each speaker shall avoid repetition of the remarks of prior speakers and, when speaking at the time an agenda item is being considered, shall speak only to the specific agenda item under consideration.

7. Speakers may not concede any part of their allotted time to another speaker.

F. QUESTIONS.

Following each speaker's remarks, each Council Member shall be given the opportunity to comment further and to address questions to the speaker. The speaker may not be permitted or required to answer such questions if a majority of Council Members present other than the questioner object.

G. PRESENTATIONS SUBMITTED IN WRITING.

Persons who anticipate oral presentations exceeding the allowed time are encouraged to submit comments in writing at the earliest possible time, for distribution to the Council and other interested parties. Comments should be submitted at least one day in advance of the scheduled meeting date to insure distribution to the Council prior to the meeting.

H. POWER POINT PRESENTATIONS.

Members of the public may present a Power Point software presentation to the Council utilizing the City's audio/visual equipment, provided that the public make their request to the City Manager's 72 office hours in advance of the meeting in order to coordinate the use of the equipment.

IV. BUSINESS ITEM PROCEDURES.

A. ONE HOUR FOR HEARINGS.

Individual Business Items, including Public Hearing should not exceed one hour in length. To assist with this goal, time limits for public speakers may be limited in accordance with Section III.E.

B. PUBLIC HEARING AND APPEALS PROCEDURES.

The procedures for Public Hearings and appeals are as follows:

1. Presentation by Staff.
2. Presentation by Proponent or Appellant.
3. Presentation by Opponent.
4. Comments from the Public.
5. Rebuttal by the Proponent or Appellant.
6. The Presiding Officer shall recognize supplemental speakers as required by law or deemed appropriate to gather information relevant to the matter before the City Council. Supplemental speakers shall limit their remarks to presenting new information

not already covered by other speakers, and must limit their presentation to five (5) minutes or the time established for speakers in accordance with Section III.E, if less.

7. Following the public portion of the hearing, the Presiding Officer shall declare the public portion of the hearing closed and the matter is then before the City Council for the Council portion of the hearing. Each Council Member shall be given an opportunity to speak to the subject without interruption. When the Council discussion has been concluded, the Council shall make its decision.

8. Spokespersons for the Proponent/Appellant and Opponent shall each have fifteen (15) minutes to present their case. The spokesperson for the Proponent/Appellant shall have five (5) minutes to present any rebuttal. Organized groups may choose a single spokesperson who may speak for the group. Speakers may not concede any part of their allotted time to another speaker.

V. CREATION OF COMMITTEES, BOARDS AND COMMISSIONS.

A. CITIZEN COMMITTEES, BOARDS AND COMMISSIONS.

The Council may create committees, boards, and commissions to assist in the conduct of the operation of the City Government with such duties as the Council may specify, not inconsistent with the City Code. Any committee, board, or commission so created shall cease to exist upon the accomplishment of the special purpose for which it was created, or when abolished by a majority vote of the Council. No committee so appointed shall have powers other than advisory to the Council or to the City Manager, except as otherwise specified by the City Code.

B. MEMBERSHIP SELECTION.

Unless otherwise specified by state law or the City Code, appointments shall be made by the following procedure:

1. A two-member subcommittee appointed by the Mayor, which will rotate among council members with one new appointee each year, shall be appointed to interview applicants for all boards, commissions and committees, unless otherwise provided for by statute, ordinance or resolution. One member of the City Council subcommittee shall be appointed in January of each year and one member appointed in July of each year, each for a one year term.

2. Each term of the subcommittee will be filled by Council Members who did not serve on the committee during the prior term unless the Council Member is unable or unwilling to serve on the subcommittee.

3. The subcommittee shall interview the applicants using standardized questions for all applicants, particularized questions for the particular board or commission, and any other appropriate questions. The subcommittee shall may recommend one applicant to the Mayor for each vacancy. ~~and the Mayor may make the appointment from the recommended applicant.~~ The subcommittee shall may provide

~~[oral or written] comments on the recommended applicant. comments to the Mayor on why they recommended the applicant. If the Mayor finds the recommendation acceptable, the comments shall be included in the agenda packet as part of the paperwork for the appointment. If the subcommittee provides a recommendation, the subcommittee's recommendation shall not be disclosed to the Mayor prior to the publication of the agenda. The agenda shall include a statement on whether the Mayor's appointee was or was not recommended by the subcommittee.~~

~~4. If the applicant is not acceptable to the Mayor, the subcommittee shall recommend an additional applicant until an appointment is made by the Mayor, which shall be subject to final approval by the Council. The City Clerk shall call for the vote in the following order: subcommittee members, remaining council members, and the mayor.~~

~~5. If, at any point during this process, only one qualified applicant is available, the subcommittee may choose to make a single recommendation.~~

~~6. If the subcommittee is unable to recommend applicants due to lack of qualified applicants, then the Mayor may elect to interview the available applicants and/or direct staff to conduct additional outreach efforts to fill the opening.~~

4. 7. The names of the proposed appointees shall be posted five (5) working days prior to the appointment being made.

5. 8. For appointments to a board or commission where state law provides for appointment by the Council as a whole, any Council member may nominate a person for appointment. The Council shall then vote on the nominee at the following Council meeting.

6. 9. If desired by the member, a members of the Council ~~who are not on the subcommittee~~ may interview any or all of the applicants. These members shall use care not to violate the Brown Act by disclosing the information they learn from the interviews prior to the meeting where appointments are scheduled to be made.

C. REMOVAL OF MEMBERS OF COMMITTEES, BOARDS AND COMMISSIONS.

The Council may remove any member of any committee, board or commission which it has created by an affirmative vote of at least four (4) members of the Council, if removal is not specified in the City Code.

VI. RULES OF ORDER.

A. QUORUM.

Three Council Members shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings of the Board. If a quorum is not present within one hour after the time noticed for commencement of the meeting and thereafter any Council Member who was present at the end of such hour leaves and does not return, no meeting shall be held on that date notwithstanding the later presence of three (3) or more Council Members.

B. RIGHT TO THE FLOOR.

A Council Member shall not have the right to the floor without being recognized by the Presiding Officer, except upon a point of order. Council Members, including the Mayor, shall avoid interrupting any Member while speaking.

C. ORDINANCES, RESOLUTIONS AND MOTIONS – PRECEDENTS.

When any ordinance, resolution, or motion is properly brought before the Council and seconded by another Council Member, the council may discuss, debate, and offer other motions including a motion to amend or substitute. If a point of order, or a motion to adjourn, to table, to table to a time certain, to close debate, to refer or to amend, is made, no other action shall be considered until that motion or point of order is resolved. Such items shall have precedence in the order stated in the preceding sentence. Points of order shall be ruled upon by the Presiding Officer, provided that such ruling may be overridden by a majority of the Council. All points of order, or motions to adjourn, to table, to table to a time certain, to close debate, and to refer), except motions to amend, shall be put to a vote without debate and decided by a majority. Any of the foregoing motions shall be in order at anytime the speaker is duly recognized, except when repeated without intervening business or discussion, or if made when the motion to close debate has been adopted or while a vote is being taken:

1. MOTION TO ADJOURN.

A motion to adjourn terminates the meeting.

2. MOTION TO TABLE.

If a motion to table (without time certain) passes, consideration of the matter may be resumed only upon the motion of a member who voted with the majority on the motion to table.

3. MOTION TO CLOSE DEBATE.

When a motion to close debate is duly made and seconded, there shall be no further debate. If the question carries, the Presiding Officer shall put pending amendments to a vote, without debate, in the inverse order of their introduction before putting the main question. If the question is decided negatively, the main question and its amendments remain before the Council.

4. MOTION TO REFER.

A motion to refer the matter sends the matter to a committee or staff for investigating or studying the proposal and reporting back. If the motion to refer fails, the main question and its amendments remain before the Council.

5. MOTION TO AMEND.

A motion to amend modifies or changes the motion that was being considered. If the motion to amend passes then the main motions should be voted on as amended.

6. DIVISION OF THE QUESTION.

If a matter properly put before the Council contains two or more separable propositions, the Presiding Officer may, with the consent of one other Council Member, divide the question into its separable parts for consideration in order.

7. RECONSIDERATION.

Providing that no intervening rights shall be prejudiced, any Council Member who voted with the majority on a question may move the reconsideration of that question at the same meeting in which the original decision was made or at the next following meeting. A motion for reconsideration must be made no later than the Thursday before the agenda packet is published. After a motion for reconsideration has been acted upon, no other similar motion shall be made without unanimous consent.

D. VOTING.

Unless otherwise required by applicable law, three affirmative votes are required to enact an ordinance, to adopt a resolution, or to adopt a motion granting a franchise or authorizing the payment or expenditure of money or incurring of a debt. The majority of a quorum is required to adopt other motions, unless otherwise required by applicable law. A "majority" refers to a majority of the quorum present. All matters shall be adopted by a roll call vote.

VII. STAFF SUPPORT.

Staff support for requests from individual council members shall be limited to 15 minutes of staff time. Research, report writing, compilation of materials, etc. in excess of 15 minutes shall not be undertaken unless approved by a majority of the City Council.

VIII. FAILURE TO OBSERVE RULES OR PROCEDURES.

The failure to observe any of the rules or procedures does not serve as an independent source of challenge to any decision or action of the City Council, nor does it serve as evidence of improper conduct in any challenge to any action by a City Council member or by the Council as a whole.

IX. REVIEW OF THE RULES OF PROCEDURE.

The City Council shall review these Rules of Procedure not less than annually and make any appropriate changes.

APPENDIX A: COUNCIL MEMBER REQUESTED AGENDA ITEM

Requested by: _____

Desired Initial Council Meeting Date: _____

Desired Date for Second Step or Policy Calendar Review: _____

Deadline for Action, if any: _____

Problem/Issue/Idea Name: _____

Description of Problem/Issue/Idea: _____

COUNCIL DIRECTION

- No Further Action
- Schedule for Second Step on _____
- Schedule for Policy Calendar Review on _____
- Refer to: Staff _____
 Commission _____
 Board _____
 Committee _____

Date Due: _____

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 17, 2013
BUSINESS ITEMS

DATE : September 11, 2013

TO : City Council

FROM : City Manager

SUBJECT : **MAYOR PATTERSON AND COUNCIL MEMBER STRAWBRIDGE**
REQUEST TO AGENDIZE AN ITEM REGARDING FUNDING FOR
MEALS ON WHEELS

RECOMMENDATION:

Consider Mayor Patterson and Council Member Strawbridge's request to agendize these topics for future City Council Meeting.

EXECUTIVE SUMMARY:

Mayor Patterson and Council Member Strawbridge would like the City Council to consider supporting the Meals on Wheels program by providing \$6,000 in funding to keep the program going five days a week for this year.

Meals On Wheels of Solano County (MOWS) has served the clients of the Benicia Senior Center lunch five days a week for over 20 years. MOWS is a non-profit organization that receives the majority of its funding from the federal government. Due to recent funding cuts, it is necessary to reduce the lunch service to three days per week at the Senior Center.

Attachment:

- Mayor Patterson and Council Member Strawbridge's Agenda Item Form

September 6, 2013

Appendix A: Council Member Requested Agenda Item

Requested by: Council Member Strawbridge, Mayor Patterson

Desired Initial Council Meeting Date: September 17, 2013

Desired Date for Second Step or Policy Calendar Review: October , 2013

Deadline for Action, if any: None

Problem/Issue/Idea Name: Meals on Wheels funding

Meals On Wheels of Solano County (MOWS) has served the clients of the Benicia Senior Center five days a week for over 20 years. Their staff and volunteers provide a healthy lunch program that also encourages social interaction for many Benicia seniors.

MOWS is a non-profit organization that receives a majority of funding from the federal government along with additional funding from other sources. Because of the sequestration, MOWS lost over \$50,000. With these funding cuts it has become necessary to reduce the lunch service to three days a week at the Center.

Clients at the Benicia Senior Center believe that this is going to be "detrimental to their health". The clients, explain that "many of the lunch clients are over 80 and this is the only meal for the day". They went on to say that "without it for 2 days, we won't eat".

MOWS mission is "no senior goes hungry". They are looking for alternative funding sources and need \$12,000 to keep the program going the five days a week for this year.

We are asking the City for \$6000.00 to help fund the program. We will be also contacting other groups to help support the cause as well.

Council Direction

No Further Action

Schedule for Second Step on

Schedule for Policy Calendar review on

Refer to: Staff

Commission

Board

Committee

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 17, 2013
BUSINESS ITEMS

DATE : September 11, 2013

TO : City Council

FROM : City Manager

SUBJECT : **MAYOR PATTERSON REQUEST TO AGENDIZE ITEMS REGARDING INCREASING LEGAL PROPERTY NOTIFICATION REQUIREMENTS AND CREATING A FORMAL PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS**

RECOMMENDATION:

Consider Mayor Patterson's request to agendize this topic for a future City Council Meeting.

EXECUTIVE SUMMARY:

Mayor Patterson would like the City Council to consider expanding the City's public notification requirements for pending land use and development proposals. This request consists of two items. First the Mayor would like the Council to direct staff to initiate an amendment to Section 17.104.040 (Notice and Public Hearing) of the Benicia Municipal Code (BMC) increasing the legal property noticing requirements from 300 to 500 feet. Secondly the Mayor would like the City Council to adopt a formal public outreach policy for pending land use and development proposals that would give staff the discretion to expand the regulatory notification requirements for land use and development proposals that are deemed to be "of special interest" to certain groups or geographical areas of the community.

Attachments:

- ❑ Mayor Patterson Requested Agenda Item Form
- ❑ Public Outreach Policy for Pending Land Use and Development Proposals (City of San Jose)
- ❑ Increasing Public Notice Requirements (City of Davis)
- ❑ Mailed Public Hearing Notice (City of Simi Valley)
- ❑ Summary of Benicia Municipal Code Land Use Permit Property Notification Regulations

APPENDIX A: COUNCIL MEMBER REQUESTED AGENDA ITEM

Requested by: ___ Mayor Patterson

Desired Initial Council Meeting Date: August 20th or September 3, 2013

Desired Date for Second Step or Policy Calendar Review: immediately after approval

Deadline for Action, if any: prior to next advisory commissions (PC, HPRC) and Council hearings on land use projects – new or ongoing.

Problem/Issue/Idea Name: PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS

Description of Problem/Issue/Idea: There seems to be some public confusion about public notice because the terminology means something specific under the law for CEQA and land use projects and because the public has a general expectation of being notified.

The council has discussed on other occasions the legal notice of properties with 300 feet and some have suggested expanding such notice to 500 feet. This would require amending the ordinance **17.104.040 Notice and public hearing.**

In addition to the actual distance from the property line to the potentially affected neighbors, there is a need for clarification of city council policy and the spirit of open government. To be clear, there is no inherent criticism of current staff, and the proposed agenda item it to clarify through ordinance and policy the council’s desire to have an informed public.

Attached are three examples of exceeding the minimum state standards and policy clarification.

COUNCIL DIRECTION

- No Further Action
- Schedule for Second Step on _____
- Schedule for Policy Calendar Review on _____
- Refer to: Staff _____
 Commission _____
 Board _____
 Committee _____

Date Due: _____

City of San José, California

COUNCIL POLICY

TITLE PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS	PAGE 1 of 8	POLICY NUMBER 6-30
EFFECTIVE DATE November 16, 1999	REVISED DATE September 21, 2004	
APPROVED BY COUNCIL ACTION November 16, 1999; September 21, 2004		

BACKGROUND

The City Council is committed to providing the information and opportunities to encourage residents to follow development activity in their neighborhoods and to actively participate in the land use development process. The intent of this policy is to establish a baseline protocol for dissemination of information related to development activity and to encourage early and frequent communication between City staff, applicants and the public.

The California Government Code requires public hearing notices be sent to all property owners within a 300-foot radius of a development site a minimum of ten (10) days prior to the hearing. To meet the objectives of improving communication and providing the community with as much advanced notification of proposed projects as possible, the City's policy goes beyond the State requirements for notification of development proposals. As defined below, specific means of outreach are identified for projects based on size, complexity and potential interest, and notice is provided typically 14 days prior to the hearing to property owners, tenants and other stakeholders within a defined radius.

DEFINITIONS

For the purposes of this Policy:

"Very Small Development Proposal" is defined as any application for development approval with the Department of Planning, Building and Code Enforcement that is for a single family detached dwelling, tree removal, tract sales office, or similar type of approval. Such proposals are considered as being administrative in nature and having very localized interest to the community.

"Standard Development Proposal" is defined as any application for development approval with the Department of Planning, Building and Code Enforcement that requires a public hearing and is not a Very Small, Large or Significant Community Interest Proposal.

"Large Development Proposal" is defined as any application for development approval with the Department of Planning, Building and Code Enforcement or the Redevelopment Agency that is for more than 50 dwelling units, 60,000 square feet of commercial uses or 100,000 square feet of office or industrial uses.

"Significant Community Interest Proposal" is defined as any application for development approval with the Department of Planning, Building and Code Enforcement that the Director, in consultation with the Council Offices of the Council District, the applicant and the neighborhood designee in which the application is proposed, determines has the potential to have a high degree of interest either at a local or City-wide level. The Director should make the decision to designate a proposal as being Significant Community Interest within 30 days of the application being filed; however, may extend the decision to 45 days of the application being filed.

"Director" is defined as the Director of Planning, Building and Code Enforcement.

"Project Manager" is defined as a Department of Planning, Building and Code Enforcement staff member who is responsible for processing the land use and/or development applications.

TITLE	PAGE	POLICY NUMBER
PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS	2 of 8	6-30

"Neighborhood Group Designee" is defined as a designated member of a group that is representative of its' specific neighborhood, and whose primary purpose is the improvement of that neighborhood. The neighborhood group is self-identified and provides an annual update of the designee's contact information to the City.

"Neighborhood Advisory Committee (NAC) Designee" is defined as a designated member of one of the 19 NAC's established under the City's Strong Neighborhood Initiative. An annual update of the NAC designee's contact information should be provided to the City by the NAC.

"Community Organization Designee" is defined as a designated member of a group of individuals organized for the purpose of monitoring, advocating, or promoting issue(s) of interest or concern of the group. The community organization is self-identified and provides an annual update of the designee's contact information to the City by the community organization.

GOALS/OBJECTIVES

This Policy identifies approaches to public outreach with the intent of involving interested parties in the development review process through early notification and accessibility of information while still meeting performance goals related to the timely review of development applications through a predictable process. For example, community meetings for Large or Significant Community Interest Proposals serve the best interests of both the applicant and the community by providing a forum to discuss the projects and potential issues well before the noticed Public Hearing.

The City of San José encourages all applicants to work with staff on appropriate means of noticing the surrounding property owners, residents, neighborhood groups, community organizations, and other interested parties about their development applications, and providing the public the opportunity to become involved in the land use and development process. While specific means of outreach are identified as essential for projects that are Large and/or Significant Community Interest Proposals, it may be appropriate at times for Very Small or Standard Development Proposals to also utilize the expanded outreach methods outlined in this policy.

Where a proposed private or public development may be of significant interest, the Council's experience is that extensive public outreach efforts can improve communications, alleviate concerns, and clarify misunderstandings or points of contention that typically arise at a Public Hearing occurring much later in the process. Timely and informed community involvement results in better projects and decisions.

ROLES/RESPONSIBILITIES

Effective public outreach and communication is a result of successful collaboration between staff, applicants and the community. All stakeholders must participate in the process, respond in a timely manner to questions and requests for information, and respect the project schedule.

PROCESS

1. Early Notification

Purpose/Intent

The intent of Early Notification is to ensure that property owners, tenants, neighborhood groups, community organizations, and other interested parties have as much advanced notification of proposed projects as possible. This provides stakeholders the opportunity to be informed about decisions that may affect them

Modes and Timing

At a minimum, all development applications are posted on the Planning Divisions' website at the time of application submittal. Within ten (10) days of application submittal, an email should be sent to subscribing individuals to indicate the filing of an application and a notice should be posted at the property of the proposed development application.

TITLE	PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS	PAGE	3 of 8	POLICY NUMBER	6-30
--------------	--	-------------	---------------	----------------------	-------------

The Director may at the time of the filing of an application determine that additional modes of Early Notification are warranted for Large and/or Significant Community Interest Proposals. The additional modes should be employed within ten (10) working days of the filing of a development application. See "Matrix A: Modes of Outreach" to determine which modes of outreach are essential for each proposed type.

2. Community Meetings.

Purpose/Intent

The purpose of community meetings is to inform property owners, residents and other interested parties about the proposed development, answer questions, receive public comment, and address project issues before the Public Hearing.

Modes and Timing

At a minimum, for Large and/or Significant Community Interest Proposals, there should be at least one community meeting no less than 45 days following the filing of the application nor less than 30 days prior to the Public Hearing. It is recommended that the community meeting be held as early as possible in the process, to allow applicants and interested parties to share their goals and concerns before proposal details are finalized. The tentative Public Hearing date for the proposal should be announced at the community meeting.

Meetings hosted by an interested community group or organization, such as a Neighborhood Advisory Committee, scheduled during their regularly scheduled meetings, are preferred. However, Large Development Proposals and Significant Community Interest Proposals may not fit into the timeframe of established community meeting agendas and likely require stand-alone meetings. Absent an opportunity to partner with an interested community group or organization to establish a mutual meeting time, mid-week evening meetings are preferred. A minimum of two (2) weeks should be allowed for the actual noticing of the community meeting prior to the meeting date to give appropriate notice to the community and ensure a successful opportunity for input and involvement.

A Community Meeting Notice should clearly explain who is conducting the meeting, as well as the applicant's and the City's Project Manager's contact information, the topic of the meeting, the location of the subject property, the date, time and place of the meeting, the specific time at which the formal presentation will begin as well as sufficient details of the proposed to provide the community with a basic understanding of the project. See "Matrix A: Modes of Outreach" to determine which modes of outreach are essential for your proposal.

Meeting Logistics

The project proponent (applicant and/or representatives such as architect, engineer, etc.) should plan on organizing the meeting unless the applicant and City staff make other arrangements. City staff should be invited to the meeting so that they can provide an overview of Planning issues and processes relevant to the project, and respond to questions on policy and process, as well as facilitating the discussion. An important aspect of staff's role at community meetings is to understand and record public comment so that staff can transmit community input to the decision-makers.

Due to the need to provide appropriate advance notice, it is important for the applicant to discuss possible meeting dates with the Project Manager early to that they may coordinate with appropriate parties and confirm a meeting location. It is also important that the applicant coordinate the meeting with the Project Manager to determine an appropriate meeting notice, agenda and respective roles. The responsibility to notice the meeting shall be the applicant's, unless the applicant and City staff makes other arrangements.

Possible locations for the community meeting include at a local school, church, or meeting hall. A private residence may also be used although is not normally encouraged. It is important that the location of the meeting be neutral to encourage public attendance and participation. The meeting site should provide adequate parking, and the meeting facility should be of adequate size to accommodate the anticipated number of attendees.

TITLE	PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS	PAGE	POLICY NUMBER
		4 of 8	6-30

At the meeting, a presentation should be provided by the proponents (at a specific time on the meeting agenda). After the proponent's presentation, Planning Staff should be given the opportunity to identify project issues for discussion. After a discussion of these issues takes place, the public would then have the opportunity to informally discuss any other project issues. Staff should take notes on the discussion and be available to respond to policy and process questions. The proponent must ensure that there is adequate opportunity for comments and questions from the public.

Visual presentations (for example, architectural renderings and models) are usually the most effective method of relaying project information to the public. If renderings are available prior to the meeting, it would be in the applicant's best interest to attach this information to the meeting notice or provide copies to the Project Manager to allow the public to review project details and come to the meeting more prepared for an open and effective discussion.

3. On-Site Noticing

Purpose/Intent

On-site Noticing is an additional mode of Early Notification warranted for all Proposals. The on-site notice is intended to provide information to immediate neighbors and members of the public regarding the development application on file for the subject property.

Modes and Timing

The applicant is responsible for installing such on-site notice at the site. Such on-site notice should be accessible to the public and should be sufficient to adequately notify the public of the proposed development at the site and where the public might obtain more information regarding the proposed development. All on-site notices need to meet City specifications, which should be indicated in a separate detailed handout available from the Department of Planning, Building, and Code Enforcement. The applicant is responsible to replace any vandalized or missing sign only once upon request by the City.

On-site Notification should be employed within ten (10) working days of the filing of a development application.

4. Public Hearing Notice

Purpose/Intent

The Council recognizes the importance of using larger radius noticing as a tool to broaden the awareness of persons in the immediate area of a pending land use or development action. Therefore, the City's Policy goes beyond the State requirements for notification of Standard, Large, or Significant Community Interest Proposals. By keeping the community informed about land use and development decisions, the City promotes an open process that encourages genuine and effective involvement with all stakeholders.

Modes and Timing

- Website: Public Hearing Agendas and associated Staff Reports are posted on the website. Typically, Agendas are available one week prior to the Hearing, and Staff Reports for applications that are decided upon by the Planning Commission or City Council are posted one week prior to the Public Hearing.
- Mailed Notice:
 - *Timing*. Public Hearing Notices should be mailed a minimum of two (2) weeks prior to the Hearing for Standard and Large Proposals. Public Hearing Notices should be mailed a minimum of 21 days prior to the Hearing for Significant Community Interest Proposals. Notices should be sent to all property owners and tenants within a specified radius of the subject property, as well as neighborhood group leaders, community organization leaders, and other interested parties.

TITLE	PAGE	POLICY NUMBER
PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS	5 of 8	6-30

- *Radius.* See "Matrix A: Modes of Outreach" to determine the radius for noticing for each proposal type. The Director determines when supplemental Noticing is required, such as modifications to the radius, additional publishing, etc.
- Where non-residential development is proposed near existing residential areas, special care in the use of mailed notices should be taken to ensure the most appropriate radius distance is used. It may be the decision of the Director that a modified radius is used with a larger radius adjacent to residential areas, and smaller next to non-residential land uses.
- *Content.* Notice language should clearly describe the project in concise and plain terms, utilizing prepared, standard form documents. The use of technical terms should be limited and explained wherever possible to ensure the highest level of understanding of the information presented to the public. The project description should include sufficient detail to convey to the general public the nature of the proposed development project.
- *Language.* All Public Hearing Notices should contain a note in Spanish and Vietnamese explaining how the public can receive information about the Hearing and/or Proposal in these languages. For Large Proposals, the entire Notice should be written in both English and Spanish (or other dominant language spoken in the neighborhood) at the cost of the applicant. For Significant Community Interest Proposals, the entire Notice should be written in both English and Spanish (or other dominant language spoken in the neighborhood) at the cost of the requesting Neighborhood Group, Neighborhood Advisory Committee, or Community Organization. Neighborhood Groups, Neighborhood Advisory Committees or Community Organizations that do not have the means to pay for the translation, may appeal to the Director for assistance.
- *Publishing.* For Large or Significant Community Interest Proposals, Notice should be advertised in at least one general circulation or community English language publications, which reaches the community in the vicinity of the project. In addition, should the neighborhood demographics warrant additional outreach, the Notice may be published in a language other than English in an appropriate publication.
- *Broadcast on the City Television Channel.* Notices may be broadcast for Large or Significant Community Interest Proposals, including General Plan Amendment hearings, and proposed changes to the Zoning Ordinance.

5. Community Input for Items Deferred or Continues from the Noticed Public Hearing before the Planning Commission or Director of Planning

Purpose/Intent

Upon receipt of a Public Hearing Notice, many members of the public make arrangements to attend and possibly provide testimony at the Hearing. For items that are deferred or continued from the noticed meeting date, community input in the form of public testimony should be taken by the decision-making body at the originally scheduled date. The intent of this policy is to provide the public an opportunity to comment on the proposal notwithstanding a request for a continuance of the Public Hearing or a delay in action on the application.

Mode/Timing

All continuances beyond two (2) weeks are subject to the Public Hearing Notice requirements under Section 4 above (located on page 4), unless staff, for good cause, recommends otherwise.

6. Modes of Outreach

- **E-Mail:** The Director should develop an opt-in (i.e., subscription) procedure for designated contacts/leaders of the neighborhood groups, community organizations, and other interested parties who request e-mail notification of proposals meeting specific criteria. It is the responsibility of the designated contacts/leaders and interested parties to provide updated contact information to the City.

TITLE	PAGE	POLICY NUMBER
PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS	6 of 8	6-30

- Postcards: Postcards should be sent to the designated contacts/leaders of the neighborhood groups, community organizations, and other interested parties for all Large or Significant Community Interest Proposals to alert property owners, tenants, neighborhood group leaders, community organization leaders, and other interested parties of the application submittal.

It is the responsibility of the designated contacts/leaders and interested parties to provide updated contact information to the City.

- On-site signs: See Section 3 (located on page 4).
- In-Person Notifications: At the earliest opportunity, the Director's staff is encouraged, when practicable, to describe all pending Large or Significant Community Interest Proposals at established community and neighborhood association meetings.
- Broadcast on the City Television Channel: Notices should be broadcast for upcoming community meetings for Large or Significant Community Interest Proposals, such as General Plan Amendment hearings and proposed changes to the Zoning Ordinance.
- Website: The City of San José recognizes the importance of the Internet in providing self-service information to the public 24 hours a day, seven (7) days a week. The Planning Divisions' website is updated weekly, and provides the public with information on recently submitted land use and development proposals, as well as a range of other planning related documents and policies. In addition, San José Permits On-Line (www.sjpermits.org) is now available. This website allows customers to search/retrieve property-related information, check on the status of permits, and performs research and queries from a list of maps of the City of San José.

As this policy is implemented, additional information that could facilitate the public outreach goals of this Policy should be implemented, as staffing is available (e.g., project information packets with drawings may be posted on the website).

TITLE	PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS	PAGE	7 of 8	POLICY NUMBER	6-30
--------------	---	-------------	--------	----------------------	------

MATRIX A: Modes of Outreach

Method	Very Small	Standard	Large	Significant Community Interest
Early Notification				
Website	3	3	3	3
Email	3	3	3	3
Postcard			3	3
Site display	3	3	3	3
Radius				
300 feet	3			
500 feet		3		
1,000 feet			3	3
Community Meeting				
Website	3	3	3	3
Email			•	•
Mail			3	3
Flyers			•	•
Public Hearing Notices				
Website	3	3	3	3
Email			•	♦
Mail	3	3	3	3
Notice in paper			3	3
City Television Channel			•	♦

Legend:

3 ESSENTIAL

♦ DESIRABLE

• MAY BE APPROPRIATE

TITLE	PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS	PAGE	8 of 8	POLICY NUMBER	6-30
--------------	--	-------------	---------------	----------------------	-------------

Matrix B: Application Types and Special Uses

Application Type/Special Uses	Very Small (300 feet)	Standard (500 feet)	Large (1,000 feet)	Significant Community Interest (1,000 feet or more)
Applications				
Annexation ¹		3		
General Plan Amendment ¹		3	3	3
Rezoning/Prezoning ¹		3		
Planned Development Zoning ¹		3		
Conditional Use Permit ²		3		
Planned Development Permit/Amendment ¹		3		
Single Family House Permit	3			
Site Development Permit/Amendment		3		
Special Use Permit ³		3		
Tentative Map		3		
Historic Permit	3	3		
Tree Removal Permit	3			
Variance/Exception ³		3		
Special Uses (minimum 500 feet radius)				
Alcohol, off-site sales		3	3	3
Dancehall		3	3	3
Entertainment		3	3	3
Poolroom/billardis		3	3	3
Private club or lodge		3	3	3
Theatre, indoor		3	3	3
Drinking establishment		3	3	3
Hospital		3	3	3
Residential care facility		3	3	3

Notes:

- The Director will determine when modifications to the radius are required.**
- The designee(s) of the relevant Neighborhood Group, Neighborhood Advisory Committee, or Community Organization should receive a Notice of those Proposed within their area(s) of interest.**

Legend

- Most applications are defined as Standard Proposals; the Director will make the determination when an application qualifies as a Large or Significant Community Interest Proposals.
- Most Conditional Use Permits are Standard Proposals, but specific uses generate greater community interest and are therefore defined as Significant Community Interest Proposals.
- Most applications are defined as Standard Proposals, unless they are for Single-Family projects for which a 300-foot notification radius is appropriate.

Meeting Date: _____

Staff Report

May 7, 2004

TO: City Council

FROM: Bill Emlen, Planning Director
Katherine Hess, Community Development Administrator

SUBJECT: Zoning Ordinance amendment increasing public notice requirements

Recommendation

Staff recommends the City Council:

1. Hold a public hearing; and
2. Introduce the attached ordinance increasing the minimum standard notification distance for planning applications from 300 feet to 500 feet.

Background and Analysis

As part of the Telecommunications Ordinance Update, the minimum distance for public notice of a Conditional Use Permit (CUP) hearing was increased from 300 feet to 500 feet. Staff is recommending the notice requirements for other planning applications and demolition permits be increased to match these changes. These provisions were included in drafts of the telecommunications ordinance but were removed from the final version because the change had not been included in the public hearing notices.

Although the change will result in some slight increase in processing and postage costs, staff believes it is appropriate for the following reasons:

1. We do not support having one notification area for CUPs that is different from that for other applications. It would be confusing to the public, applicants, and city staff alike.
2. On a practical – and a policy – level, it is better to over-notice than to under-notice. Increasing the notification area may allow concerns to be identified and resolved prior to the public hearing venue.

Staff makes the following additional comments:

- Approximately a year ago, the Community Development Department began generating mailing lists itself, rather than relying on an applicant to provide labels. Although we

have not eliminated all mistakes, there is less concern about deliberate omissions that were occasionally associated with applicant-generated lists.

- We have also changed our standard practice to include notice to occupants of rented single-family homes. We continue to pursue mechanisms for notifying apartment residents.
- The recommended ordinance would not affect the “adjacent neighbor” notice of A Tier #1 Design Review within the Downtown and Traditional Residential Neighborhoods Design Guidelines.
- As always, per the adopted “Neighborhood Noticing and Participation Guidelines,” likely controversial projects will have noticing areas that may significantly exceed the minimum 500-foot radius. Such an expanded noticing area would reflect the area potentially impacted by a project and concerned agencies/associations.

Planning Commission recommendation

On April 21, 2004, the Planning Commission held a public hearing on the draft ordinance. There was no public comment. The Planning Commission recommended approval of the draft as presented, with minimal discussion.

Attachments

1. Recommended Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DAVIS
AMENDING ARTICLE 40 AND ARTICLE 8 OF THE CITY OF DAVIS MUNICIPAL CODE
TO REQUIRE 500-FOOT NOTICE WHERE 300-FOOT WOULD OTHERWISE BE
REQUIRED

THE CITY COUNCIL OF THE CITY OF DAVIS DOES ORDAIN AS FOLLOWS:

SECTION 1.

Article 40.22.080 (Final application—Submission) is hereby amended to read as follows:

The final application may be submitted any time subsequent to approval of the preliminary application by the city council. A public hearing shall be held on the application. Notice of such hearing shall be given by sending written notice to all property owners within five hundred feet of the property for which the application has been made. Such notices shall be mailed not less than five days prior to the hearing. Failure of owners to receive notice of such hearing shall in no way affect the validity of any action taken.

Final planned development applications which are not being processed concurrently with land use applications requiring city council action may be approved, conditionally approved, or denied by the planning commission. Final planned development applications which are being processed concurrently with land use applications requiring city council action may be approved, conditionally approved, or denied by the city council after review and recommendation by the planning commission.

SECTION 2.

Section 40.22.180 (Public hearing and notice, Planned Developments) is hereby amended to read as follows:

A public hearing shall be held not more than forty-five days of determination of a complete application. Notice of such hearing shall be given by sending written notice to all property owners within five hundred feet of the property for which the application has been made. Such notices shall be mailed not less than five days prior to the hearing. Failure of owners to receive notice of such hearing shall in no way affect the validity of any action taken.

SECTION 3.

Section 40.23.100(b)(2) (Certificate of Appropriateness procedures) is hereby amended to read as follows:

Public Notice.

Prior to taking action on an Administrative Approval, the Commission staff shall provide notice through a mailing to all owners of real property as shown on current property tax roles within a minimum of five hundred feet of the subject property. At the discretion of the Commission staff, based on public interest in the project, the scope of notice, including property owner radius, may be expanded.

SECTION 4.

Section 40.26.240(4) (Variances from water conservation standards) is hereby amended to read as follows:

Public Hearing and Notice.

When a public hearing is scheduled, written notice shall be mailed to the property owners within five hundred feet of the subject site not less than ten calendar days prior to the date of the hearing. The notice shall state substantially the following, pursuant to California Government Code section 65009, as amended:

"If you challenge in court the action taken on the variance application, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Community Development director at, or prior to, the public hearing."

Failure of owners to receive notice of the hearing shall in no way affect the validity of any action.

SECTION 5.

Section 40.26.270 (c)(1)(D) (procedure for family and group day care homes, nursery schools and day care centers) is hereby amended to read as follows:

The zoning administrator shall within two business days of approval give written notice of the approved application for a facility to all property owners within five hundred feet of the proposed facility.

SECTION 6.

Section 40.30A.050 (Temporary Use Permits, Authority) is hereby amended to read as follows:

The planning director is authorized to approve, conditionally approve, or deny an application for a temporary use permit. The approval may include conditions and limitations to minimize detrimental effects on surrounding properties, including but not limited to hours of operation, provision of parking area, signage, lighting, and traffic circulation access.

At least ten days prior to approval of an application for a temporary use in a single-family residential zoning district, notice of such application shall be mailed to owners within five hundred feet of the site. Failure of owners to receive notice of such application shall in no way affect the validity of any action taken.

A cash deposit or cash bond to defray the costs of a site clean-up by the city in the event the applicant fails to leave the property in a presentable and satisfactory condition, or to guarantee removal and/or reconversion of any temporary use to a permanent use allowed in the subject zoning district, may be required. (Ord. No. 1906, § 1 (part).)

SECTION 7.

Section 40.33.050 (Public hearing and notice, variances) is hereby amended as follows:

A public hearing before the planning commission shall be held on an application for a variance. A variance being processed concurrently with an application requiring city council action shall be scheduled for public hearing before the planning commission for its recommendation and then the city council for final action. Notice of such hearing shall be given

to owners of all property within five hundred feet of the subject site and as required by state law and city ordinance. Failure of owners to receive notice of such hearing shall in no way affect the validity of any action taken.

SECTION 8.

Section 40.36.050 (Public hearing by for amendments) is hereby amended to read as follows:

After receipt of a copy of any recommended amendment to this chapter from the planning commission and before adopting any amendment, the city council shall call a public hearing and shall give notice of the time and place of the hearing by one publication in a newspaper of general circulation in the city at least ten days prior to such hearing and by mailed notice to all owners of property within five hundred feet of the property proposed to be rezoned. Notice of the hearing shall also state substantially the following, pursuant to California Government Code section 65009, as amended September 30, 1984:

If action taken on the application for rezoning or for amendment of Zoning Chapter 40 of the Davis City Code is challenged in court, the challenge may be limited to raising only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the city council at, or prior to, the public hearing.

Failure of owners to receive notice of the hearing shall in no way affect the validity of any action taken.

SECTION 9.

Section 40.39.030 (Administrative approvals, Public notice) is hereby amended to read as follows:

Prior to taking action on an Administrative Approval, the Planning and Building Department shall provide notice through a mailing to all owners of real property as shown on current property tax roles within a minimum of five hundred feet of the subject property. At the discretion of the Department, based on public interest in the project, the scope of notice, including property owner radius, may be expanded.

SECTION 10.

Section 8.18.040, subsection 4.a.2. (Demolitions of Structures Built Prior to 1945) is hereby amended to read as follows:

If a demolition permit application is received and the property is not designated under Section 40.23 of the City Code, city staff shall have a maximum of thirty days to determine if the structure should be considered for historic designation consistent with the standards established in Section 40.23 of the Davis City Code. A notice of application for demolition shall be posted in a prominent location on the site, mailed to all property owners of record within five hundred feet of the site, and notice shall be posted in the local newspaper providing contact information for the applicant and/or property owner for a minimum of 14 days contiguous with the start of the 30 day review period. The city shall make a determination whether or not to issue a demolition permit within this 30 day period based on the potential historic value of the property in accordance with the criteria established in Section 40.23 of the Davis City Code. If the building is deemed to have a potential historic value, the city shall have, at its discretion, a maximum of 90 additional days to complete all necessary hearings to determine whether the property should be designated as a resource consistent with Section 40.23 of the Davis City

Code. If, after review, the building is not designated as a historic resource, a demolition permit shall be issued.

SECTION 11. ENVIRONMENTAL DETERMINATION

This ordinance increasing the minimum distance for public notice is categorically exempt from the provisions of CEQA as general procedure making which is not a project.

SECTION 12. FINDINGS

A. The City Council of the City of Davis hereby finds that:

1. The proposed amendments are in conformity with the General Plan, which calls for strengthening the neighborhood noticing and participation program used for development projects; and
2. The public necessity, convenience, and general welfare require the adoption of the proposed ordinance.

SECTION 13. EFFECTIVE DATE.

This ordinance shall become effective on and after the thirtieth (30th) day following its adoption.

INTRODUCED ON May 18, 2004 and PASSED AND ADOPTED ON _____, 2004 by the following vote:

AYES:

NOES:

ATTEST:

Ruth Uy Asmundson, Mayor

BETTE RACKI, City Clerk

**CITY OF SIMI VALLEY
MEMORANDUM**

February 6, 2013

TO: Planning Commission
FROM: Department of Environmental Services
SUBJECT: REVIEW OF MAILED PUBLIC HEARING NOTICE

RECOMMENDATION

It is recommended that the Planning Commission review the existing distance requirement regarding the written notice for public hearings and provide direction to staff.

BACKGROUND AND OVERVIEW

The Planning Commission has requested to discuss the adequacy of the City's existing 300-foot radius for providing mailed notice of public hearings to property owners and respective tenants.

California Government Code section 65091(a)(4) sets forth the minimum distance requirements for notice of a public hearing. Specifically, it requires the mailing or delivery to all owners or real property (as shown on the latest equalized assessment roll) within 300 feet of the real property that is the subject of the hearing. Also, notice of the hearing must be provided in a newspaper of general circulation within the local agency's jurisdiction at least 10 days before the hearing. [Government Code section 65090(a)] Section 65091(a)(4) also states that if the number of owners to whom notice would be mailed or delivered is greater than 1,000, the local agency, in lieu of mailing or delivery, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.

In addition to the above, notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected. [Government Code section 65091(a)(3)] In the foregoing instance, notice must also be published in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing or posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding. [Government Code sections 65091(a)(5)(A)(B)]

The City meets the above State requirements for providing notice of public hearings at least ten days before the hearing, by mailing or delivering notice to: 1) the applicant(s) and owner(s) of the subject property, if different from the applicant or the owner's agent; 2) each local agency expected to provide schools, water, or other essential facilities or services to the project whose ability to provide facilities and services may be significantly affected; and 3) all owners of real property situated in whole or in part within a radius of 300 feet of the exterior boundaries of the Assessor's Parcel(s) on which the proposed use or structure is to be located; and, 4) any person who has filed a written request for notice with the Director of the Environmental Services Department [Simi Valley Municipal Code Section 9-74.020.B.1.a(1)-(4)]. If the number or property owners exceed 1,000, notice is given by publishing the notice in a newspaper of general circulation within the City (Ventura County Star) at least ten days before the date of the hearing per California Government Code Section 65091(a)(4) [Simi Valley Municipal Code Section 9-74.020.C]. Notice is also given by publication in a newspaper of general circulation within the City (Ventura County Star) at least ten days before the date of the hearing [Simi Valley Municipal Code Section 9-74.020.B.2.a].

The City exceeds the State requirements for providing notice of public hearings by: 1) also mailing or delivering notice of public hearings to occupants that are located on real property situated in whole or in part within a radius of 300 feet of the exterior boundaries of the Assessor's Parcel(s) on which the proposed use or structure is to be located [Simi Valley Municipal Code Section 9-74.020.B.1.a(3)]; and, 2) having the applicant post a 4-foot by 8-foot sign in a conspicuous place on the subject property by 12:00 noon, a minimum of 12 days before the date of the public hearing whenever the Planning Commission or City Council holds a public hearing [Simi Valley Municipal Code Section 9-74.020.B.2.b]. The property is exempt from sign posting requirements if the number of notices to be mailed is greater than 1,000, or the City initiates the project, the City does not own or control the property, and the property is subject to a General Plan consistency Zoning Map amendment only [Simi Valley Municipal Code Section 9-74.020.B.2.b(1) and (2)].

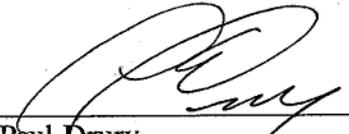
FINDINGS AND ALTERNATIVES

The Planning Commission could consider increasing the mailed notice radius of a proposed project to, for example, 500 feet, in order to inform more property owners and occupants of a proposal that may affect them. The Planning Commission may also consider a greater radius for projects heard by the Planning Commission or City Council, which may have a greater impact on a surrounding neighborhood, as compared to administratively approved projects, which may have only a minimal impact.

The City regulation for mailing public hearing notices to land owners and occupants located within 300 feet of the project site is illustrated for two parcels in Attachments 1 and 2. The illustrations also show the parcels that would be included if the mailing radius were increased to 500 feet.

The following alternatives are available to the Planning Commission:

1. Recommend to the City Council to amend the Development Code increasing the required public notice from 300 to 500 feet in radius;
2. Maintain the existing 300-foot radius public notice area;
3. Provide other direction to staff.



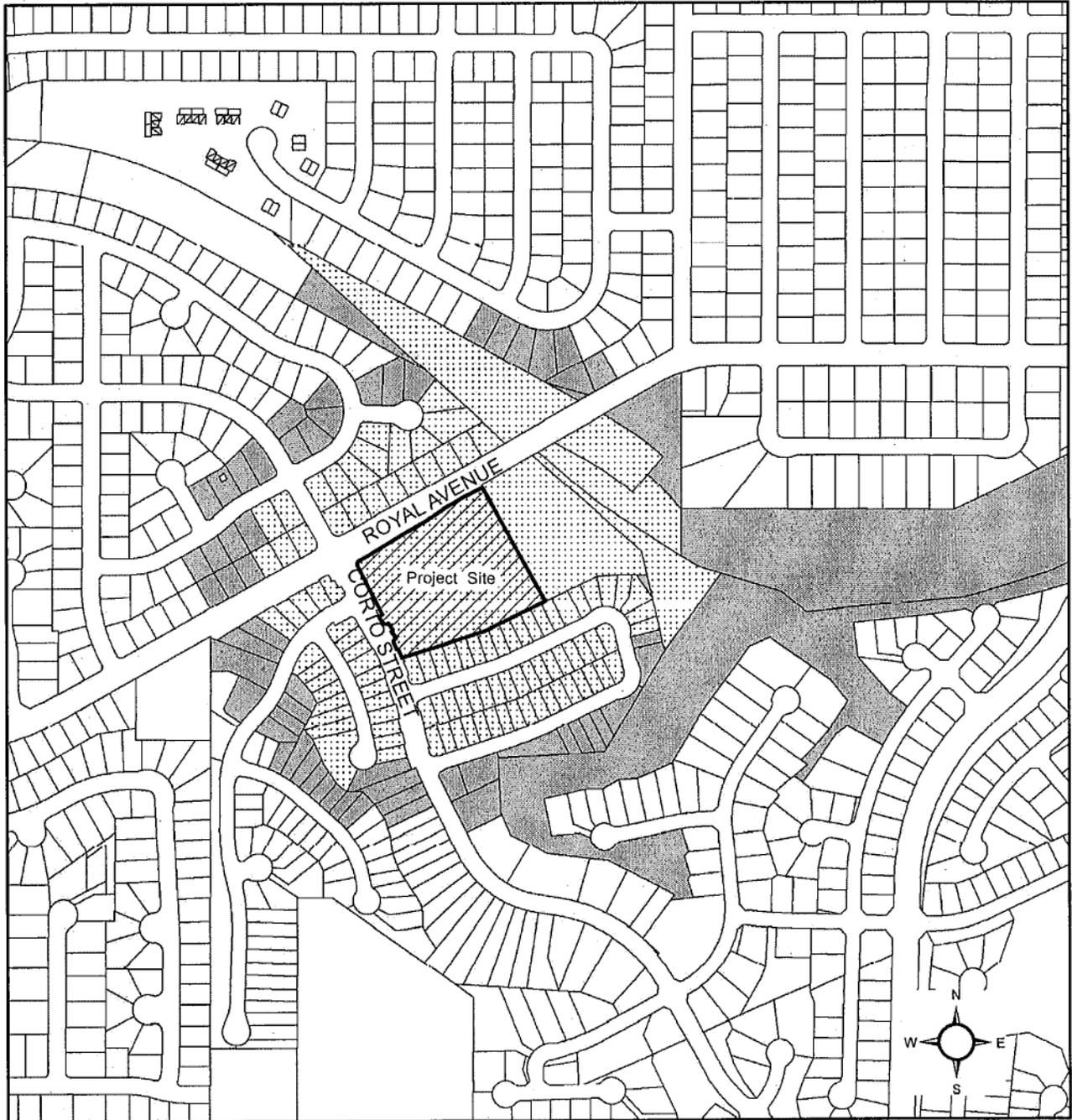
Paul Drury
Deputy Director/City Planner

INDEX

Page

Attachment 1 - Illustration 1 of the Public Notice Area with a 300-foot Radius and a 500-foot Radius.....	4
Attachment 2 - Illustration 2 of the Public Notice Area with a 300-foot Radius and a 500-foot Radius.....	5

ILLUSTRATION 1 OF THE PUBLIC NOTICE AREA WITH A 300-FOOT RADIUS AND A 500-FOOT RADIUS



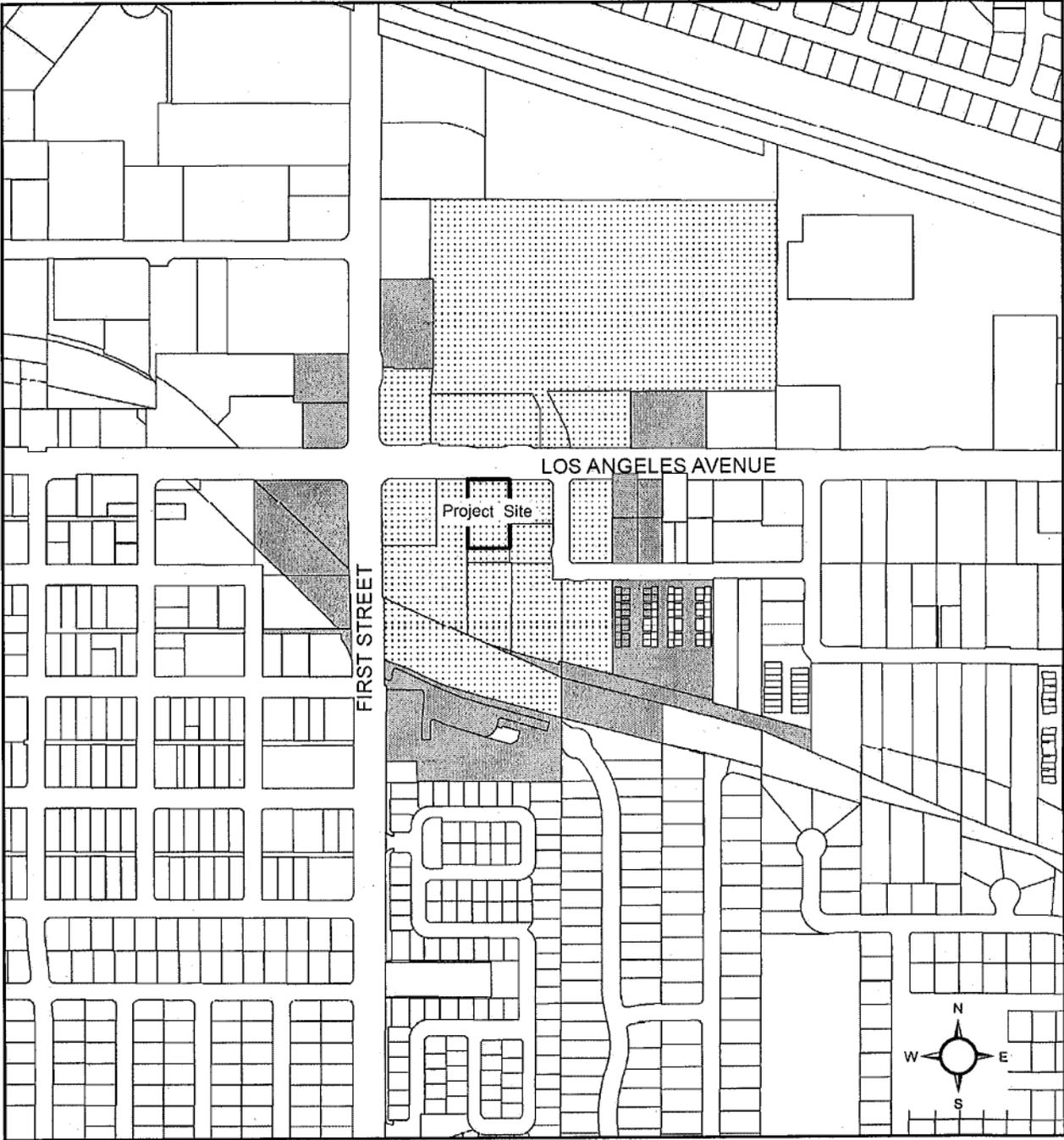
Legend

-  Parcels Within A 300-Foot Radius of the Project Boundary
-  Parcels Within A 500-Foot Radius of the Project Boundary

0 300 Feet

0 500 Feet

ILLUSTRATION 2 OF THE PUBLIC NOTICE AREA WITH A 300-FOOT RADIUS AND A 500-FOOT RADIUS



Legend

-  Parcels Within A 300-Foot Radius of the Project Boundary
-  Parcels Within A 500-Foot Radius of the Project Boundary

0 300 Feet

0 500 Feet

SUMMARY OF BENICIA MUNICIPAL CODE LAND USE PERMIT PROPERTY NOTIFICATION REGULATIONS

September 11, 2013

Use Permit & Variance (17.104.040)

Notice of the hearing shall be given in the following manner:

1. Posted Notice. Notices shall be posted at least 10 days prior to the hearing on the site of the project.
2. Mailed or Delivered Notice. At least 10 days prior to the hearing, notice shall be mailed to the applicant and all owners of property within 300 feet of the boundaries of the site, as shown on the last equalized property tax assessment roll.

Commission Design Review (17.108.080)

Notice of a public hearing required by this chapter shall be given in the following manner:

1. Posted Notice. Notices shall be posted at least 10 days prior to the hearing on the site of the project.
2. Mailed or Delivered Notice. At least 10 days prior to the hearing, notice shall be mailed to the applicant and all owners of property within 300 feet of the boundaries of the site, as shown on the last equalized property tax assessment roll.

Appeals (1.44.090)

Notice of the hearing for the appeal, rehearing, or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal, rehearing, or review was made. In all cases for the hearing for an appeal, rehearing, or review, written notice of the date, time, and place shall be given to the original applicant, if any, any prior applicant for appeal or rehearing regarding the same matter, and for appeals and rehearings the person requesting the current appeal or rehearing.

Development Agreements (17.116.040)

Notice of intention to consider the application shall be given as provided in Sections 65090 and 65091 of the California Government Code.

Amendments (17.120.040)

1. Normal Procedure. Notice shall be given in accord with Government Code Sections 65090 and 65091.
2. Zoning Map Amendments – 500 or More Lots. If a proposed zoning map amendment includes 500 or more lots, notice may be given in accord with Government Code Section 65091(c)(3).

Mobile Home Park Conversions (17.94.020)

Upon filing an application for conversion, the community development director shall inform the applicant of the requirements of Civil Code Section 798.56 and Government Code Section 65863.8 regarding notification of the mobile home park residents concerning the conversion proposal.

Condominium Conversions (17.90.070)

A notice of intent to convert shall be delivered to each tenant at least 60 days prior to filing the application for a use permit and a tentative map.

1. Two separate stamped, preaddressed envelopes for each resident of each unit shall be furnished to the department by the applicant at the time the subdivider submits an application for a use permit for a conversion. The department shall use one envelope to notify the residents by mailing a copy of the planning commission public hearing notice to tenants not less than 10 days prior to the proposed hearing date on the application. The notice shall include notification of the tenant's right to appear and be heard. The second envelope shall be used by the department to notify the residents of the results of the public hearing by mailing notification of the decision of the planning commission not more than seven days following the planning commission action. Failure of the department to mail such notice shall not invalidate any proceeding or action taken by the city in considering a conversion. The list of names and addresses of the residents of each unit in the conversion project shall be current as of the day of submittal and shall be certified as such by the applicant.
2. Notices to Prospective Tenants. Commencing 60 days prior to the submittal of the application, any prospective tenants shall be notified in writing by the subdivider of the intent to convert prior to leasing or renting any unit pursuant to Section 66452.8 of the California Government Code.
3. Posting Notices. The notice of intent shall be posted on-site in at least one location readily visible to tenants.

Wind Energy Conversion Systems 17.86.060

Unless the use permit is granted by the community development director as provided in BMC [17.86.030](#), a public hearing shall be held on the application.

Notice of the hearing shall be given in the following manner:

1. Posted Notice. Notices shall be posted at least 10 days prior to the hearing on the site of the project.
2. Mailed or Delivered Notice. At least 10 days prior to the hearing, notice shall be mailed to the applicant and all owners of property within 300 feet of the boundaries of the site, as shown on the last equalized property tax assessment roll.

Establishment of Historic District 17.54.080.

A. Neighborhood Workshop. The planning department shall conduct a neighborhood workshop in the proposed district to explain the proposal and the amendment process to neighborhood residents. Notice of the workshop shall be given in the same manner prescribed for zoning map amendments by BMC [17.120.040](#).

B. Notice and Public Hearing. After the neighborhood workshop, the proposed district shall be the subject of public hearings before the planning commission and the city council. The hearings shall be set, noticed, and conducted as prescribed by Chapter [17.120](#) BMC.

Enforcement 17.128.060

Notice shall be given in the same manner required for a public hearing to consider approval. If no notice is required for the permit, none shall be required for the revocation hearing; provided, that notice shall be mailed to the owner of the use or structure for which the permit was granted at least 10 days prior to the hearing. Contents of any notice shall be as prescribed by BMC [17.104.040](#)(D).

Subdivisions 16.04.060

A. Whenever a public hearing is held by the community development director, the planning commission or the city council pursuant to this title, notice of the time and place thereof, including a general description of the subject matter, shall be given at least 10 days before the hearing. Such notice shall be given by publication once in a newspaper of general circulation, published and circulated in the city, and by posting in City Hall, with copies to any interested agencies, organizations or individuals.

B. When the public hearing deals with a subdivision, the notice shall give a general description of the location of the subdivision or proposed subdivision. Within the time limits set forth in subsection (A) of this section, copies of said notice shall be mailed to the subdivider; to each owner of property, as shown on the latest city-wide assessment roll, located within 300 feet of the subdivision boundaries; and to each resident in the subdivision or proposed subdivision.

CEQA - Negative Declaration:

Notice filed with county clerk, in newspaper and/or project site and/or mailing to owners and occupants of property contiguous to the project, and state (as required).

Benicia CEQA - Negative Declaration:

Notice filed with county clerk, in newspaper (city-wide projects), owners and occupants within 300 feet of property, county clerk and state (as required)

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 3, 2013
TO : Mayor Patterson
FROM : City Manager
SUBJECT : **MAYORS' COMMITTEE MEETING**

The following information is provided for your committee report at the September 17, 2013 City Council meeting.

The Mayors' Committee meetings are held quarterly at 6:00 pm in Vallejo. The meeting scheduled for September 18, 2013 was canceled. The next meeting will be held on December 18, 2013 and will be held at Zio Fraedo's Restaurant. The agenda for this meeting is not yet available.

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 11, 2013

TO : Mayor Patterson
Council Member Strawbridge

FROM : City Attorney

SUBJECT : **ABAG COMMITTEE MEETING**

The following information is provided for your committee report at the September 17, 2013 council meeting. There is no new information since the July report. The July report stated:

- The Spring General Assembly was held at Jack London Square Pavilion on Thursday, April 18, 2013.
- The draft minutes for the Spring meeting were attached previously.
- The date for the Fall Assembly has not been announced yet.

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 9, 2013

TO : Council Member Campbell
Council Member Strawbridge

FROM : Acting Assistant City Manager

SUBJECT : **FINANCE COMMITTEE REPORT**

The following information is provided for your committee report at the September 17, 2013 Council meeting.

The last Finance Committee meeting was held on August 23, 2013; draft minutes for the meeting are attached for your review. The next meeting will be held on Friday, September 27, 2013 at 8:00 a.m. A copy of the draft agenda is attached.

Attachment:

- ❑ August 23, 2013 Finance Committee Meeting Draft Minutes
- ❑ September 27, 2013 Finance Committee Draft Agenda

FINANCE COMMITTEE
****DRAFT** REGULAR MEETING MINUTES**
AUGUST 23, 2013 – 8:00 AM

1. Call to Order at 8:03 AM

2. Roll Call

Attended by Chairperson Larry Grossman, Committee Members: Chris Carvalho, Michael Clarke, Kathy Griffin and Lee Wines; Council Member Christina Strawbridge.
Staff present: City Manager Brad Kilger, Acting Assistant City Manager Anne Cardwell, and Interim Finance Director, Brenda Olwin

3. Pledge of Allegiance

4. Notice to the Public

5. Action Items

A. Approval of Agenda

The committee approved the agenda of June 28, 2013:

Ayes: Grossman, Carvalho, Clarke, Griffin and Wines

Noes: (None)

Abstain: (None)

B. Approval of Minutes from the meeting held on June 28, 2013

The Committee approved the minutes of the June 28, 2013 meeting:

Ayes: Ayes: Grossman, Carvalho, Clarke, Griffin and Wines

Noes: (None)

Abstain: (None)

C. Review June 30, 2013 Investment Report

Carlos Oblites of PFM Asset Management LLC reported on the June 30, 2013 quarterly investment portfolio for assets under PFM management. During the second quarter, interest rates experienced their largest increase since 2010. As a result of rising interest rates, the overall portfolio experienced negative total returns for the quarter. The total negative return of \$(163,577) was comprised of realized gains and income of \$62,722, offset by an unrealized loss of \$(226,299). The rapid spike in interest rates was attributed to Federal Reserve discussions of “tapering” bond purchases. Mr. Oblites explained that as market yield rises (the internal rate of return expressed as an annual percentage), the value of currently-held investments decreases. He further discussed investment activity during the quarter and PFM’s strategic extension of select securities based on an overall conviction that the current rise in rates will be limited in the short-term. PFM also strategically diversified the City’s portfolio into non-financial corporate investments (such as 3Com, Walmart, Apple) for enhanced portfolio yield. When questioned about extending the duration of the portfolio, Mr. Oblites explained that overall consensus is that rates will rise from historically low levels, but that it is difficult to predict exactly when and for how long. The average duration of the City’s portfolio is 2.2 years, which is in line with the benchmark’s duration. PFM does not plan to change the portfolio target duration, but will maintain at approximately 2.2 years unless the Finance Committee and City

management considers reducing the portfolio duration significantly in order to diminish possible total return losses incurred if rates rise further.

6. Discussion Items

A. Review of Financial Report for the Months of June and July 2013

Ms. Olwin provided an overview of the financial report. Revenues are projected to be higher than budgeted amount due to increased sales tax in the industrial section. Expenditures are coming in at budget or less due to salary savings, operating expenditure savings, and the delay of certain studies planned for the fiscal year such as the organizational study. Any surplus for FY12-13 will be used to help other funds such as the Marina, Transit, and Workers' Compensation Funds. Staff will go to Council for approval of a final FY2012-2013 Budget Amendment in October. A question was asked regarding why the June 30, 2013 fund balance is not closed when it is past the fiscal year. Ms. Olwin explained that the City accrues revenues and expenditures until the end of August, as allowed by government accounting standards.

It is agreed that financial reports will be presented to the Committee on a quarterly basis for the General, Water, and Wastewater Funds.

B. Review Warrant Register for the Months of June and July 2013

The Committee reviewed the warrant registers for June and July 2013 – questions were received prior to the meeting and responses were provided.

C. Review Work Plan Revisions

ONE Solution implementation has been moved up and the Financial Reports as well. CAFR Training will be on Tuesday, August 27, at 1:00 p.m. and will last for two hours. Reserve policy and unfunded liabilities will be discussed in the CAFR training.

D. ONE Solution System Implementation Update

In answer to Committee Member Wines' question – if City is working with a consultant, yes, we are working with GFOA and who will be on-site in September. The current GFOA contract is two-fold: the first piece is to assist the City with attaining the full scope of services contracted with Sungard in the most effective manner, and, importantly, the GFOA will put together a revised implementation plan. The second piece is the chart of accounts; standardizing the chart of accounts to GFOA "Blue Book" standards, which will ease time and maintenance of logical report-building and capital, program, and grant accounting and reporting.

Sungard staff will be here next week for HR/Payroll training for staff. The current delay is primarily related to the general ledger module, it is planned that the chart of accounts study will be completed in for December. It is critical to have the chart of accounts completed and mapped first before any general ledger training occurs.

Ms. Cardwell is in-charge of the overall implementation of ONE Solution, with assistance from Ms. Olwin, Finance, HR and IT staff. With the implementation of ONE Solution there is a significant change in direct departmental interaction with the City's information system. Currently, staff plans to add about 34 users to the current Bi-Tech system. With the implementation of ONE Solution, it is anticipated that

department users will be given responsibility to enter timecards, accounts payable claims, purchase orders and account inquiry in the system.

Committee Member Wines questioned whether the City's auditors, Maze & Associates, are familiar with ONE Solution. Ms. Olwin she would clarify to what extent Maze & Associates is familiar with ONE Solution.

Chair Grossman suggested that a member of the Finance Committee be in the project team, in an informational role, to represent the committee's interest in the project. City Manager Kilger agreed to the suggestion. Committee Member Wines will be the committee liaison, with Member Griffin as the alternate. Regular conference calls are every other Thursdays at 9:30 a.m. The next scheduled phone-in is September 05, 2013.

Member Carvalho requested sample reports from ONE Solution to have a better understanding of how the system works and how reports will look.

E. Discussion of Reporting Format

Ms. Olwin presented a proposed format of all funds with revenues, expenditures and fund balance, which reflected the FY13-14 adopted budget. For future presentation, the report will serve as a monthly snapshot of year-to-date revenues, expenditures, transfers, and fund balance for each City fund budgeted. This will be a monthly activity report provided to the Committee.

F. Discussion of CAFR Review and General Fund Reserve Analysis

Ms. Olwin presented the analysis of the General Fund reserves. A question was asked regarding the Restricted St. Catherine's Wood reserve. Ms. Olwin will research and report back to the Committee on the nature of the reserve.

7. Public Comment

None

8. Committee Member Comments

None

9. Adjournment

There being no further business, the meeting was adjourned at 10:00 a.m.

**FINANCE COMMITTEE
REGULAR MEETING AGENDA
COMMISSION ROOM
September 27, 2013 - 8:00AM**

1. Call to Order

2. Roll Call

3. Pledge of Allegiance

4. Notice to the Public

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Commission Room per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

5. ACTION ITEMS

A. Approval of Agenda

B. Approval of minutes for meeting held on August 23, 2013

6. DISCUSSION ITEMS

A. Open Government Training Session

City Attorney, Heather McLaughlin, will provide a brief training on the City's open government policies.

B. Maze and Associates: Independent Audit Presentation

The City's auditor will present FY2012-13 audit information including the timing of the audit fieldwork, management representations, and fraud considerations.

C. Review All-Funds Summary Report for the Month of August 2013

At the last meeting the Finance Committee agreed to review a summary report of all City funds budgeted. Committee Members are encouraged to review and provide any questions specific to the financial report to the Asst. Finance Director prior to the meeting.

D. Review Warrant Register for Month of August 2013

The Committee reviews a monthly audit of payments to vendors that supply services to the City of Benicia. Members of the Finance Committee review the warrant register and request that further information be provided by staff as necessary. It is encouraged that Committee Members submit their questions to the Asst. Finance Director prior to the meeting.

E. Review Final Work Plan

The Finance Committee will review and discuss the Committee's work plan.

F. Update of CAFR Study Session and General Fund Reserve Analysis

The Finance Committee will review and discuss additional information based upon the August 27th CAFR study session.

7. Public Comment

8. Committee Member Comment

9. Adjournment

Public Participation

The Benicia Finance Committee welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Finance Committee allows speakers to speak on non-agendized matters under public comment and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Finance Committee.

Should you have material you wish to enter into the record, please submit it to the Assistant Finance Director.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Anne Cardwell, the ADA Coordinator, at (707) 746-4211.

Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Finance Committee discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the Finance Committee.

Pursuant to Government Code Section 65009, if you challenge a decision of the Finance Committee in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Finance Committee at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes". Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting held at City Hall in the Commission Room. If you wish to submit written information on an agenda item, please submit to the Assistant Finance Director, as soon as possible so that it may be distributed to the Finance Committee.

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 3, 2013

TO : Mayor Patterson
Vice Mayor Campbell

FROM : City Manager

SUBJECT : **LEAGUE OF CALIFORNIA CITIES**

The following information is provided for your committee report at the September 17, 2013 City Council meeting.

The next North Bay Division General Membership Meeting will be held at the Annual Conference September 18-20, 2013 in Sacramento.

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 3, 2013

TO : Council Member Hughes
Council Member Strawbridge

FROM : City Manager

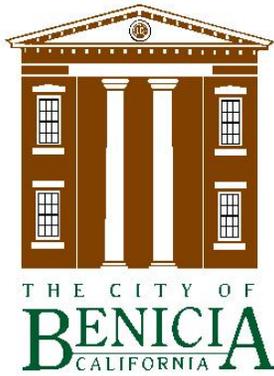
SUBJECT : **CITY COUNCIL/SCHOOL BOARD LIAISON COMMITTEE**

The following information is provided for your committee report at the September 17, 2013 City Council meeting.

This committee meets quarterly at the Benicia Unified School District Board Room located at 350 East K Street. The minutes from the March 7th meeting are attached along with the agenda from the September 5, 2013 meeting. The next scheduled meeting will be Thursday, December 5, 2013 at 8:30 am at the BUSD Board Room. The agenda for that meeting is currently unavailable.

Attachments:

- March 7, 2013 Minutes for Liaison Committee Meeting
- September 5, 2013 Agenda for Liaison Committee Meeting



• Since 1849 •

MINUTES

BENICIA CITY COUNCIL/SCHOOL BOARD LIAISON COMMITTEE

District Board Room
350 East K St
March 7, 8:30-10:00am

Present:

Janice Adams, Superintendent of Schools

Rosie Switzer – School Board Member

Dr. Michael Gardner- Assistant Superintendent Human Resources

Tim Rahill – Chief Business Official

Ron Wheat – BHS Vice -Principal

Brad Kilger – City Manager

Mike Dodson - Parks and Community Services Assistant Director

Christina Strawbridge – City Council Member

Mike Roberts- City Engineer

Andrew Bidou – Chief of Police

Officer Mike Greene – Benicia Police

Call to Order and Pledge of Allegiance:

Janice Adams, Superintendent of Schools, called the meeting to order at 8:33 a.m. on Thursday, March 7, 2013. She referenced the Fundamental Rights of the public.

Ms Adams led the pledge of allegiance.

Consent Calendar:

It was moved and seconded to approve the Minutes of the Regular Meeting December 6, 2012. The motion passed unanimously.

Minutes

Benicia City Council / School Board Liaison Committee
Benicia Unified School District Board Room
350 East K St

Business Items:

A. Update and Discussion on the Benicia High School Campus Closure

Janice Adams, Superintendent gave a report and discussion on the Benicia High School Campus Closure. Ron Wheat and Tim Rahill added some information on the gradual roll out of the closure.

B. Update and Discussion on the Safe Routes To School Plan

Benicia Unified School District staff gave an update on the SRTS plan. Rosie Switzer, a member of the SRTS, and Mike Roberts reported on the plan and the recommended upgrades. Each agency would receive \$100,000 to complete the capital improvements. The committee will stay together to prioritize these improvements.

C. Report and Discussion on the School Suspension Drug Diversion Program

Benicia City staff gave a report on the school suspension drug diversion program. Lieutenant Green stated that the student suspensions at BHS are often diverted to a police program and a good relationship exists.

D. Report and Discussion on "Top the Cops"

Benicia City staff gave a report on the new program, "Top the Cops". Chief Bidou stated that this program allows students to drag race, for time, the police in their vehicles. The department is just now starting to look into this.

E. Report on Benicia Education Foundation Fun Run

Janice Adams, Superintendent gave a report on the upcoming BEF Fun Run.

Future Agenda Items

Results of the Change of Election Years

Strategic Plans

Declining Enrollment and Demographic Information

Announcements -BHS Challenge days and the DUI court in April. City staff is having a strategic plan workshop next week.

The meeting adjourned at 9:30 a.m.

Public Participation

The City Council/School Board Liaison Committee welcomes public participation.

Minutes

Benicia City Council / School Board Liaison Committee
Benicia Unified School District Board Room
350 East K St

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council/School Board Liaison Committee allows speakers to speak on matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council/School Board Liaison Committee.

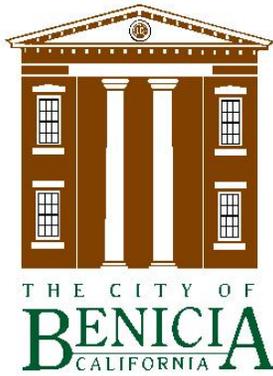
Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Betty Jensen, the ADA Coordinator, at (707) 748-2611. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for City Council/School Board Liaison Committee discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council/School Board Liaison Committee.



• Since 1849 •

AGENDA

BENICIA CITY COUNCIL/SCHOOL BOARD LIAISON COMMITTEE

District Board Room

350 East K St

September 5, 2013 8:30-9:30am

- I. Call to Order and Pledge of Allegiance**
- II. Reference to the Fundamental Rights of the Public and Public Comment**
- III. Consent Calendar**
 - A. Approval of Minutes of the Regular Meeting March 7, 2013**
- IV. Business Items**
 - A. Update and Discussion on the Benicia High School Campus Closure**

Janice Adams, Superintendent will give a report and discussion on the Benicia High School Campus Closure.
 - B. Update on the Student Resource Officer Cost Sharing**

Benicia Unified School District will give an update on the SRO cost sharing.
 - C. Report and Discussion on the School District Enrollment and Demographic**

Janice Adams, Superintendent, will give a report on the school district enrollment and demographic information.
 - D. Report on the Benicia Non-profits**

Janice Adams, Superintendent, will give a report on the Benicia Non-profits.
- V. Future Agenda Items**
- VI. Adjournment**

AGENDA

Benicia City Council / School Board Liaison Committee
Benicia Unified School District Board Room
350 East K St

Public Participation

The City Council/School Board Liaison Committee welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council/School Board Liaison Committee allows speakers to speak on matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council/School Board Liaison Committee.

Should you have material you wish to enter into the record, please submit it to the Superintendent.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Betty Jensen, the ADA Coordinator, at (707) 748-2611. Notification 48 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for City Council/School Board Liaison Committee discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council/School Board Liaison Committee.

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 28, 2013

TO : Vice Mayor Campbell
Council Member Schwartzman

FROM : City Manager

SUBJECT : **SKY VALLEY OPEN SPACE COMMITTEE**

The following information is provided for your committee report at the September 17, 2013 Council meeting.

The Sky Valley Open Space Committee meets quarterly. A special meeting was scheduled for August 21, 2013 to coincide with the release of the Draft Environmental Impact Report for the Lake Herman Quarry (Syar Industries).

In addition, the Committee Members provided their thoughts on Council's direction to hold one final meeting before suspending the Committee. The Committee Members expressed interest in remaining active; however, only meeting on an 'as-needed' basis. More information on the Committee's thoughts pertaining to Council's direction was provided at the September 3, 2013 Council meeting from the City Attorney.

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 3, 2013

TO : Mayor Patterson
Council Member Strawbridge

FROM : City Manager

SUBJECT : **SOLANO EDC BOARD OF DIRECTORS**

The following information is provided for your committee report at the September 17, 2013 Council meeting.

The agenda for the September 12, 2013 Board of Directors Meeting is attached. The next Board of Directors meeting is scheduled for Thursday, November 14, 2013 at 9:00 a.m. at Jelly Belly Candy Company. The agenda for that meeting is not yet available.

Attachment:

- Solano EDC Agenda September 12, 2013

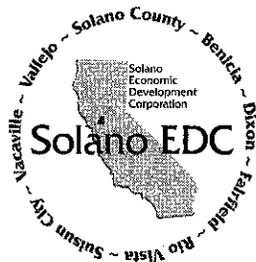
Solano EDC
Board of Directors Meeting
 Thursday, September 12, 2013
 Jelly Belly Candy Company (Corporate Offices)

AGENDA

- | | | | |
|-------------|-----|--|----------------------------|
| 9:00 am | 1. | Call to Order | Patsy Van Ouwerkerk, Chair |
| Action Item | 2. | Approval of 07/11/13 Meeting Minutes | Patsy Van Ouwerkerk, Chair |
| Action Item | 3. | Treasurer's Report – August 2013 | Sean Quinn, Treasurer |
| Action Item | 4. | New Board members:
◆ Bill Browne, Manex
◆ Jim Sotirós, Toró University | Patsy Van Ouwerkerk, Chair |
| | 5. | Chairman's Remarks | Patsy Van Ouwerkerk, Chair |
| | 6. | Guest Speaker: Supervisor Linda Seifert - TAFB Fisher House | |
| | 7. | Guest Speakers: Stephanie Wolf and Mark Sievers
Solano Community Foundation | |
| | 8. | Transportation Update | Daryl Halls |
| | 9. | Advocacy Committee Update | Steve Huddleston |
| | 10. | Economic Development Committee Update | Mario Giuliani |
| | 11. | President's Report | Sandy Person |
| | 12. | Items from Directors | |
| 10:00 am | 13. | Adjourn Meeting | |

Calendar of Events

- | | |
|--------------------------|---|
| Sept 26, 2013 | Solano EDC Breakfast, 7:30-9:00 am at Hilton Garden Inn Fairfield
Keynote Speaker: Rish Rajan, Governor's Office of Economic Development |
| Nov 8, 2013 | NorthBay Business Journal Impact Solano at Hilton Garden Inn Fairfield |
| Nov 14, 2013 | Solano EDC Board of Directors meeting, 9 am at Jelly Belly Candy Company |
| Dec 5, 2013 | Westamerica Bank & Solano EDC Spirit of Solano luncheon |



SOLANO EDC BOARD OF DIRECTORS MEETING

July 11, 2013, 9:00 AM

CALL TO ORDER

Chairman Van Ouwerkerk called the meeting to order at 9:00 am at the Jelly Belly Candy Company. President Person introduced Sylvette Wake, new EDC part-time staff member assisting with the retention program.

Attending were:

Robert Bloom	Constance Boulware	Tony Cincotta	Elaine Crombie
Ed Farewell	Mario Giuliani	Daryl Halls	Steve Hardy
Dilenna Harris	Norm Hattich	Tim Kubli	Laura Kuhn
Jowel Laguerre	Jim Lindley	Sandy Person	Scott Reynolds
Talyon Sortor	Jay Speck	Skip Thomson	
Patsy Van Ouwerkerk	Sylvette Wake	Louise Walker	

Absent were:

Jack Batchelor	Rebecca Brandt	Beverly Byl	Jim Dunbar
Terry Glubka	Steve Huddleston	Brad Kilger	Albert Lavezzo
Catherine Moy	Elizabeth Patterson	Brooks Pedder	Sean Quinn
Tom Recknagel	Debra Russo	Bob Simpson	Hermie Sunga
Scott Thomas			

APPROVAL OF MINUTES

Chairman Van Ouwerkerk called for approval of minutes of the May meeting. Upon motion duly made (Reynolds) and seconded (Hardy) it was RESOLVED, that the minutes of the May 9, 2013 meeting of the Solano EDC Board of Directors be accepted as submitted.

TREASURERS REPORT

In the absence of Treasurer Quinn, President Person presented the financial report for the month of June 2013. Upon motion duly made (Reynolds) and seconded (Hardy) it was RESOLVED, that the Treasurer's Report be accepted.

ROSTER CHANGES

Chairman Van Ouwerkerk called for approval of the following change to the board roster: Dilenna Harris from Frank Hurtarte, Kaiser Permanente. Upon motion duly made (Reynolds) and seconded (Thomson) it was RESOLVED, that the roster change be accepted.

TRANSPORTATION UPDATE

Director Halls provided an update on: transportation impact fee; metering lights; bridge toll revenue and Washington DC trip. He also asked the Solano EDC to provide a letter to support Caltrans' Buy America waiver request related to the relocation of PG&E's natural gas services facilities on the I-80/I-680/SR-12 interchange project. Upon motion duly made (Hardy) and seconded (Thomson) it was RESOLVED, the EDC provide a letter on the waiver request.

CHAIRMAN COMMENTS

Chairman Van Ouwerkerk announced at the July Executive Committee meeting the group reviewed recommendations from the 2011 retreat, by-laws and succession plan. She also provided information on the draft Principles for Economic Growth & Economic Development.

PRESIDENT'S REPORT

President Person provided updates on: Washington DC trip with STA; prospect activity; project ICON; member prospects; Impact Solano; July 26 breakfast with Senator Lois Wolk; Spirit of Solano event; Moving Solano Forward project; Manex and Employment Training Panel.

Calendar items were discussed. The meeting adjourned 10:08 am.

Sandy Person

President
sandy@solanoedc.org

Patricia Uhrich

Office Manager
pat@solanoedc.org

Sylvette Wake

Retention Program Specialist
sylvette@solanoedc.org

Address:

360 Campus Lane, Suite 102
Fairfield, CA 94534

Phone:

707.864.1855

Fax:

707.864.6621

Toll Free:

888.864.1855

Website:

www.solanoedc.org

Solano EDC Monthly Financial Summary

AUGUST 2013
(YTD 67% of budget)

MONTHLY INCOME: \$ 49,268.45 YTD: \$ 274,505.48 (84%)

- Membership Renewals – YTD 70% accrual (actual to date is 106%)
- New Member – Umpqua Bank (\$1,000)
- Public Membership – Received \$22,400 from City of Vallejo and Solano County
 - ✓ City of Vallejo: Received \$4,900 final invoice for FY 12/13
 - ✓ County of Solano: Received \$37,500 for FY13/14
 - ✓ City of Benicia: Received \$2,375 quarterly payment (current)
 - ✓ City of Dixon: Received \$1,875 quarterly payment (current)
 - ✓ City of Fairfield: \$5,000 for FY13/14 (current)
 - ✓ City of Rio Vista: \$1,000 FY13/14 (current)
 - ✓ City of Vacaville: \$5,000 FY13/14 (current)
 - City of Suisun City (dropped membership)
- Golf (net) - \$10,841.35 (108% budget)
- Membership Meetings: \$920.00 (YTD 92% of budget)
- Sublease Income: Received \$300 SCBI monthly payment - YTD 90% budget

MONTHLY EXPENSES: \$ 26,184.48 YTD: \$218,234.97 (66%)

- Fixed Expenses: \$5,985.89 (YTD tracking slightly under budget at 64%)
- Personnel: \$17,540.62 (YTD tracking with budget)
- Prof Services: \$925.00 (YTD tracking slightly under budget at 65%)
- Marketing-Business Attraction:
 - Business Attraction & Recruiting – \$1,707.77 (YTD slightly over budget at 71% due to timing issues - STA trip to Washington DC, economic analysis for ICON and CALED member dues)

Monthly INCOME: \$23,083.97

Solano EDC
Monthly Financial Statement
 August 2013

	Current Month	Year-to-Date		Annual	
	Aug 13 Actuals	Jan-Aug 13 Actuals	Jan-Dec 13 Budget	YTD \$ Variance	%(67) of Budget
INCOME					
Private & Other Public					
Membership Renewals	13,347.15	106,362.60	151,000.00	(44,637.40)	70%
New Members	1,437.49	6,833.44	15,000.00	(8,166.56)	46%
Public Memberships					
Membership Renewals	22,400.00	70,300.00	83,800.00	(13,500.00)	84%
Contracts & Grants (Manex)	0.00	12,000.00	12,000.00	0.00	100%
Contracts & Grants (MSF)	0.00	10,125.00	0.00	10,125.00	0%
Contracts & Grants (Other)	0.00	5,600.00	0.00	5,600.00	0%
Fundraisers					
Golf - Net	10,841.35	10,841.35	10,000.00	841.35	108%
Membership Mtgs (Net)	920.00	13,794.20	15,000.00	(1,205.80)	92%
Publications	0.00	9,500.00	10,000.00	(500.00)	95%
Other Income					
Capital Campaign	0.00	8,300.00	8,300.00	0.00	100%
Interest Income	22.46	191.96	300.00	(108.04)	64%
Sublease Income	300.00	20,666.93	23,000.00	(2,343.07)	90%
Total INCOME	49,268.45	274,505.48	328,400.00	(53,894.52)	84%
EXPENSES					
Fixed/Semi-Fixed Expenses	5,985.89	47,217.38	74,100.00	(26,882.62)	64%
Personnel	17,540.62	139,142.35	207,300.00	(68,157.65)	67%
Professional Services	925.00	9,062.00	14,000.00	(4,938.00)	65%
Marketing-Sales & Bus Attraction					
Publications	0.00	4,290.95	5,000.00	(709.05)	86%
Website	25.20	1,537.39	4,000.00	(2,462.61)	38%
Business Att & Recruiting	1,707.77	16,984.90	24,000.00	(7,015.10)	71%
Total EXPENSES	26,184.48	218,234.97	328,400.00	(110,165.03)	66%
INCOME (LOSS)	23,083.97	56,270.51	0.00	56,270.51	17%

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 3, 2013

TO : Mayor Patterson
Council Member Hughes
Council Member Schwartzman

FROM : Director of Public Works

SUBJECT : **SOLANO TRANSPORTATION AUTHORITY**

The following information is provided for your committee report at the September 17, 2013 City Council meeting.

The minutes from the July 10, 2013 meeting are attached along with the agenda for the September 11, 2013 meeting. The next regular meeting is scheduled for October 9, 2013 at Suisun City Hall and the agenda for that meeting is unavailable.

Attachments:

- July 10, 2013 Regular Board Meeting Minutes
- September 11, 2013 Regular Board Meeting Agenda



SOLANO TRANSPORTATION AUTHORITY
Board Minutes for Meeting of
July 10, 2013

1. CALL TO ORDER

Chair Hardy called the regular meeting to order at 6:05 p.m. A quorum was confirmed.

MEMBERS

PRESENT: Steve Hardy, Chair City of Vacaville
Osby Davis, Vice Chair City of Vallejo
Elizabeth Patterson City of Benicia
Jack Batchelor City of Dixon
Harry Price City of Fairfield
Norman Richardson City of Rio Vista
Pete Sanchez City of Suisun City
Jim Spering County of Solano

MEMBERS

ABSENT: None.

STAFF

PRESENT: Daryl K. Halls Executive Director
Bernadette Curry Legal Counsel
Janet Adams Deputy Exec. Director/Dir. of Projects
Robert Macaulay Director of Planning
Johanna Masiclat Clerk of the Board/Office Manager
Jayne Bauer Legislative & Marketing Program Manager
Susan Furtado Accounting & Administrative Svc. Manager
Liz Niedziela Transit Manager
Danelle Carey SR2S Assistant Program Manager
Robert Guerrero Project Manager
Sofia Recalde Associate Planner
Sara Woo Associate Planner
Jessica McCabe Project Assistant
Jasmeen Kaur STA Intern
Angela Tsagarakis STA Intern

ALSO PRESENT: (In alphabetical order by last name.)

Amanda Dum City of Suisun City
Shawn Cunningham City of Vacaville
Barry Eberling The Daily Republic

Bill Emlen	Solano County
George Hicks	City of Fairfield
Joe Leach	City of Dixon
Mike Roberts	City of Benicia
Matt Tuggle	Solano County

2. CONFIRM QUORUM/STATEMENT OF CONFLICT

A quorum was confirmed by the Clerk of the Board. There was no Statement of Conflict declared at this time.

3. APPROVAL OF AGENDA

On a motion by Board Member Patterson, and a second by Board Member Sanchez, the STA Board approved the agenda to include the following amendments to recommendations noted below in *bold italics*:

- Item 7.S, OneBayArea Grant (OBAG) Programming for Safe Routes to School (SR2S) Projects
Recommendation:
Approve the programming of ~~\$1,200,000~~ *\$200,000 in Safe Routes to School funds for Benicia's projects and Rio Vista's project* of Congestion Mitigation and Air Quality (CMAQ) funds for Safe Routes to Schools (SR2S) projects as described in *revised* Attachment C.
- Item 9.A, I-80 Ramp Metering Study and Implementation Plan and Ramp Metering Memorandum of Understanding (MOU)
Recommendation:
Approve the following:
 1. I-80 Ramp Metering Study and Implementation Plan as shown in Attachment A;
 2. *Direct staff to request Caltrans to complete the follow-up Freeway to Freeway analysis specified in the I-80 Ramp Metering Study and Implementation Plan and bring back to the SoHip and STA Board within 6 months;* and
 3. Authorize the STA Executive Director to enter into a Memorandum of Understanding with Caltrans for the I-80 Ramp Metering Implementation.

4. OPPORTUNITY FOR PUBLIC COMMENT

None presented.

5. EXECUTIVE DIRECTOR'S REPORT

- STA Visit to Washington DC Focused on Buy America and Follow-up to MAP 21
- I-80/680/SR 12 Interchange Project Focus of Nationwide Buy America Waiver Discussions
- STA Fiscal Year 2013-14 Budgets
- Nexus Study for Transportation Impact Fee
- Regional Measure 2 (RM 2) Implementation Plan
- I-80 Ramp Metering Study and Implementation Plan and Ramp Metering MOU
- Travel Training Second for Implementation of Mobility Management Program
- SNCI Program Hits Their New Vanpools Target for FY 2012-13
- STA Staff Update
- Two New Interns Join STA

6. **COMMENTS FROM METROPOLITAN TRANSPORTATION COMMISSION (MTC), CALTRANS, AND STAFF:**

MTC Report:

None presented.

Caltrans Report:

None presented.

STA Staff:

- A. **Presentation: Fairfield/Vacaville Intermodal Train Station presented by George Hicks**
- B. **Summary of Washington, D.C. Trip presented by Chair Hardy**
- C. **Directors Report**
 - 1. **Planning**
 - 2. **Projects**
 - 3. **Transit/Rideshare**

7. **CONSENT CALENDAR**

On a motion by Board Member Patterson, and a second by Board Member Price, the STA Board approved Consent Calendar Items A through S as amended shown below in *bold italics*.

A. **Minutes of the STA Board Meeting of June 12, 2013**

Recommendation:

Approve STA Board Meeting Minutes of June 12, 2013.

B. **Draft Minutes of the TAC Meeting of June 26, 2013**

Recommendation:

Approve Draft TAC Meeting Minutes of June 26, 2013.

C. **Fiscal Year (FY) 2013-14 Transportation Development Act (TDA)**

Matrix - July 2013

Recommendation:

Approve the FY 2013-14 Solano TDA Matrix – July 2013 as shown in Attachment B for the Cities of Dixon and Rio Vista.

D. **Fiscal Year (FY) 2013-14 State Transit Assistance Funds (STAF)**

Funding Priorities

Recommendation:

Approve the FY 2013-14 STAF funding priorities as specified in Attachment C.

E. **Mobility Management Travel Training Scope of Work**

Recommendation:

Approve the following:

- 1. The Travel Training scope of work; and
- 2. Authorize the Executive Director to issue a request for proposal and enter into an agreement for Travel Training Consultant Services for an amount not to exceed \$130,000.

F. **Solano Napa Commuter Information (SNCI) Fiscal Year (FY)**

2013-14 Work Program

Recommendation:

Approve the Solano Napa Commuter Information Work Program for FY 2013-14 as shown in Attachment A.

- G. Safe Routes to School (SR2S) Two-Year Work Plan for Fiscal Years (FY) 2013-14 and 2014-15**
Recommendation:
 Approve the Solano SR2S 2-year Work Plan for Fiscal Years 2013-14 and 2014-15 as shown in Attachment A.
- H. Fiscal Year (FY) 2013-14 Transportation Development Act (TDA) Article 3 Countywide Coordinated Claim**
Recommendation:
 Approve FY 2013-14 TDA Article 3 Resolution No. 2013-18 as specified in Attachment A.
- I. Solano Napa Commuter Information and Solano Safe Routes to School OneBayArea Grant Funding**
Recommendation:
 Approve the following:
1. Revised funding amount of \$533,000 of OBAG Congestion Mitigation and Air Quality (CMAQ) funds to the STA's Solano Napa Commuter Information Program;
 2. Program \$1,256,00 of OBAG Congestion Mitigation and Air Quality (CMAQ) funds to the STA's Safe Routes to School Program;
 3. STA Resolution No. 2013-19 for \$533,000 for the STA's Solano Napa Commuter Information Program; and
 4. STA Resolution No. 2013-20 for \$1,256,000 for the STA's Safe Routes to School Program.
- J. Paratransit Coordinating Council Membership Status and Appointment**
Recommendation:
 Appoint Anne Payne to the Paratransit Coordinating Council as a Social Service Provider for a three-year term.
- K. Alternative Fuel and Infrastructure Plan Consultant Contract Amendment**
Recommendation:
 Approve the following:
1. Authorize the STA Executive Director to execute a contract extension for ICF International to complete the Alternative Fuels and Infrastructure Plan; and
 2. Approve an additional \$15,000 in STAF funding contingent upon approval of STA Board Agenda Item 7.D.
- L. OneBayArea Grant (OBAG) Funding Agreements**
Recommendation:
 Authorize the Executive Director to enter into OBAG Funding Agreements with each city for the following approved OBAG capital projects:
1. City of Suisun City's Train Station Improvements;
 2. City of Vacaville's Allison Drive Sidewalk + Class I to Transit Center;
 3. City of Vacaville's Ulatis Creek Class I Bike Lane (McClellan to Depot);
 4. City of Vallejo's Downtown Streetscape (Maine Street);
 5. County of Solano's Vaca-Dixon Bicycle Path; and
 6. County of Solano's Suisun Valley Farm to Market Phase 1 Project

M. SolanoExpress Marketing Contract Amendment

Recommendation:

Authorize the Executive Director to:

1. Execute contract amendment with MIG for an amount not-to-exceed \$60,000 to cover additional services related to the SolanoExpress marketing and extend contract date to June 30, 2014; and
2. Allocated \$7,000 in STAF funds to SolTrans to cover the cost of fare and brochures marketing media for the SolanoExpress routes.

Pg. 107

N. I-80/I-680/State Route (SR) 12 Interchange – Initial Construction Package Contract Amendment for Right-of-Way Services

Recommendation:

Approve a budget increase for Right-of-Way acquisition services of \$105,000, for a total budget amount of \$785,000 and a contract amendment for Contra Costa County Real Property Division for the I-80/I-680/SR 12 Interchange - Initial Construction Package (ICP) for a total contract amount not-to-exceed \$785,000.

O. I-80/I-680/State Route (SR) 12 Interchange – Initial Construction Package PG&E Access Road Construction

Recommendation:

Approve STA Resolution No. 2013-21 that authorizes the Executive Director to advertise and award a contract to construct the PG&E Access Road for the WB I-80 to SR 12 (West) Connector and Green Valley Road Interchange Improvements Project (Initial Construction Package) for a total amount not to exceed \$650,000.

P. I-80 Eastbound Cordelia Truck Scales Relocation Project - Contract Amendment for Engineering Services During Construction

Recommendation:

Approve a contract amendment for HDR in the not-to-exceed amount of \$300,000, to cover engineering services during construction of the I-80 Eastbound Cordelia Truck Scales Relocation Project.

Q. I-80 Eastbound Cordelia Truck Scales Relocation Project - Contract Amendment for Technology System Integration Services

Recommendation:

Approve a contract amendment for Intelligent Imaging Systems Inc. (IIS) in a not-to-exceed amount of \$360,200 to cover Technology System Integration design and equipment and two years of extended maintenance for the technology system for the I-80 Eastbound Cordelia Truck Scales Relocation project.

R. I-80/I-680/State Route (SR) 12 Interchange Phase 1 Project – Environmental Mitigation

Recommendation:

Authorize the Executive Director to enter into agreements to provide the environmental mitigation required by the I-80/I-680/SR 12 Interchange – Phase 1 project for a not-to-exceed amount of \$13.8 M.

S. OneBayArea Grant (OBAG) Programming for Safe Routes to School (SR2S) Projects

Recommendation:

Approve the programming of ~~\$1,200,000~~ *\$200,000 in Safe Routes to School funds for Benicia's projects and Rio Vista's project* of Congestion Mitigation and Air Quality (CMAQ) funds for Safe Routes to Schools (SR2S) projects as described in *revised* Attachment C.

8. ACTION – FINANCIAL ITEMS

A. STA's Fiscal Year (FY) 2013-14 Budget Revision and FY 2014-15 Proposed Budget

Susan Furtado presented the FY 2013-14 budget revision and proposed budget for FY 2014-15. She noted that both budgets are balanced and cover the estimated costs for successful implementation of STA planning, projects, and programs. She also cited that the FY 2013-14 budget incorporates updates revenue information for a variety of projects and programs and includes construction funding for several priority projects which accounts for the budget increase from \$31.55 million to \$65.73 million (\$34.17 million change). She concluded by stating that the projected budget total for FY 2014-15 is \$20.49 million.

Public Comments:

None presented.

Board Comments:

None presented.

Recommendation:

Approve the following:

1. Adopt the STA's FY 2013-14 Budget Revision as shown in Attachment A;
2. Adopt the STA's FY 2014-15 Proposed Budget as shown in Attachment B; and
3. Approve a modification to the STA's Staff Organizational Chart establishing the part-time Customer Service Representatives for the SNCI Program.

On a motion by Board Member Price, and a second by Board Member Patterson, the STA Board unanimously approved the recommendation.

B. STA Regional Transportation Impact Fee (RTIF) Nexus Report

Robert Guerrero reported that at an earlier meeting, the RTIF Policy Committee recommended the approval of the Solano County Regional Transportation Impact Fee Nexus Report *based on the direction to work with the RTIF Working Groups to provide administrative recommendations back to the Committee with two principals; 1.) that funding can be moved from working groups; and 2.) have a reserve for potential projects to get shelf ready.*

Public Comments:

None presented.

Board Comments:

None presented.

Recommendation:

Approve the Solano County Regional Transportation Impact Fee Nexus Report as included in Attachment B.

On a motion by Board Member Spring, and a second by Board Member Sanchez, the STA Board approved the recommendation with the understanding to include direction made by the RTIF Policy Board as indicated above in *bold italics*.

C. Solano County Regional Measure 2 (RM 2) Implementation Plan

Janet Adams presented the Solano County RM 2 Implementation Plan. She noted that earlier this year, the Metropolitan Transportation Commission (MTC) adopted a policy to require all RM 2 (bridge toll) project sponsors to develop a funding plan for remaining RM 2 funds by September 2013 and the initiation of construction by March of 2014. She added that STA staff has been working with Solano's remaining RM 2 project sponsors to develop a funding plan for the remaining \$47 million in unallocated RM 2 funds.

Public Comments:

None presented.

Board Comments:

Board Member Spring commended staff for being proactive and thanked the Cities of Fairfield and Vallejo for working with STA staff to move these projects forward.

Recommendation:

Approve the Regional Measure 2 Implementation Plan as shown on Attachment A.

On a motion by Board Member Spring, and a second by Board Member Price, the STA Board unanimously approved the recommendation.

9. ACTION – NON-FINANCIAL ITEMS

A. I-80 Ramp Metering Study and Implementation Plan and Ramp Metering Memorandum of Understanding (MOU)

Robert Guerrero reported that STA staff has been working with Caltrans, MTC and the local agencies located adjacent to the I-80 corridor to develop an I-80 Ramp Metering Study and Implementation Plan. He noted that this process has been managed through a Solano Highway Partnership (SoHip) Committee comprised of engineering staff from the local agencies, STA and Caltrans. He cited that the effort has now been completed and is ready for adoption by the STA Board. This Plan will provide the initial schedule and operational plan for the ramp meters to become operational along the I-80 Corridor in Solano County once they are installed. He concluded that STA has developed a ramp metering Memorandum of Understanding (MOU) that would maintain this partnership between Caltrans, STA and the local agencies (Dixon, Fairfield, Vacaville, Vallejo, and County of Solano).

Public Comments:

None presented.

Board Comments:

Chair Hardy commented about the need for jurisdictions to have control in the ramp metering turning on or off.

Board Member Spering commented that the intent for the ramp metering plan is to mitigate the local concerns and issues to make sure that traffic does not get backed up on the local streets. He stated that the main problem Caltrans and MTC are facing is that when the money was invested, local jurisdictions agreed to go forward with the improvements. He added that he does not want the impression to seem like MTC and Caltrans does not care about the local jurisdictions and that it is just a different mechanism.

Board Member Patterson cited that she understands the reasoning behind the MOU. She interpreted the process as an impact assessment and when there is a potential impact, there is mitigation measure in which all criteria addresses that. However, she noted that what was compelling in the Plan was the traffic safety measure. She noted that a quarter of the accidents are expected to be reduced with the metering program if mitigation measures are adopted, monitored and followed through with a proposed mitigation.

Vice Chair Davis asked what the timeframe is on I-80 at the I-780 on ramps? Daryl Halls responded that installation on I-80 to I-780 is a freeway to freeway which requires more technical data from the consultant/Caltrans and it is recommended that it go back to the STA for review and approval process. Janet Adams also commented that in order to do the Vallejo segment, which includes these ramps, there will have to be improvements throughout this section of the corridor which would likely occur as part of the HOV Lanes/Express Lanes.

At this time, Board Member Price requested to amend the recommendation to read as follows:

“Direct staff to request Caltrans to complete the follow-up Freeway to Freeway analysis specified in the I-80 Ramp Metering Study and Implementation Plan and bring back to the SoHip and STA Board within 6 months.”

Recommendation:

Approve the following:

1. I-80 Ramp Metering Study and Implementation Plan as shown in Attachment A;
2. *Direct staff to request Caltrans to complete the follow-up Freeway to Freeway analysis specified in the I-80 Ramp Metering Study and Implementation Plan and bring back to the SoHip and STA Board within 6 months; and*
3. Authorize the STA Executive Director to enter into a Memorandum of Understanding with Caltrans for the I-80 Ramp Metering Implementation.

On a motion by Board Member Batchelor, and a second by Board Member Richardson, the STA Board unanimously approved the recommendation as amended as shown above in *bold italics*.

10. INFORMATIONAL – NO DISCUSSION

- A. Public-Private Partnership (P3) Update
- B. Legislative Update
- C. Fiscal Year (FY) 2012-13 Abandoned Vehicle Abatement (AVA) Program Third Quarter Report
- D. Summary of Funding Opportunities Summary
- E. STA Board and Advisory Committee Meeting Schedule for Calendar Year 2013

11. BOARD MEMBER COMMENTS

None.

12. ADJOURNMENT

The meeting was adjourned at 7:10 p.m.

Attested by:



Johanna Masiclat
Clerk of the Board

/September 1, 2013
Date



Solano Transportation Authority

STA BOARD MEETING AGENDA
6:00 p.m., Regular Meeting
Wednesday, September 11, 2013
Suisun City Hall Council Chambers
701 Civic Center Drive
Suisun City, CA 94585

Mission Statement: To improve the quality of life in Solano County by delivering transportation system projects to ensure mobility, travel safety, and economic vitality.

Public Comment: Pursuant to the Brown Act, the public has an opportunity to speak on any matter on the agenda or, for matters not on the agenda, issues within the subject matter jurisdiction of the agency. Comments are limited to no more than 3 minutes per speaker unless modified by the Board Chair, Gov't Code § 54954.3(a). By law, no action may be taken on any item raised during the public comment period (Agenda Item IV) although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the agency. Speaker cards are required in order to provide public comment. Speaker cards are on the table at the entry in the meeting room and should be handed to the STA Clerk of the Board. Public comments are limited to 3 minutes or less.

Americans with Disabilities Act (ADA): This agenda is available upon request in alternative formats to persons with a disability, as required by the ADA of 1990 (42 U.S.C. §12132) and the Ralph M. Brown Act (Cal. Govt. Code §54954.2). Persons requesting a disability related modification or accommodation should contact Johanna Masiclat, Clerk of the Board, at (707) 424-6008 during regular business hours at least 24 hours prior to the time of the meeting.

Staff Reports: Staff reports are available for inspection at the STA Offices, One Harbor Center, Suite 130, Suisun City during regular business hours, 8:00 a.m. to 5:00 p.m., Monday-Friday. You may also contact the Clerk of the Board via email at jmasiclat@sta-snci.com. Supplemental Reports: Any reports or other materials that are issued after the agenda has been distributed may be reviewed by contacting the STA Clerk of the Board and copies of any such supplemental materials will be available on the table at the entry to the meeting room.

Agenda Times: Times set forth on the agenda are estimates. Items may be heard before or after the times shown.

ITEM

BOARD/STAFF PERSON

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE (6:00 – 6:05 p.m.) Chair Hardy
2. CONFIRM QUORUM/ STATEMENT OF CONFLICT (6:05 – 6:10 p.m.) Chair Hardy
3. APPROVAL OF AGENDA
4. OPPORTUNITY FOR PUBLIC COMMENT (6:05 – 6:10 p.m.)

STA BOARD MEMBERS

Table listing STA Board Members: Steve Hardy (Chair), Osby Davis (Vice-Chair), Elizabeth Patterson, Jack Batchelor, Jr., Harry Price, Norman Richardson, Pete Sanchez, Jim Spering, City of Vacaville, City of Vallejo, City of Benicia, City of Dixon, City of Fairfield, City of Rio Vista, City of Suisun City, County of Solano.

STA BOARD ALTERNATES

Table listing STA Board Alternates: Dilenna Harris, Hermie Sunga, Alan Schwartzman, Dane Besneatte, Rick Vaccaro, Constance Boulware, Mike Hudson, Erin Hannigan.

5. **EXECUTIVE DIRECTOR’S REPORT – Pg. 9** Daryl K. Halls
(6:10 – 6:15 p.m.)
6. **REPORT FROM THE METROPOLITAN TRANSPORTATION COMMISSION (MTC)** MTC Commissioner and STA Board Member
(6:15 – 6:30 p.m.) Jim Spering
A. Bay Area Freight Study Presentation Carolyn Clevenger, MTC
7. **REPORT FROM CALTRANS**
(6:30 – 6:35 p.m.)
8. **REPORT FROM STA**
(6:35 – 6:40 p.m.)
A. Local Preference Policy Annual Report Judy Kowalsky
B. Directors Report
1. Planning Jayne Bauer
2. Projects Janet Adams
3. Transit/Rideshare Danelle Carey
9. **CONSENT CALENDAR**
Recommendation:
Approve the following consent items in one motion.
(Note: Items under consent calendar may be removed for separate discussion.)
(6:40 - 6:45 p.m.)
- A. Minutes of the STA Board Meeting of July 10, 2013** Johanna Masiclat
Recommendation:
Approve STA Board Meeting Minutes of July 10, 2013.
Pg. 15
- B. Draft Minutes of the Technical Advisory Committee (TAC) Meeting of August 28, 2013** Johanna Masiclat
Recommendation:
Approve Draft TAC Meeting Minutes of August 28, 2013.
Pg. 25
- C. Fiscal Year (FY) 2013-14 Indirect Cost Allocation Plan (ICAP) Rate Application for Caltrans** Susan Furtado
Recommendation:
Approve the following:
1. STA’s ICAP Rate Application for FY 2013-14; and
2. Authorize the Executive Director to submit the ICAP Rate Application to Caltrans.
Pg. 31
- D. STA Personnel and Human Resources Consulting Services – Joy Apilado – Contract Amendment** Daryl Halls
Recommendation:
Authorize the Executive Director to amend the agreement with Joy Apilado for the provision of Human Resource Services for a two year period, with the option for a two year extension, for a not-to-exceed two year contract amount of \$30,000.
Pg. 33

- E. Paratransit Coordinating Council (PCC) Membership Status and Appointment** Sofia Recalde
Recommendation:
 Appoint Curtis Cole to the Paratransit Coordinating Council for a three (3) year term as a Public Agency representative.
Pg. 35
- F. Solano Pedestrian Advisory Committee (PAC) Member Appointment** Sofia Recalde
Recommendation:
 Appoint Kevin McNamara representing City of Rio Vista to the PAC for a three-year term.
Pg. 39
- G. Appointments to Comprehensive Transportation Plan (CTP) Committees** Sara Woo
Recommendation:
 Appoint the following individuals to the STA CTP Committees as indicated in Attachment A:
Pg. 43
- H. Fiscal Year (FY) 2013-14 Transportation Fund for Clean Air (TFCA) 40% Program Manager Funds** Sara Woo
Recommendation:
 Approve the following projects and amounts for the FY 2013-14 Solano TFCA Program Manager Funds:
1. Solano Community College Student Bus Voucher Program (\$42,000);
 2. Safe Routes to School (SR2S) High School Trip Reduction Pilot (\$24,981); and
 3. Suisun City Electric Charging Station (\$2,000).
- Pg. 49**
- I. Planning for Priority Development Areas (PDAs) and PDA Growth and Investment Strategy Update Using OneBayArea Grant (OBAG) Funding** Robert Macaulay
Recommendation:
 Approve the STA Resolution No. 2013-23 for \$586,000 for the Planning Support for Priority Development Areas Program, PDA Growth and Investment Strategy Update, and PCA Assessment Plan.
Pg. 57
- J. STA Transit Ambassador Program OneBayArea Grant (OBAG) Funding** Sofia Recalde/
Jessica McCabe
Recommendation:
 Approve STA Resolution No. 2013-22 for \$250,000 for the Transit Ambassador Program.
Pg. 65

- K. Coordinated Short Range Transit Plan (SRTP)/Transit Corridor – Contract Amendment - Arup** Liz Niedziela
Recommendation:
 Authorize the Executive Director to execute a contract amendment with Arup for an amount not-to-exceed \$62,500 to cover the additional cost associated with the Coordinated SRTP and the Transit Corridor Study.
Pg. 73
- L. Transit Planning Project Management - Contract Amendment – Nancy Whelan Consulting (NWC)** Liz Niedziela
Recommendation:
 Authorize the Executive Director to execute a contract amendment with Nancy Whelan Consulting for an amount not-to-exceed \$70,000 to cover FY 2013-14 services related to Transit Finance and Management and Coordination Implementation.
Pg. 85
- M. OneBayArea Grant (OBAG) Programming for Safe Routes to School (SR2S) Projects** Jessica McCabe
Recommendation:
 Approve the programming of \$744,702 of Congestion Mitigation and Air Quality (CMAQ) funds for Safe Routes to Schools (SR2S) projects as described in Attachment C.
Pg. 89
- N. Priority Development Area (PDA) Planning** Sofia Recalde
Recommendation:
 Authorize the Executive Director to execute agreements with the cities of Benicia, Dixon, Fairfield, Rio Vista and Suisun City for the expenditure of PDA planning funds in the following amounts:
1. \$163,000 to City of Suisun City for the Downtown Waterfront Specific Plan;
 2. \$850,000 to City of Fairfield for the Downtown and West Texas Street PDA;
 3. \$250,000 to City of Benicia for the Benicia Industrial Park Transportation Plan;
 4. \$75,000 to the City of Dixon for a Downtown Specific Plan; and
 5. \$161,000 to the City of Rio Vista for a Downtown Specific Plan
- Pg. 97**
- O. STA Regional Transportation Impact Fee (RTIF) – Contract Amendment – Economic Planning Systems (EPS)** Robert Guerrero
Recommendation:
 Authorize the STA Executive Director to amend EPS and Fehr and Peers agreement to include the additional scope of work outlined in Attachment B for an amount not to exceed \$28,500.
Pg. 99

- P. Solano County’s MAPS Pilot Program - Contract Amendment** Robert Guerrero
Recommendation:
 Authorize the Executive Director to amend the STA’s and County’s MAPS Pilot Program’s current contract agreement to be extended to December 30, 2014.
Pg. 109
- Q. I-80 Eastbound Cordelia Truck Scales Project – Allocation Transfer** Janet Adams
Recommendation:
 Approve the attached STA Resolution No. 2013-25 request that Metropolitan Transportation Commission (MTC) transfer \$360,200 in Regional Measure 2 or AB1171 funds from the Design Phase to the Construction Phase for the I-80 EB Truck Scales Relocation Project.
Pg. 127
- R. I-80/I-680/State Route (SR) R12 Interchange Project – Allocation Request** Janet Adams
Recommendation:
 Approve the attached STA Resolution No. 2013-26 and Funding Allocation Request from Metropolitan Transportation Commission (MTC) for \$2,469,088 in Regional Measure 2 or AB1171 funds for the I-80/I-680/SR12 Interchange Project - ICP for right-of-way phase.
Pg. 141
- S. Redwood Parkway – Fairgrounds Drive Improvement Project - Contract Amendment HQE, Inc.** Janet Adams
Recommendation:
 Authorize the Executive Director to amend the contract with HQE, Inc. for an amount not-to-exceed \$30,000 for the environmental document and project approval for the Redwood Parkway – Fairgrounds Drive Improvement Project.
Pg. 159
- T. Mobility Management Plan Update** Sofia Recalde
Recommendation:
 Approve the following:
 1. The Scope of Work for the development of a Mobility Management Website as specified in Attachment C; and
 2. Authorize the Executive Director to issue a Request for Proposal (RFP) and enter into an agreement for Mobility Management Website Development Services for an amount not-to-exceed \$35,000.
Pg. 161

10. ACTION FINANCIAL ITEMS

A. Rail Facilities Plan Update

Sofia Recalde

Recommendation:

Approve the following:

1. The Scope of Work for the Solano Rail Facilities Update as shown in Attachment A;
2. Authorize the Executive Director to issue a RFP for the Solano Rail Facilities Plan Update;
3. Authorize the Executive Director to enter into an agreement with selected consultant for an amount not-to-exceed \$41,500; and
4. Additional Task 3.2 and Task 4.2 in the Scope of Work as shown in Attachment A.

(6:45 – 6:55 p.m.)

Pg. 173

B. Priority Conservation Area (PCA) Assessment and Implementation Plan and Stakeholders Committee

Sara Woo

Recommendation:

Approve the following:

1. The Stakeholders Working Group Participants List for the Solano County PCA Assessment and Implementation Plan as shown in Attachment A;
2. Authorize the Executive Director to issue a Request for Proposals for the Solano County PCA Assessment and Implementation Plan; and
3. Authorize the Executive Director to enter into an agreement with selected consultant for an amount not-to-exceed \$75,000.

(6:55 – 7:05 p.m.)

Pg. 185

11. ACTION NON-FINANCIAL ITEMS

A. Coordinated Short Range Transit Plan and Solano Intercity Performance Benchmarks

Nancy Whelan

Recommendation:

1. Approve the Solano Intercity Performance Benchmarks as shown in Attachment A; and
2. Adopt STA Resolution No. 2013-24 approving the Solano County Coordinated Short Range Transit Plan as shown in Attachment B.

(7:05 – 7:25 p.m.)

Pg. 197

B. Legislative Update

Jayne Bauer

Recommendation:

Take the following positions:

SB 556 (Corbett) – Oppose

AB 466 (Quirk-Silva) - Support

(7:25 – 7:30 p.m.)

Pg. 205

12. INFORMATIONAL ITEMS – NO DISCUSSION

- | | |
|--|------------------|
| A. STA’s Local Preference Policy FY 2012-13 Year-End Report
Pg. 243 | Judy Kowalsky |
| B. STA Alternative Fuel and Infrastructure Plan
Pg. 247 | Robert Guerrero |
| C. Summary of Funding Opportunities Summary
Pg. 249 | Sara Woo |
| D. STA Board and Advisory Committee Meeting Schedule
for Calendar Year 2013
Pg. 253 | Johanna Masiclat |

13. BOARD MEMBERS COMMENTS

14. ADJOURNMENT

The next regularly scheduled meeting of the STA Board at **6:00 p.m., Wednesday, September 11, 2013**, Suisun Council Chambers.

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 3, 2013

TO : Mayor Patterson
Council Member Hughes

FROM : Director of Public Works

SUBJECT : **SOLANO COUNTY WATER AGENCY**

The following information is provided for your committee report at the September 17, 2013 City Council meeting.

The draft minutes of the August 8, 2013 meeting are attached along with the agenda for the September 12, 2013 meeting. The next regular meeting is scheduled for October 10, 2013.

Attachments:

- SCWA Draft Minutes for August 8, 2013
- SCWA Meeting Agenda for September 12, 2013

**SOLANO COUNTY WATER AGENCY
BOARD OF DIRECTORS MEETING MINUTES**

MEETING DATE: AUGUST 8, 2013

The Solano County Water Agency Board of Directors met this evening at the Solano County Water Agency. Present were:

Mayor Jack Batchelor, City of Dixon
Mayor Harry Price, City of Fairfield
Mayor Pete Sanchez, City of Suisun City
Mayor Elizabeth Patterson, City of Benicia
Mayor Norm Richardson, City of Rio Vista
Mayor Osby Davis, City of Vallejo
Supervisor Erin Hannigan, Solano County District 1
Supervisor Jim Sperring, Solano County District 3
Supervisor John Vasquez, Solano County District 4
Supervisor Skip Thomson, Solano County District 5
Director Bob Bishop, Solano Irrigation District
Manager Mike Hardesty, Reclamation District 2068
Manager Don Holdener, Maine Prairie Water District

CALL TO ORDER

The meeting was called to order at 6:30 P.M. by Chairman Sperring.

APPROVAL OF AGENDA

On a motion by Mayor Patterson and a second by Supervisor Thomson the Board unanimously approved the agenda.

PUBLIC COMMENT

There were not public comments.

CONSENT ITEMS

Supervisor Thomson requested item C be removed from the consent items. On a motion by Mayor Vasquez and a second by Mayor Sanchez the Board unanimously approved the following consent items:

- (A) Minutes
- (B) Expenditure Approvals
- (D) Countywide Aerial Imagery Services
- (E) Amendment No. 10 to the Agreement with Southwest Environmental Incorporated
- (F) Mitigated Negative Declaration for the Lower Putah Creek 2 NAWCA Project
- (G) Cost of Living Adjustment for Water Agency Employees

CONSENT ITEM C – PURCHASE VEHICLE, HYDRAULIC EXCAVATOR AND EQUIPMENT ATTACHMENTS

Thomas Pate explained the excavator would provide year round advantages to the Agency, not just during the months when the Agency had rented an excavator in the past. Additionally several other Solano agencies have expressed an interest in renting the excavator. On a motion from Mayor Patterson and a second by Mayor Price the Board unanimously approved Consent Item C.

BOARD MEMBER REPORTS

There were no Board Member reports.

GENERAL MANAGER'S REPORT

There were no additions to the written report.

SUPERVISOR DON NOTTOLI

Sacramento County Supervisor Don Nottoli was invited to speak to the Board on Delta matters. Supervisor Nottoli is on the Delta Protection Commission, the Delta Stewardship Council and active in the Delta Counties Coalition. He explained that Bay Delta Conservation Plan tunnel intake structures will be in Sacramento County and he is concerned with both construction impacts and long term impacts from these facilities. He expressed frustration that Delta local governments have been effectively excluded from any decision making role in BDCP. He urged that Delta Counties and local governments to stay involved in Delta water issues and express their concerns collectively as much as possible. Supervisor Nottoli answered questions from the Board and the Board expressed appreciation for his comments.

DELTA ISSUE PRIORITIES

Mayor Batchelor provided a description of a Matrix of Delta Issues prepared by the Solano Delta Water Coordination Working Group. The purpose of the Matrix is to summarize high priority Delta issues and provide concise explanations. Manager Okita stated one area of focus for the Working Group is to become involved with two active habitat restoration programs: the DWR Fish Restoration Program and the State and Federal Contractors Water Agency. On a motion by Mayor Batchelor and a second by Mayor Richardson the Board unanimously approved adoption of the Matrix of Delta Issues.

LEGISLATION

Manager Okita explained that AB 145 is designed to move drinking water programs from the State Department of Public Health to the State Water Resources Control Board. The reason for the opposition is because the vast majority of local water providers are satisfied with the State Department of Public Health's management of the drinking water programs. On a motion by Mayor Patterson and a second by Mayor Sanchez the Board unanimously approved a position of opposition to AB 145, recommended that other Solano agencies take a similar position, and provided staff flexibility to change the position if the bill is amended to retain the regulatory functions of the drinking water programs with the Department of Public Health.

Patrick Leathers, Legislative Advocate, explained one major area of his focus on behalf of the Agency is the development of the Water Bond for the 2014 election. Patrick distributed an update of bills of interest to SCWA.

TIME AND PLACE OF NEXT MEETING

The next regularly scheduled meeting will be Thursday, September 12, 2013 at 6:30 P.M. at the Solano County Water Agency offices.

ADJOURNMENT

This meeting of the Solano County Water Agency Board of Directors was adjourned at 8:00 P.M.

David B. Okita, General Manager
and Secretary to the Board of Directors of the
Solano County Water Agency

SOLANO COUNTY WATER AGENCY



BOARD OF DIRECTORS:

Chair:

Supervisor Jim Spring
Solano County District 3

Vice Chair:

Mayor Harry Price
City of Fairfield

Mayor Jack Batchelor
City of Dixon

Director Bob Bishop
Solano Irrigation District

Director Dale Crossley
Reclamation District No. 2068

Mayor Osby Davis
City of Vallejo

Supervisor Erin Hannigan
Solano County District 1

Mayor Steve Hardy
City of Vacaville

Mayor Elizabeth Patterson
City of Benicia

Mayor Norm Richardson
City of Rio Vista

Director Gene Robben
Maine Prairie Water District

Mayor Pete Sanchez
City of Suisun City

Supervisor Linda Seifert
Solano County District 2

Supervisor Skip Thomson
Solano County District 5

Supervisor John Vasquez
Solano County District 4

GENERAL MANAGER:

David Okita, PE
Solano County Water Agency

BOARD OF DIRECTORS MEETING

DATE: Thursday, September 12, 2013

TIME: 6:30 - 7:00 p.m. (Note: There is a CCCC meeting this month)

PLACE: Berryessa Room
Solano County Water Agency Office
810 Vaca Valley Parkway, Suite 203
Vacaville

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. PUBLIC COMMENT

Limited to 5 minutes for any one item not scheduled on the Agenda.

5. CONSENT ITEMS

(A) Minutes: Approval of the Minutes of the Board of Directors meeting of August 8, 2013 is recommended.

(B) Expenditure Approvals: Approval of the August checking account register is recommended.

6. BOARD MEMBER REPORTS

RECOMMENDATION: For information only.

7. GENERAL MANAGER'S REPORT

RECOMMENDATION: For information only.

810 Vaca Valley Parkway, Suite 203
Vacaville, California 95688
Phone (707) 451-6090 • FAX (707) 451-6099
www.scwa2.com



VIII.E.9.5

8. **STATE WATER PROJECT SUPPLY ALLOCATION SETTLEMENT AGREEMENT**

RECOMMENDATION:

1. Review Negative Declaration adopted by Department of Water Resources and adopt Negative Declaration under California Environmental Quality Act. Authorize Chairman to execute Settlement Agreement and Release Regarding Solano County Water Agency.
2. Authorize Chairman to execute Amendment No. 20 to the Water Supply Contract between the State of California Department of Water Resources and the Solano County Water Agency.
3. Authorize Chairman to execute revised Participating Agency Contracts between the Solano County Water Agency and the following cities: Benicia, Dixon, Fairfield, Rio Vista, Suisun City, Vacaville and Vallejo.

9. **TIME AND PLACE OF NEXT MEETING**

Thursday, October 10, 2013 at 6:30 p.m. at the SCWA offices.

The Full Board of Directors packet with background materials for each agenda item can be viewed on the Agency's website at www.scwa2.com.

Any materials related to items on this agenda distributed to the Board of Directors of Solano County Water Agency less than 72 hours before the public meeting are available for public inspection at the Agency's offices located at the following address: 810 Vaca Valley Parkway, Suite 203, Vacaville, CA 95688. Upon request, these materials may be made available in an alternative format to persons with disabilities.

Sep.2013.bod.agd

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 28, 2013

TO : Vice Mayor Campbell
Council Member Schwartzman

FROM : Director of Public Works

SUBJECT : **TRAFFIC, PEDESTRIAN AND BICYCLE SAFETY (TPBS) COMMITTEE**

The following is provided as your committee report for the September 17, 2013 City Council meeting.

The last TPBS Committee meeting was held on April 25, 2013, (draft minutes attached). The next regularly scheduled TPBS Committee meeting is Thursday, October 17, 2013 at 7:00 p.m. in the Commission Room.

The last Benicia Safe Routes to School (SR2S) Task Force participated in the Solano SR2S Summit on May 23, 2013. The summit was a forum to provide an overview of the successes of the county-wide SR2S Program in each community, and was hosted by the Solano Transportation Authority and Solano County Public Health.

Attachments:

- April 25, 2013 Draft Minutes Traffic Pedestrian & Bicycle Safety Committee
- May 23, 2013 STA SR2S Summit Program Overview

DRAFT MINUTES
CITY OF BENICIA
TRAFFIC, PEDESTRIAN AND BICYCLE SAFETY (TPBS) COMMITTEE
Re-scheduled Regular Meeting
Thursday, April 25, 2013
7:00 pm

I. Call to Order.

Meeting called to order at 7:01pm

1. Roll Call:

Committee Members Present:

Vice-Mayor Tom Campbell, Chair

Police Lt. Scott Przekurat

City Engineer, Melissa Morton

Senior Civil Engineer, Mike Roberts

Absent: Council Member Alan Schwartzman, Vice-Chair (excused)

Staff Present:

Kathy Trinque, Administrative Secretary

2. Fundamental Rights Statement

II. Approval of October 18, 2012 Meeting Minutes.

The minutes were adopted by a motion made by Melissa Morton, seconded by Mike Roberts and approved by a unanimous vote.

III. Public Comment:

Nancy Lund, resident and member of the Benicia Bike Club and STA Bicycle Committee requested that the City create a bicycle map that includes how to bicycle to key places (the easiest way). She suggested that staff look at the City of Davis's city map that includes bike lanes. She would like to see maps for each school that shows the safest way to bicycle to school.

Ms. Lund further commented on the following:

- ✓ She would like staff to check out what the City of Pleasant Hill, has done on Oak Park Road; they used a rust colored glittering material on the street that improves bicycle visibility for motorists.
- ✓ She would like to see improvements made to the intersection at Military West and W 7th Streets.
- ✓ She complimented staff on the newly completed Downtown Intermodal Project at First and Military.

IV. Citizen Request:

1. Request for Marked Crosswalk on West K at West 7th Street.

Mike Roberts provided a brief review of this request, staff's research, adjacent residents' comments and decision from the October 2012 TPBS Committee meeting. At the October meeting the Committee recommended installing a new high visibility crosswalk at this intersection, but since that time City staff has received additional feedback from two adjacent residents who are concerned about their loss of on-street parking from the proposed crosswalk.

Staff recommends that the City proceed with installing the new crosswalk even though it will reduce the amount of on-street parking to one stall for each adjacent resident. Staff's recommendation takes into account the need to balance the impact to the residents with improved safety for pedestrians. Without the crosswalk pedestrians must walk between parked cars to cross at this intersection.

This all-way stop intersection is a direct route for children to walk to Mary Farmar Elementary School, Benicia Middle School and Benicia High School. An additional crosswalk could be installed on West K Street at West 6th or West 8th Streets, but those intersections are not controlled by all-way stop.

The cost to install this crosswalk is approximately \$7,000 because a new depressed ramp at the sidewalk corner is needed at the south side and a retrofit of the north side for ADA standards is needed in addition to the crosswalk itself.

Public Comments:

Rene Mitchell of 640 West K Street spoke in opposition to the proposed crosswalk. He and his family have lived at this location about 13 years. He made the following comments:

- ✓ He rarely sees children crossing at this intersection – the crosswalk isn't needed.
- ✓ His next door neighbor, who would also be impacted by less on-street parking, is not in support of the crosswalk. (She was not able to attend the meeting.)
- ✓ He has an accessory dwelling unit on his property so he needs more than one on-street parking space.
- ✓ It would be more difficult for him and his neighbor to park and unload groceries if parking is reduced.
- ✓ Pedestrians have other places to cross the street nearby.
- ✓ He supports safety but in this case there is too much of an impact on adjacent residents. The neighborhood does not want the crosswalk there.

Yvette Mitchell of 640 West K Street also spoke in opposition to the proposed crosswalk. She stated that since the City changed the skate park into a

playground area, there are fewer children (and younger children usually accompanied by a parent), which has reduced traffic in this area.

No other comments were received.

The Committee held a discussion considering the following:

Lt. Przekurat noted that this has not been a problem area, from a police perspective.

Mike Roberts commented that we can't install the new crosswalk on the west side of the intersection (less impact to on-street parking) because there is a resident's driveway located on the southwest side of the intersection, creating a safety problem. This was the reason staff moved the crosswalk location to the east side of the intersection.

Melissa Morton commented that it is not reasonable to put in another all-way stop in such close proximity to this all-way stop intersection. If a crosswalk is necessary, it should be installed at this location.

Tom Campbell suggested that we continue this item to the next meeting since the resident who requested the item is not present and may not still want it.

Mike Roberts noted that he did receive a phone call from Mr. Bowman, who requested the crosswalk be installed, and unfortunately was not able to attend this meeting, but still wants the City to move forward with the new crosswalk. It is important that the Committee advocate for safe walking/biking to school.

A motion was made by Mike Roberts and seconded by Melissa Morton, that staff move forward with installation of the new crosswalk on the west side of the intersection of West K Street at West 7th Street, working closely with the affected residents to try to mitigate its impacts on their on-street parking.

The motion was adopted by a 4-0 vote.

V. Action Item:

1. Interim All-way Stop at Military East/Grant/Adams/Jefferson Streets.

Mike Roberts summarized the recent installation of an interim all-way stop at this location with the recommendation that the TPBS Committee consider its permanent installation or look at other alternatives if this all-way stop proves onerous to the public.

The interim all-way stop at this location was installed in early April to address multiple safety concerns for vehicles stopped at the westbound Grant Street approach to the intersection including: restricted sight distance because of the

sharp angle of Grant Street and confusion with vehicles travelling east on Military East that appear to be moving straight onto Grant Street, but instead veer left onto Adams Street without activating their turn signal.

The cost to install the interim all-way stop sign was approximately \$1,000.

Mike Roberts also mentioned that he received an email from Ms. Megan Richards, who stated that she is in favor of the new all-way stop signs. Staff has not heard negative feedback from the Jefferson Street residents.

Public Comments:

An unidentified Vallejo resident spoke in favor of the all-way stop. She stated that while walking on Military East and watching for traffic from Adams Street, she was recently hit by a car travelling on Grant Street. She commented that this is the worst area in Benicia for safety and strongly stated her wish for the signs to remain in place.

Tom Campbell commented that after many years of serving on City Council and Planning Commission, this is the first time this has been brought to his attention.

Nancy Lund, a Benicia resident, spoke in favor of the stop signs remaining in place. It creates a safer intersection for bicyclists and pedestrians.

No other public comments were provided.

A motion was made by Melissa Morton and seconded by Scott Przekurat to follow staff's recommendation to monitor the success or failure of the interim all-way stop for the next 3 months and bring this item back to the TPBS Committee for a final determination at the next meeting.

The motion was adopted by a 4-0 vote.

Meeting was adjourned at 7:35 pm

2013 SR2S Summit Program Overview

8:30 a.m. **Registration**

9:00 a.m. **Welcome & Introductions**

9:10 a.m. **SR2S Program Update**

9:20 a.m. **The 5E's**

9:50 a.m. **Community Task Force Presentations**

City of Rio Vista/River Delta School District

City of Dixon/Dixon School District

City of Benicia/Benicia School District

City of Vacaville/Vacaville School District

City of Vallejo/Vallejo School District

City of Suisun City/Fairfield-Suisun School District

City of Fairfield/Fairfield-Suisun School District

City of Fairfield and Vacaville/Travis School District

10:50 a.m. **BREAK**

11:00 a.m. **Breakout Sessions/Panel Discussions**

Mapping Tool (How to Start a Walking School Bus at Your School)

Lessons Learned on How to Successfully Engage Your School in SR2S

Working with Partners to Integrate SR2S into Broader Policies and Plans

12:00 pm **SR2S Success/Tribute (School Successes, Parent/Teacher Champions)**

12:20 p.m. **LUNCH**

12:50 p.m. **The Public Health Case for Safe Routes to School**

1:10 p.m. **Future of SR2S Program Funding**

1:30 p.m. **Keynote Speaker, Senator Lois Wolk**

1:50 p.m. **BREAK**

2:00 p.m. **Breakout Sessions/Panel Discussions**

Mapping Tool (How to Start a Walking School Bus at Your School)

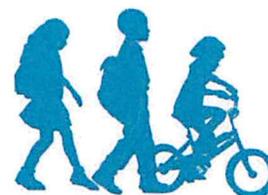
Lessons Learned on How to Successfully Engage Your School in SR2S

Working with Partners to Integrate SR2S into Broader Policies and Plans

3:00 p.m. **Closing Remarks**

safe routes to school

IN SOLANO COUNTY



AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 4, 2013

TO : Mayor Patterson
Council Member Strawbridge

FROM : City Manager

SUBJECT : **TRI-CITY AND COUNTY COOPERATIVE PLANNING GROUP**
"SOLANO OPEN SPACE"

The following information is provided for your committee report at the September 17, 2013 Council meeting.

The Tri-City and County Cooperative Planning Group for September 9, 2013 was canceled due to lack of a quorum. The next meeting is scheduled for December 9, 2013.

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 3, 2013

TO : Mayor Patterson
Council Member Hughes

FROM : City Manager

SUBJECT : **VALERO COMMUNITY ADVISORY PANEL (CAP)**

The following information is provided for your committee report at the September 17, 2013 Council meeting.

Attached are the draft minutes from the March 20, 2013 meeting along with the draft agenda for the August 29, 2013 meeting. The CAP meets quarterly at 6:30 p.m. at the refinery at 610 Industrial Way. The next meeting is TBD.

Attachments:

- Draft Minutes for March 20, 2013
- Draft Agenda for August 29, 2013

Valero Community Advisory Panel (CAP)

DRAFT -- Summary Meeting Minutes

March 20, 2013

Valero East, Conference Room B

CALL TO ORDER

The meeting was called to order at 6:35 p.m.

The following attended:

CAP Members

Marilyn Bardet	Good Neighbor Steering Committee
Tom Gavin	Community at Large
Mark Hughes	Benicia City Council
Steve McClure	Benicia Chamber of Commerce
Libbey McKendry	Community at Large
Brian Tulloch	BIPA
Gary Wing	BUSD

Valero CAP Representatives & Additional Valero Staff

John Hill	Vice President & General Manager, Benicia Refinery
Chris Howe	Director, Health, Safety, Environment & Governmental Affairs
Sue Fisher Jones	Public Affairs Manager, Benicia Refinery

Rebecca Sgambati	Director, Technical Services
Sonny Menzel	Director, Central Maintenance
Keith Washington	Manager, Safety
Don Cuffel	Manager, Environmental Engineering
Debbie Menzel	Manager, Complex 2
Kevin Lassahn	Director, Operations
Maria Onedera	Staff Office Assistant, Benicia Refinery

Others in Attendance

Charlie Knox	City of Benicia, Community Development and Planning Director
Mario Guiliani	City of Benicia, Economic Development Manager
Nicolas Thomas	City of Benicia, Benicia Fire Department, Acting Fire Chief
Ed Ruszel	Ruszel Woodworks

Approval of Agenda

Agenda approved.

Approval of Minutes

Summary minutes from the July 11, 2012 CAP meeting were approved.

Housekeeping – Marilyn Bardet

- Review by-laws trying to bring to some conclusion. Recommendations were made a while back in the actual by-laws and reviewed the summary of proposed changes. Motion made to accept the changes as recommended in the by-laws. All in favor.
- Committee voted on 3 consecutive terms of service.
- Gave thanks to Marilyn for doing a great job as Chair for CAP.
- Selection of a new CAP chair - Mark Hughes nominated Tom Gavin as the new chair.
- Tom Gavin accepted nomination.

General Refinery Update – John Hill

Our vision is to be recognized as the safest, most reliable provider of petroleum products, while maintaining an environmentally sound operation and delivering industry leading returns for Valero.

- Safety - Maintain an injury free workplace
- Reliability - Achieve industry leading asset availability
- Environment - Eliminate environmental incidents
- Profitability - Deliver industry leading returns for Valero
- Organizational Capability - Develop people and work processes leveraging Valero culture to achieve industry leading results.

1st Qtr 2013 Turnaround (T/A) – Sonny Menzel

- T/A has been completed on several units in the plant. T/A work included catalyst change out, inspection of fixed equipment, overhauling hydrogen gas compressor, and replacement of F-301 furnace tubes. T/A was injury free.

Crude by Rail Project – Rebecca Sgambati

- Decreases pollutant emissions, increases use of light North American crudes and reduces reliance on foreign crudes.
- New jobs to Benicia – construction of 120 jobs will be created, and 30 full time equivalent refinery jobs created.
- Projects include – installation of rail car offloading rack, construction of two offloading rail spurs and other track modifications on Valero property, installation of 4,000 feet of crude oil pipelines and relocation of 1,500 feet of the lower tank field dike wall and firewater pipeline to accommodate rail tracks and rack.
- Rail safety and Valero – received a Pinnacle Award for chemical transportation safety from Union Pacific Railroad and major rail companies; i.e., UP, Burlington, Northern Santa Fe, CSX Transportation, Norfolk Southern and Canadian Nation have recognized Valero with prestigious safety awards four consecutive years.

VPP – Keith Washington

- The Cal/OSHA Voluntary Protection Program is designed to recognize employers and their employees who have implemented safety and health programs that effectively prevent and control occupational hazards.
- Benicia earned its initial VPP Star in 2006 and recertification in 2010. Next recertification is October 2013.
- Benicia and Wilmington refineries are the only two California refineries designated by Cal/OSHA as VPP STAR Sites.
- Other VPP programs such as VPP STAR Site Contracting Companies, VPP Mentoring, Contractor Safety Forum and SNAP (Safety Needs Active Participation) are currently ongoing at Benicia.

Commitment to Community

- Benicia has contributed \$8.1 million from 2002-2013 to the United Way of the Bay Area, and has been a two-time winner of the UWBA “Spirit of the Bay” Award. Valero Energy Corp. has won the Spirit of America Award twice.
- Contributed thousands of dollars annually to local charitable giving.
- Thousands of hours donated annually through our Valero Volunteer Council.
- Valero is a member in the Benicia Chamber/BIPA, Benicia Main Street, Solano Economic Development Corporation, local service clubs (Rotary, Lions), and other area Chambers of Commerce.
- Benefit for Children Golf Grants – 2012 Benefit for Children Golf Classic together with the Valero Texas Open raised \$9 million for charities. Distributed \$350,000 to 26 children’s charities in Benicia and surrounding areas in 2012.

2012 Social Responsibility Report

- The report summarizes Valero’s health and safety, environment, community, employees and corporate governance. It was distributed to CAP members and guests.

Other

- Next CAP meeting will be held within the next two months.

Adjourn

- The meeting adjourned at 8:20 p.m.



**Valero Benicia Refinery
Community Advisory Panel (CAP)
Valero East Conference Center
610 Industrial Way, Benicia, CA**

Drive to the back of the building to enter the meeting room

**Thursday, August 29, 2013
6:30 PM – 8:30 PM**

DRAFT AGENDA

- | | |
|--|-------------------|
| Call to Order – Welcome Chair Tom Gavin | 5 minutes |
| <ul style="list-style-type: none">• Safety briefing – Ric Irizarry• Introduction of CAP members and Guests• Approval of Agenda• Approval of Summary Minutes from March 20, 2013 | |
| Refinery Update – John Hill | 15 minutes |
| <ul style="list-style-type: none">• Operations overview• Crude By Rail – EIR Scoping meeting Sept. 12• United Way of the Bay Area Campaign focus for 2013• One Million Safe Work Hours [handout in packet – print ad]• Clays for Kids | |
| Refinery Safety Overview – Chris Howe | 10 minutes |
| Safety Presentation – Keith Washington & others | 60 minutes |
| <ul style="list-style-type: none">○ Process Safety Management – Tom Rybarczyk<ul style="list-style-type: none">▪ Mechanical Integrity – Jim Rollans○ SNAP (Safety Needs Active Participation) – Dave Frank○ VPP Recertification – Ric Irizarry | |
| Other | 5 minutes |
| <ul style="list-style-type: none">• Benefit for Children Grant Awards<ul style="list-style-type: none">○ Background○ <u>Tentative</u> Grant Awards Breakfast: Wednesday, Oct. 30, 8:30 a.m.• Next CAP meeting | |

Adjourn

VIII.E.12.7

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORT

DATE : September 10, 2013

TO : Mayor Elizabeth Patterson
Council Member Christina Strawbridge
Council Member Mark Hughes

FROM : Youth Action Coalition

SUBJECT : **YOUTH ACTION COALITION**

The Benicia Youth Action Coalition met on August 28th. The Coalition reviewed this year's County Scope of Work and budget.

Report was given on the Retail Tobacco Survey that was conducted in August.

Upcoming Events: Set up BYAC information booth to educate the public on ATOD issues.

August 24th - Promoted non-smoking efforts at Relay for Life
August 29th - Attended Middle School Back to School Night
Sept, 4th - Attended Liberty High Back to School Night
Sept. 19th - Will attend BHS Back to School Night

October 23-31 Red Ribbon Week. Group discussed projects to support school activities. Wrist bands will be purchased and given to the Middle and High Schools to hand out to students during their activities. City Proclamation will be presented at the October 15th meeting.

Next Parent Project starts September 24th fliers handed out.

Next meeting is scheduled for September 25th.

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS**

DATE : September 3, 2013
TO : City Council
FROM : Mayor Patterson
SUBJECT : **ABAG/CAL FED TASK FORCE/BAY AREA WATER FORUM**

The following information is provided for your committee report at the September 17, 2013 City Council meeting.

The Bay Area Water Forum's last meeting was held on March 26, 2012.

This was the last meeting of the Bay Area Water Forum for 2012, due to a lack of funding.

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 17, 2013
COUNCIL MEMBER COMMITTEE REPORTS

DATE : September 9, 2013

TO : Mayor Patterson
Council Member Hughes
Council Member Schwartzman

FROM : Acting Assistant City Manager

SUBJECT : **SOLANO COUNTY TRANSIT (SolTrans) BOARD MEETING**

The following information is provided for your committee report at the September 17, 2013 Council meeting.

The Solano County Transit (SolTrans) Joint Powers Authority held a regular meeting on August 15, 2013 in the City of Vallejo GVRD Board Room. The agenda and the Executive Report for the August 15, 2013 meeting were provided on the August 20, 2013 Council meeting.

The next regular meeting of the SolTrans Board is scheduled for Thursday, September 19, 2013 at 4:00 p.m. and will be held in the City of Benicia Council Chambers. The Agenda and Executive Report for this meeting were not available as of the date of this report.

