



CITY COUNCIL MEETING

COUNCIL CHAMBERS, 33 SOUTH MAIN STREET, COLFAX, CA

MAYOR DONNA BARKLE • MAYOR PRO-TEM TONY HESCH
COUNCILMEMBERS • KIM DOUGLASS • JASON McKINNEY • TOM PARNHAM



REGULAR MEETING AGENDA

CLOSED SESSION at 6:30pm • October 9, 2013 • REGULAR SESSION at 7:00pm



Colfax City Council Meetings are ADA compliant. If you need special assistance to participate in this meeting, please contact the City Clerk at (530) 346-2313 at least 72 hours prior to make arrangements for ensuring your accessibility.

1) OPENING of CLOSED SESSION

- A. Call to Order
- B. Roll Call

2) PUBLIC COMMENT – CLOSED SESSION ITEMS

3) CLOSED SESSION AGENDA

- A. Public employee discipline/dismissal/release pursuant to Government Code Section 54957
- B. Public employee employment pursuant to Government Code Section 54957
Title of position to be filled: City Manager

4) OPENING of REGULAR SESSION

- A. Pledge of Allegiance
- B. Roll Call
- C. Announcement of Action Taken in Closed Session
- D. Approval of Agenda Order
 - a. This is the time for changes to the agenda to be considered including removal, postponement, or change to agenda sequence.
RECOMMENDED ACTION: By motion, accept the agenda as presented or amended.

Members of the public who addresses the Council shall do so in an orderly manner. No person shall yell or make profane or threatening remarks to any member of the Council, staff, or general public. No person shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, whistling, stamping of feet, clapping, or other acts that unreasonably disturb, disrupt, delay or otherwise impede the orderly conduct of the Council meeting. Except as allowed by rules of order, a Councilmember or staff member shall not by conversation or other means delay the Council proceedings or disturb any other Councilmember or staff member while speaking.

5) COUNCIL, STAFF AND OTHER REPORTS

The purpose of these reports is to provide information to the Council and public on projects, programs, and issues discussed at committee meetings and other items of general information. No decisions will be made on these issues. If a member of the Council prefers formal action be taken on any committee reports or other information, the issue will be placed on a future Council meeting agenda.

6) PRESENTATIONS

7) CONSENT AGENDA

All matters listed under the Consent Agenda are considered routine in nature and will be approved by one blanket motion with a roll call vote. There will be no separate discussion of these items unless persons request specific items to be removed from the Consent Agenda for discussion and separate action. Any items removed will be considered after the motion to approve the Consent Agenda. If you wish to have an item pulled from the Consent Agenda for discussion, please notify the City Clerk.

AGENDA ITEM	RECOMMENDED ACTION
A. Minutes: September 25, 2013	<i>Receive and File</i>

8) PUBLIC COMMENT

At this time, members of the audience are permitted to address the Council on matters of concern to the public that are not listed on this agenda. Please make your comments as brief as possible. Comments should not exceed three (3) minutes in length. The Council cannot act on items not included on this agenda; however, if action is required it will be referred to staff.

9) PUBLIC HEARING

NOTICE TO THE PUBLIC:

City Council will take the following actions when considering a matter scheduled for hearing:

1. Open the public hearing
2. Presentation by staff
3. Presentation, when applicable, by applicant or appellant
4. Accept public testimony
5. When applicable, applicant or appellant rebuttal period
6. Close public hearing. (No public comment is taken after the hearing is closed.)
7. Council comments and questions
8. City Council action

Public hearings that are continued will be announced. The continued public hearing will be listed on a subsequent Council Meeting Agenda and posting of that agenda will serve as notice.

Sitting as Planning Commission- The council will convene as the Planning Commission for the purpose of considering and making a recommendation on Agenda Item 9A

- A. Consideration of Ordinance No. 522: An Ordinance of the City of Colfax Repealing and Replacing Chapter 17.104 of Title 17 of the Colfax Municipal Code (#PL-01-13/Density Bonus Ordinance Update) and Consideration of Adoption of Resolution No. 41-2013: A Resolution Of The Planning Commission Of The City Of Colfax, California, Recommending The City Council Adopt An Ordinance

Repealing And Replacing Chapter 17.104 ("Density Bonuses & Other Incentives") Of Title 17 Of The Colfax Municipal Code To Comply With California State Law

Recommended Action: Adopt Resolution No 41-2013

Sitting as City Council- The council will re-convene as the City Council for the remainder of the meeting.

- B. Introduction and First Reading of Ordinance No. 522: An Ordinance Of The City Of Colfax Repealing and Replacing Chapter 17.104 of Title 17 of the Colfax Municipal Code (#PL-01-13)

Recommended Action: By motion introduce Ordinance by title only, waive reading and continue for second reading at a future city council meeting

10) COUNCIL BUSINESS

- A. Consider Adopting Resolution No. 42-2013, A Resolution Of The City Council Of The City Of Colfax Authorizing The Mayor And Interim City Manager To Execute A Memorandum Of Understanding Between The City Of Colfax And Stationary Engineers Local 39 And Approving An Adjusted Salary Schedule.

Recommended Action: Adopt Resolution No. 42-2013

- B. Conduct Discussion about Adopting City Council Policies and Procedures.

Recommended Action: Conduct discussion, which will focus on Sections 1-4 of the draft rules, and direct staff

- C. Opportunity for Colfax Citizens to provide input regarding recruitment and selection of City Manager.

Recommended Action: Conduct discussion and provide direction to staff

11) ADJOURNMENT

**Agenda Posted at Colfax City Hall
and Colfax Post Office locations October 4, 2013.**



Karen Pierce, City Clerk

Administrative Remedies must be exhausted prior to action being initiated in a court of law. If you challenge City Council action in court, you may be limited to raising only those issues you or someone else raised at a public hearing described in this notice/agenda, or in written correspondence delivered to the City Clerk of the City of Colfax at, or prior to said public hearing.

Minutes
City Council Meeting
January 25, 2013

1. OPENING

Mayor Pro-tem Hesch called the meeting to order at 5:30pm.

Present and answering roll call were Council members Douglass, Parnham, McKinney and Mayor Pro-tem Hesch

Mayor Barkle was absent due to medical reasons.

2. PUBLIC COMMENT

There was no public comment

3. CLOSED SESSION

Mayor Pro-tem Hesch called the closed session to order at 5:30pm

Mayor Barkle joined the Closed Session via telecommuting at 5:39pm.

- A. Public employee employment pursuant to Government Code Section 54957
Title of position to be filled: City Manager
- B. Conference with Labor Negotiators pursuant To Government Code Section 54957.6 Employee Organization: General Employees and Bargaining Unit Represented by Operating Engineers, Local 39 City's Designated Representative: Gabe Armstrong
- C. Conference with Legal Counsel - Anticipated Litigation: Initiation of litigation pursuant to Government Code Section 54956.9(c), 1 case
- D. Conference with Legal Counsel- Anticipated Litigation: Significant exposure to litigation pursuant to Government Code Section 54956.9(b), 1 case

Mayor Pro-tem Hesch closed the closed session at 6:50pm.

4. OPENING AND AGENDA APPROVAL

Mayor Pro-tem Hesch called the regular meeting to order at 7:02pm.

Suzanne Roberts led the Pledge of Allegiance

Mayor Pro-tem Hesch stated that council voted 4/1, with councilman Parnham being the no vote to move forward with enforcement of collection of delinquent sewer and garbage charges for the Sierra Vista Community Center.

A motion was made by councilman McKinney and seconded by councilman Parnham to move Council Business item A to later in the agenda to accommodate Land Use Attorney Brigit Barnes who has been delayed to the meeting and to approve the agenda as presented with the above item noted. The motion was passed by the following vote:

AYES: Douglass, Parnham, McKinney and Mayor Pro-tem Hesch
 NOES:
 ABSENT: Mayor Barkle
 ABSTAIN:

5. CITY COUNCIL COMMITTEE REPORTS

Councilman Parnham reported on attending the Mosquito and Vector Control board meeting and the WAC/MAC meeting
 Councilman Douglass reported on attending the Project Go meeting
 Mayor Pro-tem Hesch reported on attending the League of California Cities Conference, the PCTPA meeting and the Downtown Business meeting

6. INFORMATION REPORTS FROM STAFF AND OTHERS

Interim City Manager, Gabe Armstrong reported on the following:

- Surveillance cameras have been installed at the Splash Park and Ball Field
- Street Painting for Railroad Days on October 2
- 27 complete applications were submitted for the City Manager position
- Plans have been submitted for the Taco Bell remodel project
- Splash Park has been closed for the winter

7. CONSENT AGENDA

AGENDA ITEM	ACTION TAKEN
A. Minutes: September 11, 2013	<i>Receive and File</i>
B. Cash Balance Summary: August 31, 2013	<i>Receive and File</i>
C. Consider adopting Resolution No. 39-2013: A Resolution of the City Council of the City of Colfax approving a tentative agreement with I.U.O.E. Stationary Engineers Local 39 modifying the terms of the existing memorandum of understanding and extending its term until December 31, 2015	<i>Pulled for Discussion</i>

A motion was made by councilman McKinney and seconded by councilman Parnham to approve the consent agenda as presented with the above noted item pulled for discussion. The motion was passed by a voice vote.

Mayor Pro-tem Hesch made two minor corrections to the August 28 minutes. He was not able to make the corrections at the last meeting because he was absent. A motion was made by councilman McKinney and seconded by councilman Parnham to approve the changes to the August 28 minutes. The motion was passed by voice vote.

C. Consider adopting Resolution No. 39-2013: A Resolution of the City Council of the City of Colfax approving a tentative agreement with I.U.O.E. Stationary Engineers Local 39 modifying the terms of the existing memorandum of understanding and extending its term until December 31, 2015

Councilmember McKinney requested that a roll call vote be taken on this item. A motion was made by councilman Hesch and seconded by councilman Parnham to adopt Resolution No. 39-2013. The motion was passed by the following vote:

AYES: Douglass, Parnham and Mayor Pro-tem Hesch
NOES: McKinney
ABSENT: Mayor Barkle
ABSTAIN:

8. PUBLIC COMMENT

Suzanne Roberts, county resident inquired about Sierra Vista closed session item. Nancy Hagman, volunteer noted that the Cemetery Board has had land donated to the cemetery and she wanted to update City Limit lines at and around the cemetery. She noted that the Indian Cemetery land was conveyed to the Indian community. There will be a fund raiser at the Bull and the Bear located at the museum during Railroad Days.

9. PUBLIC HEARING

10. COUNCIL BUSINESS

B. Conduct discussion regarding the City's standard form agreements.

Mayor Pro-tem Hesch went over the form agreement. Council had no further comments. City Attorney, Mick Cabral was asked to make a new form agreement that will be the City's standard form.

A. Consideration of Adoption of Resolution No. 40-2013: A Resolution Of The City Council Of The City Of Colfax Authorizing The City To Enter Into An Agreement For Services With Laurin Associates, A Division Of Raney Planning & Management, Inc. To Update The City's Housing Element

Land Use attorney, Brigit Barnes went over the staff report and Housing Element requirements. Mayor Pro-tem Hesch discussed budget issues with Land Use Attorney. Council had questions. There was no public comment. A motion was made by councilman McKinney and seconded by councilman Douglass to adopt Resolution No. 40-2013. The motion was passed by the following vote:

AYES: McKinney and Mayor Pro-tem Hesch
NOES: Parnham
ABSENT: Mayor Barkle

ABSTAIN: Douglass

C. Conduct Discussion about Adopting City Council Policies and Procedures.

Councilmember McKinney went over the City Council Rules of Procedures and the Agenda Preparation Procedures created by City Clerk, Karen Pierce. Councilmember McKinney suggested that at the next council meeting council go over items 4, 5 and 6 of the Rules of Procedures. There was no public comment. Council discussed.

D. Opportunity for Colfax Citizens to provide input regarding recruitment and selection of City Manager.

Speaking from the public was:

Nancy Hagman, museum volunteer wanted the new City Manager to be able to get along with the many types of people who live and volunteer in Colfax.

Suzanne Roberts, county resident spoke about the importance of reference checks.

11. PRESENTATION

12. ADJOURNMENT

Being no further business to come before council by voice vote the meeting was adjourned at 8:25pm.



STAFF REPORT TO THE COLFAX CITY COUNCIL

9A

SITTING AS THE PLANNING COMMISSION

FOR THE OCTOBER 9th, 2013 CITY COUNCIL MEETING

FROM: Brigit S. Barnes, City Land Use Attorney

PREPARED: October 2, 2013

SUBJECT: Consideration of Ordinance No. 522: An Ordinance of the City of Colfax Repealing and Replacing Chapter 17.104 of Title 17 of the Colfax Municipal Code (#PL-01-13/Density Bonus Ordinance Update) and Consideration of Adoption of Resolution No. 41-2013: A Resolution Of The Planning Commission Of The City Of Colfax, California, Recommending The City Council Adopt An Ordinance Repealing And Replacing Chapter 17.104 ("Density Bonuses & Other Incentives") Of Title 17 Of The Colfax Municipal Code To Comply With California State Law

RECOMMENDED ACTION: Adopt Resolution No. 41-2013

ISSUE STATEMENT AND DISCUSSION

When the City's Housing Element was updated in 2009, it included a requirement that the City update its affordable housing ("Density Bonus") ordinance to comply with recent changes in State law, which was never done.

Planning Staff is now in the process of updating said ordinance as directed under Program #28 of the City's Housing Element. If the Density Bonus Ordinance Update is adopted by the City Council **on or before October 31, 2013**, it will have met one of the criteria for qualifying for a streamlined review process for the City's upcoming Housing Element Update.

BACKGROUND

State law requires cities to adopt ordinances that offer incentives for affordable housing, including density bonuses. In 2004, the California State Legislature passed State Senate Bill 1818 amending Government Code Section 65915 (density bonus law) in a number of ways. Beginning January 1, 2005, applicants have been eligible for a range of density bonuses of up to 35% based on the percentage of affordable units in a development. Applicants are also eligible for density bonuses based on land donation and/or inclusion of child care facilities. Additionally, localities are now required to offer at least one to three incentives rather

than one, based on the percentage of affordable units in a development. These changes are not reflected in the City's current affordable housing regulations as required by State law.

A summary of the proposed changes to the Density Bonus & Other Incentives Chapter of the Zoning Code is attached (see Attachment 1.)

The City's current Housing Element, adopted by the City Council on April 28, 2009, includes a program (Program #28) for a Zoning Code Amendment to maintain consistency with state requirements with regard to the granting of Density Bonuses and incentives, and specifically directs that the Density Bonus Ordinance be updated to reflect the changes required by Senate Bill 1818.

GENERAL PLAN CONSISTENCY

The proposed Zoning Code amendment would implement Program #28 of the 2009 Housing Element of the General Plan, which states that the Zoning Code shall be revised to incorporate the Density Bonus provisions, with options, as per SB 1818, to bring the City into compliance with State law and enhance the feasibility of affordable housing projects. As such, it is consistent with the City's General Plan.

ENVIRONMENTAL ANALYSIS

Based on the following, Planning Staff has determined that the proposed ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations since it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment:

The proposed ordinance codifies the revisions to the City's previously adopted Density Bonus law to comply with changes to State law (Government Code Section 65915 et seq.) enacted by the Legislature through the adoption of Senate Bill 1818. The revisions modify the criteria and incentives offered to qualifying developments, but do not authorize construction not already permitted under the City's existing plans and codes. Most of the incentives and concessions the City has designated as a matter of right are already authorized by the Zoning Code. Further, each individual project will be subject to its own environmental review.

The current Zoning Code already allows for at least 25% density bonuses, together with incentives, which conceivably could include increases of up to 35%, which is the new stated maximum under SB 1818.

The proposed ordinance does not modify locations where housing could occur, so adoption of this amendment would not increase the exposure of people to environmental impacts in relation to current policy or increase impacts on historic resources or have other environmental effects not already considered in the City's General plan environmental analysis. Government Code Section 65915 and the proposed ordinance explicitly preclude application of the ordinance to sites where the incentives would have unmitigated adverse effects on the physical environment.

COMMITTEE RECOMMENDATION

This project was discussed with the Land Use Committee on September 9, 2013. The Land Use Committee recommended updating the Density Bonus Ordinance to comply with State law as soon as possible to meet

the October 31, 2013 adoption deadline, since doing so will meet one of the criteria for qualifying for a streamlined review process for the City's upcoming Housing Element Update.

STAFF RECOMMENDATION

Staff recommends the Planning City Council adopt the attached Resolution (see Attachment 2) recommending that the City Council adopt the Ordinance (see Attachment 3) repealing and replacing the "Density Bonus and Other Incentives" Chapter (17.104) of the Zoning Code as discussed herein.

RECOMMENDED FINDINGS

Staff has drafted the Resolution to include the following recommended findings, among others:

1. The Zoning Code amendment consists of repealing and replacing Chapter 17.104 ("Density Bonuses & Other Limitations").
2. The proposed Zoning Code amendment will not have a direct and significant impact on the environment, so is exempt under Section 15061(b)(3) – General Rule (for the reasons stated above in this Staff Report). The general rule states that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment.
3. The proposed Zoning Code amendment is consistent with the actions, goals, objectives, policies and programs of the General Plan. The proposed Zoning Code amendment would implement a program (#28) of the Housing Element to adopt an ordinance to ensure the City's Zoning Code is consistent with California's Density Bonus Law (Government Code Section 65915).
4. The proposed Zoning Code amendment would not be detrimental to the public interest, health, safety, convenience or general welfare of the City. It is a procedural amendment that provides for consistency of the Zoning Code density bonus regulations with state requirements, which are meant to encourage the provision of affordable housing.
5. The proposed Zoning Code amendment is internally consistent with all other applicable provisions of the Zoning Code. The amendment would implement an objective of the Housing Element to provide for a procedure to grant density bonuses and incentives so as to allow and encourage the provision of affordable housing, and does not provide for land use deviations in a manner that is inconsistent with the General Plan Land Use Element.

ATTACHMENTS

1. Resolution No. 41-2013
2. Summary of Changes
3. Draft Ordinance and Draft proposed new Chapter 17.104

CITY OF COLFAX

RESOLUTION 41-2013

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COLFAX, CALIFORNIA, RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE REPEALING AND REPLACING CHAPTER 17.104 (“DENSITY BONUSES & OTHER INCENTIVES”) OF TITLE 17 OF THE COLFAX MUNICIPAL CODE TO COMPLY WITH CALIFORNIA STATE LAW

Whereas, in 2004 the California State Legislature enacted SB 1818 revising several aspects of the density bonus law (California Code Section 65915), including creating a range of density bonuses of up to 35% for which applicants would be eligible based on the percentage of affordable units provided in a development; requiring localities to offer at least one to three incentives, also based on affordable housing; and introducing land donations and inclusion of child care facilities in developments as a means of obtaining a density bonus; and

Whereas, the City Council adopted a revised Housing Element of the General Plan as required by State law on April 28, 2009; and

Whereas, the Housing and Community Development Department of the State of California certified the City’s Housing Element to be in substantial conformance with State law; and

Whereas, Program #28 of the City’s Housing Element states the Zoning Code shall be revised to incorporate the Density Bonus provisions, with options, as per SB 1818, to bring the City into compliance with State law and enhance the feasibility of affordable housing projects; and

Whereas, the Planning Commission held a duly-noticed public hearing on October 9, 2013 to consider said Zoning Code amendment; and

Whereas, the Planning Commission has reviewed and carefully considered said Zoning Code amendment following a lawfully-noticed public hearing.

NOW, THEREFORE, BE IT RESOLVED that:

SECTION 1. The Planning Commission hereby finds that the proposed Zoning Code amendment will not have a direct and significant impact on the environment, so is exempt under Section 15061b(3) – General Rule, for the reasons stated in the Notice of Exemption. The general rule states that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment.

SECTION 2. The Planning Commission hereby makes the following findings with respect to the proposed Zoning Code amendment repealing and replacing Chapter 17.104 of the Zoning Code (Title 17) to ensure the City's density bonuses regulations are consistent with State law:

1. This Zoning Code amendment is consistent with the actions, goals, objectives, policies and programs of the General Plan. The proposed Zoning Code amendment would implement a program of the Housing Element to adopt an ordinance to ensure the City's Zoning Code is consistent with California's Density Bonus Law (Government Code Section 65915).

2. This Zoning Code amendment would not be detrimental to the public interest, health, safety, convenience or general welfare of the City. It is a procedural amendment that provides for consistency of the Zoning Code density bonus regulations with state requirements, which are meant to encourage the provision of affordable housing.

3. This Zoning Code amendment is internally consistent with all other applicable provisions of the Zoning Code. The amendment would implement an objective of the Housing Element to provide for a procedure to grant density bonuses and incentives so as to allow and encourage the provision of affordable housing, and does not provide for land use deviations in a manner that is inconsistent with the General Plan Land Use Element.

SECTION 3. For the foregoing reasons, and based on the entirety of the record before it, which includes, without limitation, the California Environmental Quality Act, the City of Colfax General Plan, all reports, minutes and public testimony submitted as part of the duly-noticed public hearing on October 9, 2013, and any other evidence, the Planning Commission of the City of Colfax does hereby recommend that the City Council adopt the Ordinance repealing and replacing Chapter 17.104 of the Zoning Code (Title 17) to ensure the City's density bonuses regulations are consistent with State law.

Passed and adopted this 9th day of October, 2013, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Donna L. Barkle, Mayor

ATTEST:

Karen Pierce, City Clerk

SUMMARY OF CHANGES TO DENSITY BONUS ORDINANCE CHAPTER

PRIOR COLFAX CHAPTER	NEW COLFAX CHAPTER
“At least” 25% density bonus allowed	Up to 35% density bonus allowed; based on sliding scale of number of units set aside for affordable housing purposes
<p>Eligibility requirements:</p> <p>20% of total units for lower income</p> <p>10% of units for very low income</p> <p>50% of units for “qualifying residents” (seniors)</p> <p>33% of condominium units for low or moderate income; or 15% of condominium units for lower income</p>	<p>Eligibility requirements:</p> <p>10% of total units for lower income</p> <p>5% of units for very low income</p> <p>10% of condominium units for moderate income</p> <p>Senior housing development</p> <p>Land Donation to the City for very low income units</p> <p>Child Care facility when built in conjunction with qualifying affordable housing minimums set forth in the first three items</p>
“At least” one concession or “incentive”	<p>One incentive if 10% for lower income or 5% very low income or 10% (condominium project) for moderate income</p> <p>Two incentives if 20% for lower income or 10% very low income or 20% (condominium project) for moderate income</p> <p>Three incentives if 30% for lower income or 15% very low income or 30% (condominium project) for moderate income</p>
<p>Concession or “incentives” included:</p> <p>Reduction in site development standards or modification of zoning code requirements or architectural design requirements</p> <p>Approval of mixed-use zoning</p> <p>Other incentives proposed by developer or city that would reduce costs</p>	<p>Incentives include:</p> <p>Reduction in site development standards (reduced lot size, dimensions, setbacks, max lot coverage, max building height or stories and street standards)</p> <p>Reduction in architectural design standards</p> <p>Density bonus greater than otherwise allowed</p> <p>Other incentives proposed by developer or city that would reduce costs</p>

	<p>Special parking standards:</p> <p>0-1 bedroom: 1 on-site parking space</p> <p>2-3 bedrooms: 2 on-site parking spaces</p> <p>4+ bedrooms: 2.5 on-site parking spaces</p>
No definitions of key terms	Adds definitions of key terms, such as “Density Bonus,” “Incentive,” “Lower Income,” “Lower Income Unit,” “Very Low Income,” “Very Low Income Unit,” “Moderate Income,” “Moderate Income Unit,” “Child Care Facility,” “Senior Citizen Housing Development”, etc.
No discussion of application requirements	Adds discussion of application requirements
No discussion of findings	Adds discussion of findings

[PROPOSED] ORDINANCE 522

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLFAX,
CALIFORNIA, REPEALING AND REPLACING CHAPTER 17.104 (“DENSITY
BONUSES & OTHER INCENTIVES”) OF THE COLFAX MUNICIPAL CODE TO
COMPLY WITH CALIFORNIA STATE LAW**

Whereas, in 2004 the California State Legislature enacted SB 1818 revising several aspects of the density bonus law (California Code Section 65915), including creating a range of density bonuses of up to 35% for which applicants would be eligible based on the percentage of affordable units provided in a development; requiring localities to offer at least one to three incentives, also based on affordable housing; and introducing land donations and inclusion of child care facilities in developments as a means of obtaining a density bonus; and

Whereas, the City Council adopted a revised Housing Element of the General Plan as required by State law on April 28, 2009; and

Whereas, the Housing and Community Development Department of the State of California certified the City’s Housing Element to be in substantial conformance with State law; and

Whereas, Program #28 of the City’s Housing Element states the Zoning Code shall be revised to incorporate the Density Bonus provisions, with options, as per SB 1818, to bring the City into compliance with State law and enhance the feasibility of affordable housing projects; and

Whereas, the Planning Commission and City Council held duly-noticed public hearings on October 9, 2013 to consider said Zoning Code amendment; and

Whereas, on October 9, 2013, the Planning Commission recommended that the City Council adopt the Ordinance repealing and replacing Chapter 17.104 of the Zoning Code (Title 17) to ensure the City’s density bonuses regulations are consistent with State law; and

Whereas, the City Council has reviewed and carefully considered said Zoning Code amendment following lawfully-noticed public hearings and, based on the reasons and findings set forth in this Ordinance, the City Council adopts the Ordinance repealing and replacing Chapter 17.104 of the Zoning Code (Title 17).

NOW, THEREFORE, BE IT ORDAINED that, based on the entirety of the record before it, which includes, without limitation, the California Environmental Quality Act, the City of Colfax General Plan, all reports, minutes and public testimony submitted as part of the City Council and Planning Commissions duly-noticed public hearings on October 9, 2013, and any other evidence, the City Council of the City of Colfax does hereby ordain as follows:

SECTION 1 – FINDINGS:

1. The foregoing recitals are true and correct and made a part of this Ordinance.
2. The Zoning Code amendment consists of repealing and replacing Chapter 17.104 (“Density Bonuses & Other Limitations”) – a copy of the new Chapter 17.104 is attached to this Ordinance as Exhibit A);
3. The City Council hereby finds that the proposed Zoning Code amendment will not have a direct and significant impact on the environment, so is exempt under Section 15061b(3) – General Rule, for the reasons stated in the Notice of Exemption. The general rule states that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment.
4. The documents and other material constituting the record for these proceedings are in the custody of the Planning Director and located at the City of Colfax Planning Department, whose office is located at 33 S. Main Street, Colfax, CA 95713.
5. This Zoning Code amendment is consistent with the actions, goals, objectives, policies and programs of the General Plan. The proposed Zoning Code amendment would implement a program of the Housing Element to adopt an ordinance to ensure the City’s Zoning Code is consistent with California’s Density Bonus Law (Government Code Section 65915).
6. This Zoning Code amendment would not be detrimental to the public interest, health, safety, convenience or general welfare of the City. It is a procedural amendment that provides for consistency of the Zoning Code density bonus regulations with state requirements, which are meant to encourage the provision of affordable housing.
7. This Zoning Code amendment is internally consistent with all other applicable provisions of the Zoning Code. The amendment would implement an objective of the Housing Element to provide for a procedure to grant density bonuses and incentives so as to allow and encourage the provision of affordable housing, and does not provide for land use deviations in a manner that is inconsistent with the General Plan Land Use Element.

SECTION 2 – REPEAL OF CHAPTER 17.104 OF TITLE 17

Chapter 17.104 of Title 17 is hereby repealed in its entirety and replaced as provided in Section 3 below.

SECTION 3 – NEW CHAPTER 17.104 OF TITLE 17 ADOPTED

Chapter 17.104 of Title 17 is hereby added to the Colfax Municipal Code to read as set forth in Exhibit A attached hereto and incorporated herein.

SECTION 4 – SUPERCEDING PROVISIONS

The provisions of this ordinance and any resolution adopted pursuant hereto shall supercede any previous ordinance or resolution to the extent the same is in conflict herewith.

SECTION 5 – SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Colfax hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

SECTION 6 – EFFECTIVE DATE

This ordinance shall be in full force and effect thirty (30) days from and after its adoption.

This ordinance shall, within fifteen (15) days after its adoption, be published or posted in accordance with Section 36933 of the Government Code of the State of California with the names of those City Council members voting for and against it.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Colfax, duly-held on the 9th day of October, 2013 and passed and adopted at a regular meeting of the City Council of the City of Colfax, duly-held on the 23rd day of October, 2013, by the following vote:

- Ayes:**
- Noes:**
- Absent:**
- Abstain:**

Donna L. Barkle, Mayor

ATTEST:

Karen Pierce, City Clerk

Chapter 17.104 DENSITY BONUSES AND OTHER INCENTIVES

REPEAL & REPLACE

17.104.010 Purpose.

This chapter is adopted pursuant to the provisions of California Government Code Sections 65915—65918. The purpose of adopting this chapter is to encourage affordable housing by providing the incentive of increased density and such other incentives provided by this chapter. The provisions of this chapter are intended to comply with California Government Code Sections 65915—65918. In the event that any provision of this chapter conflicts with California Government Code Sections 65915—65918, or any after-enacted amendment of these sections, State law shall control over the conflicting provision.

17.104.020 Definitions.

For the purpose of this chapter, the following words and phrases shall have the following meanings:

- A. “Approval authority” is as defined in the Colfax Municipal Code – Title 17, Zoning Chapter 17.40.020.
- B. “Child care facility” is defined as a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age child care centers.
- C. “Density bonus” means an increase in density over the otherwise maximum allowable residential density under the applicable general plan designation as of the date of filing of an application for density bonus with city. A density bonus request shall be considered as a component of a qualified housing development.
- D. “Development standard” is defined as the site, development, or construction standards and/or conditions of approval that apply to a residential development.
- E. “Housing development” is defined as one or more groups of projects for residential units constructed within a large lot parcel. For the purposes of this chapter, “housing development” also includes a subdivision or common interest development as defined in Section 1351 of the Civil Code and consists of residential units or unimproved residential lots. A density bonus may be permitted in geographic areas of the housing development other than the areas where the affordable units are located, so long as the density bonus units are located on the same large lot parcel.
- F. “Incentive” is defined as a reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission. An incentive can be requested by the applicant for purposes of reducing the cost of development to make the project financially feasible. The term “incentive” includes the term “concession” as that term is used in California Government Code Sections 65915—65918.
- G. “Large lot parcel” is defined as that term is used in any applicable specific plan (large lot parcel is hereby generally deemed as a geographic area).
- H. “Lower income” is defined as less than 80 percent of the area median income, as defined by Section 50079.5 of the California Health and Safety Code.
- I. “Lower income unit” is defined as a unit with an affordable rent or payment that does not exceed 30 percent of 60 percent of area median income adjusted for family size appropriate for the unit.

J. “Moderate income” is defined as less than 120 percent of the area median income, as defined in Section 50093 of the California Health and Safety Code.

K. “Moderate income unit” is defined as a unit with an affordable rent or payment that does not exceed 35 percent of 110 percent of area median income adjusted for family size appropriate for the unit.

L. “Very low income” is defined as less than 50 percent of the area median income, as defined in Section 50105 of the California Health and Safety Code.

M. “Very low income unit” is defined as a unit with an affordable rent or payment that does not exceed 30 percent of 50 percent of the area median income, adjusted for family size appropriate for the unit.

N. “Senior citizen housing development” is defined as a housing project where residency is restricted to persons 62 years of age or older, or 55 years of age or older in a senior citizen housing development per Sections 51.3 and 51.12 of the California Civil Code.

17.104.030 Application requirements.

A density bonus may be approved pursuant to a request for approval of a density bonus, provided the request complies with the provisions of this chapter. Each application for a density bonus request shall be accompanied by the following:

A. A site plan that identifies all units in the project including the location of the affordable units and the bonus units;

B. A narrative briefly describing the housing development and shall include information on:

1. The number of units permitted under the general plan,
2. The total number of units proposed in the project,
3. The number of affordable and/or senior units,
4. The number of bonus units requested based on the tables provided in Section 17.104.050 of this chapter,
5. A breakdown of units proposed for very low, lower, and moderate income, senior citizen, and/or market rate units, and
6. Any requested incentive(s), including an explanation as to why the incentive(s) is required for the housing development;

C. Information indicating that appropriate and sufficient infrastructure capacity (water, sewer, roadway) and water supply is available to serve the bonus units;

D. A pro-forma illustrating the financial need for the density bonus and/or any requested Incentives. The information that shall be included is as follows:

1. The project pro-forma shall include, but is not limited to: capital costs, operating expenses, return on investment, revenues, loan-to-value ratio and debt-coverage ratio, any contribution provided by subsidy programs, and the economic effect created by the use and income restrictions of the affordable units,
2. An appraisal report indicating the value of the density bonus and any incentive(s) requested, and

3. A source and use of funds statement identifying any projected financing gap of the project. The developer shall establish how much of the gap is covered by the density bonus units, and how much will be covered by the requested incentive(s);

E. Any such additional information in support of a request for a density bonus as may be requested by the planning and redevelopment department.

17.104.040 Eligibility for bonus.

A developer of a housing development containing five or more units may qualify for a density bonus and at least one other incentive as provided by this chapter if the developer does one of the following:

- A. Agrees to construct and maintain at least five percent of the units dedicated to very low income households;
- B. Agrees to construct and maintain at least 10 percent of the units dedicated to lower income households;
- C. Agrees to construct and maintain at least 10 percent of the units in a common interest development (as defined in Section 1351 of the California Civil Code) dedicated to moderate income households, provided that all units in the development are offered to the public for purchase;
- D. Agrees to construct and maintain a senior citizen housing development as defined in Section 17.104.020 of this chapter;
- E. Donates land to the city dedicated for the construction of very low income units pursuant to Section 17.104.080 of this chapter; or
- F. Includes a qualifying child care facility as described in Section 17.104.070 of this chapter in addition to providing housing as described in subsections (A) through (C) of this section.

17.104.050 Density bonus calculation and allowance.

A. State Law Preemption. Pursuant to state law, the granting of a density bonus or the granting of a density bonus together with an incentive(s) shall not be interpreted, in and of itself, to require a general plan amendment, specific plan amendment, rezone, or other discretionary approvals.

B. Density Bonus Calculation. An applicant must choose a density bonus from only one applicable affordability category in below subsection C and may not combine categories with the exception of child care facilities or land donation, which may be combined with an affordable housing development, for an additional density bonus up to a combined maximum of 35 percent.

C. Density Bonus Allowance. In calculating the number of units required for very low, lower and moderate income households, the density bonus units shall not be included. In no event shall a density bonus exceed 35 percent. A housing development that satisfies all applicable provisions of this chapter shall be allowed the following applicable density bonuses:

- 1. Very Low Income. The density bonus for very low income units shall be calculated as follows:

Percentage of Very Low-Income Units	Percentage Density Bonus
5	20
6	22.5

Percentage of Very Low-Income Units	Percentage Density Bonus
7	25
8	27.5
9	30
10	32.5
11	35

2. Lower Income. The density bonus for lower income units shall be calculated as follows:

Percentage of Lower Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

3. Moderate Income. The density bonus for moderate income ownership units shall be calculated as follows:

Percentage of Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19

Percentage of Moderate-Income Units	Percentage Density Bonus
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

4. Senior Citizen Housing Development. The density bonus for a senior citizen housing development that provides housing for seniors consistent with Section 17.104.040 of this chapter shall be 20 percent.

5. Child Care Facility. A project (whether a housing, commercial, or industrial project) is eligible for a density bonus for a child care facility when in compliance with Section 17.104.070 of this chapter and California Government Code Section 65917.5.

6. Donation of Land. A project is eligible for the following density bonus for the donation of land when in compliance with Section 17.104.080 of this chapter:

Percentage of Very Low-Income Units	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26

22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

7. Conversion of Apartments to Condominiums. A project is eligible for a 25 percent density bonus for the conversion of apartments to condominiums when in compliance with California Government Code Section 65915.5.

17.104.060 Eligibility and application requirements for incentives.

A. Available Incentives. A housing development qualifying for a density bonus may be entitled to at least one incentive. Incentives may include, but are not limited to:

1. A reduction in site development standards such as:
 - a. Reduced minimum lot sizes and/or dimensions,
 - b. Reduced minimum lot setbacks,
 - c. Increased maximum lot coverage,
 - d. Increased maximum building height and/or stories,
 - e. Reduced street standards;
2. A reduction in architectural design requirements;
3. A density bonus greater than the amount required by this chapter;
4. Other regulatory incentives proposed by the developer or the city, which result in identifiable, financially sufficient, and actual cost reductions;
5. If an applicant qualifies for a density bonus pursuant to this chapter, the applicant may request, in addition to any requested incentive(s), that the following parking requirement be applied to the project in place of the city's current parking requirements. The parking requirement is inclusive of handicapped and guest parking for the entire housing development, but shall not include on-street parking spaces in the count towards the parking requirement:
 - a. Zero to one bedroom: 1 on-site parking space,
 - b. Two to three bedrooms: 2 on-site parking spaces,
 - c. Four or more bedrooms: 2.5 on-site parking spaces.

B. Eligibility for Incentives. Incentives are available to a housing developer as follows:

1. One incentive for housing developments that (a) restrict at least 10 percent of the total units to lower income households, at least five percent for very low income households, or at

least 10 percent for persons and families of moderate income in a common interest development, or (b) are for senior housing.

2. Two incentives for housing developments that restrict at least 20 percent of the total units to lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

3. Three incentives for housing developments that restrict at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

17.104.070 Child care facilities.

A. Child Care Facility Density Bonus. When an applicant proposes to construct a housing development that is eligible for a density bonus under Section 17.104.040 of this chapter and California Government Code Section 65917.5, and includes a child care facility that will be located on the premises or adjacent to the housing development, the city shall grant either:

1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the square footage of the child care facility up to a combined maximum of 35 percent of the project square footage without the density bonus; or

2. An additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

B. Child Care Facility Requirements. The city shall require, as a condition of approving the housing development, the following to occur:

1. The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the affordable units are required to remain affordable per this chapter; and

2. Of the children who attend the child care facility, the children of very low income households, lower income households or families of moderate income households shall equal a percentage that is equal to or greater than the percentage of affordable units in the housing development that are required for very low, lower or families of moderate income households.

C. Child Care Facility Criteria. The city shall not be required to provide a density bonus or incentive for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

17.104.080 Donation of land.

A. Donation of Land Density Bonus. When a developer of a tentative subdivision map, parcel map, or other residential development donates land to the city, the developer shall be entitled to a density bonus above the otherwise maximum allowable residential density, up to a maximum of 35 percent depending on the amount of land donated (see Section 17.104.050 of this chapter). This increase shall be in addition to any increase in density permitted by Section 17.104.040 of this

chapter up to a maximum combined density increase of 35 percent if an applicant seeks both the increase required by Section 17.104.040 and this section of this chapter.

The developer shall be eligible for the density bonus for the donation of land, if all of the following conditions are met:

1. The developer shall donate and transfer land no later than the date of approval of the final subdivision map, parcel map, or residential development application;
2. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in the amount not less than 10 percent of the residential units in the proposed development;
3. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The transferred land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income units on the transferred land, except that the city may subject the proposed development to subsequent design review if the design is not reviewed by the local government prior to the time of transfer;
4. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 17.104.110 of this chapter if required by financing programs or subsidy programs;
5. The land is transferred to the city or to a housing developer approved by the city. The city may require the developer to identify and transfer the land to the affordable housing developer; and
6. The transferred land shall be within the boundary of the proposed development or, if the city determines appropriate, within one-quarter mile of the boundary of the proposed development.

17.104.090 General guidelines.

A. Location of Bonus Units. As required by California Government Code Section 65915(g), the location of density bonus units within the qualifying housing development may be at the discretion of the developer, and need not be in the same area of the project where the units for the lower income households are located as long as the density bonus units are located within the same housing development.

B. Preliminary Review. A developer may submit to the planning and redevelopment department a preliminary proposal for the development of housing pursuant to this chapter prior to the submittal of any formal application for a density bonus. The city shall, within 90 days of receipt of a written proposal, notify the housing developer in writing of either (1) any specific requirements or procedures under this chapter, which the proposal has not met, or (2) the proposal is sufficient for preparation of an application for density bonus.

C. Infrastructure and Supply Capacity. Criteria to be considered in analyzing the requested bonus will include the availability and capacity of infrastructure (water, sewer, road capacity, etc.) and water supply to accommodate the additional density.

17.104.100 Findings for approval for density bonus and or incentive(s).

A. Density Bonus Approval. The following finding shall be made by the approval authority in order to approve a density bonus request:

1. The density bonus request meets the requirements of this chapter.

B. Density Bonus Approval with Incentive(s). The following findings shall be made by the Approval Authority in order to approve a density bonus and incentive(s) request:

1. The density bonus request meets the requirements of this chapter;

2. The incentive is required in order to provide affordable housing; and

3. Approval of the incentive(s) will have no specific adverse impacts upon health, safety, or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to very low, low, and moderate income households.

C. Denial of a Request for an Incentive(s). The approval authority shall make the following findings prior to disallowing an incentive (in the case where an accompanying density bonus may be approved, or in the case of where an incentive(s) is requested for senior housing or child care facility):

1. That the incentive is not necessary in order to provide for affordable housing costs as defined in Section 17.104.020 of this chapter, or for rents for the targeted units to be set as specified in Section 17.104.020 of this chapter.

2. That the incentive would result in specific adverse impacts upon health, safety, or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to very low, low, and moderate income households.

17.104.110 Affordable housing agreement required.

A. Agreement Required. In approving a density bonus, the associated permit or tentative map shall require that an affordable housing agreement, or other form of agreement as approved by the city attorney, effectuating the terms of affordability of the development be executed prior to effectuation of the permit or recordation of the final map.

B. Continued Availability. The density bonus request shall include the procedures proposed by the developer to maintain the continued affordability of all affordable income density bonus units and shall be evidenced by an affordable housing agreement as follows:

1. An applicant shall agree to, and the city shall ensure, continued affordability of all very low and low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing

assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 17.104.020 of this chapter. Owner-occupied units shall be available at an affordable housing cost as defined in Section 17.104.020 of this chapter.

2. An applicant shall agree to, and the city shall ensure that, the initial occupants of the moderate income units are directly related to the receipt of the density bonus in the common interest development as defined in Section 1351 of the California Civil Code, are persons and families of moderate income, as defined in Section 17.104.020 of this chapter and that the units are offered at an affordable housing cost, as that cost is defined in Section 17.104.020 of this chapter. The city shall enforce an equity-sharing agreement unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

a. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. The city shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the California Health and Safety Code that promote homeownership.

b. For purposes of this subdivision, the city's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

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



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE OCTOBER 9th, 2013 COUNCIL MEETING

FROM: Brigit S. Barnes, City Land Use Attorney

PREPARED: October 2, 2013

SUBJECT: Introduction and First Reading of Ordinance No. 522: An Ordinance Of The City Of Colfax Repealing and Replacing Chapter 17.104 of Title 17 of the Colfax Municipal Code (#PL-01-13)

RECOMMENDED ACTION: By motion introduce Ordinance by title only, waive reading and continue for second reading at a future city council meeting

DISCUSSION:

The October 2, 2013 Staff Report submitted to the Planning Commission is incorporated herein by reference for background, which discusses the Density Bonus Ordinance Update Project (#PL-01-13) at length.

On October 9, 2013, the Planning Commission will conduct a public hearing on the Project. At the conclusion of the hearing, the Planning Commission may make a recommendation to the City Council to adopt an Ordinance repealing and replacing Chapter 17.104 of the Colfax Zoning Code.

RECOMMENDATION:

If the Planning Commission makes the above-referenced recommendation, Staff recommends that the City Council introduce and waive the full reading of the text of the Ordinance for the Density Bonus Ordinance Update and schedule a second hearing on said Ordinance for October 23, 2013.

ATTACHMENTS

1. October 2, 2013 Staff Report to Planning Commission
2. Draft Ordinance and Draft proposed new Chapter 17.104 (attached to Planning Commission Staff Report)



STAFF REPORT TO THE COLFAX CITY COUNCIL

SITTING AS THE PLANNING COMMISSION

FOR THE OCTOBER 9th, 2013 CITY COUNCIL MEETING

FROM: Brigit S. Barnes, City Land Use Attorney

PREPARED: October 2, 2013

SUBJECT: Consideration of Ordinance No. 522: An Ordinance of the City of Colfax Repealing and Replacing Chapter 17.104 of Title 17 of the Colfax Municipal Code (#PL-01-13/Density Bonus Ordinance Update)

RECOMMENDED ACTION: Give recommendation to the City Council to adopt Ordinance No. 522: An Ordinance Of The City Of Colfax Repealing and Replacing Chapter 17.104 of Title 17 of the Colfax Municipal Code (#PL-01-13)

ISSUE STATEMENT AND DISCUSSION

When the City's Housing Element was updated in 2009, it included a requirement that the City update its affordable housing ("Density Bonus") ordinance to comply with recent changes in State law, which was never done.

Planning Staff is now in the process of updating said ordinance as directed under Program #28 of the City's Housing Element. If the Density Bonus Ordinance Update is adopted by the City Council **on or before October 31, 2013**, it will have met one of the criteria for qualifying for a streamlined review process for the City's upcoming Housing Element Update.

BACKGROUND

State law requires cities to adopt ordinances that offer incentives for affordable housing, including density bonuses. In 2004, the California State Legislature passed State Senate Bill 1818 amending Government Code Section 65915 (density bonus law) in a number of ways. Beginning January 1, 2005, applicants have been eligible for a range of density bonuses of up to 35% based on the percentage of affordable units in a development. Applicants are also eligible for density bonuses based on land donation and/or inclusion of child care facilities. Additionally, localities are now required to offer at least one to three incentives rather than one, based on the percentage of affordable units in a development. These changes are not reflected in the City's current affordable housing regulations as required by State law.

A summary of the proposed changes to the Density Bonus & Other Incentives Chapter of the Zoning Code is attached (see Attachment 1.)

The City's current Housing Element, adopted by the City Council on April 28, 2009, includes a program (Program #28) for a Zoning Code Amendment to maintain consistency with state requirements with regard to the granting of Density Bonuses and incentives, and specifically directs that the Density Bonus Ordinance be updated to reflect the changes required by Senate Bill 1818.

GENERAL PLAN CONSISTENCY

The proposed Zoning Code amendment would implement Program #28 of the 2009 Housing Element of the General Plan, which states that the Zoning Code shall be revised to incorporate the Density Bonus provisions, with options, as per SB 1818, to bring the City into compliance with State law and enhance the feasibility of affordable housing projects. As such, it is consistent with the City's General Plan.

ENVIRONMENTAL ANALYSIS

Based on the following, Planning Staff has determined that the proposed ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations since it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment:

The proposed ordinance codifies the revisions to the City's previously adopted Density Bonus law to comply with changes to State law (Government Code Section 65915 et seq.) enacted by the Legislature through the adoption of Senate Bill 1818. The revisions modify the criteria and incentives offered to qualifying developments, but do not authorize construction not already permitted under the City's existing plans and codes. Most of the incentives and concessions the City has designated as a matter of right are already authorized by the Zoning Code. Further, each individual project will be subject to its own environmental review.

The current Zoning Code already allows for at least 25% density bonuses, together with incentives, which conceivably could include increases of up to 35%, which is the new stated maximum under SB 1818.

The proposed ordinance does not modify locations where housing could occur, so adoption of this amendment would not increase the exposure of people to environmental impacts in relation to current policy or increase impacts on historic resources or have other environmental effects not already considered in the City's General plan environmental analysis. Government Code Section 65915 and the proposed ordinance explicitly preclude application of the ordinance to sites where the incentives would have unmitigated adverse effects on the physical environment.

COMMITTEE RECOMMENDATION

This project was discussed with the Land Use Committee on September 9, 2013. The Land Use Committee recommended updating the Density Bonus Ordinance to comply with State law as soon as possible to meet the October 31, 2013 adoption deadline, since doing so will meet one of the criteria for qualifying for a streamlined review process for the City's upcoming Housing Element Update.

STAFF RECOMMENDATION

Staff recommends the Planning City Council adopt the attached Resolution (see Attachment 2) recommending that the City Council adopt the Ordinance (see Attachment 3) repealing and replacing the "Density Bonus and Other Incentives" Chapter (17.104) of the Zoning Code as discussed herein.

RECOMMENDED FINDINGS

Staff has drafted the Resolution to include the following recommended findings, among others:

1. The Zoning Code amendment consists of repealing and replacing Chapter 17.104 ("Density Bonuses & Other Limitations").
2. The proposed Zoning Code amendment will not have a direct and significant impact on the environment, so is exempt under Section 15061(b)(3) – General Rule (for the reasons stated above in this Staff Report). The general rule states that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment.
3. The proposed Zoning Code amendment is consistent with the actions, goals, objectives, policies and programs of the General Plan. The proposed Zoning Code amendment would implement a program (#28) of the Housing Element to adopt an ordinance to ensure the City's Zoning Code is consistent with California's Density Bonus Law (Government Code Section 65915).
4. The proposed Zoning Code amendment would not be detrimental to the public interest, health, safety, convenience or general welfare of the City. It is a procedural amendment that provides for consistency of the Zoning Code density bonus regulations with state requirements, which are meant to encourage the provision of affordable housing.
5. The proposed Zoning Code amendment is internally consistent with all other applicable provisions of the Zoning Code. The amendment would implement an objective of the Housing Element to provide for a procedure to grant density bonuses and incentives so as to allow and encourage the provision of affordable housing, and does not provide for land use deviations in a manner that is inconsistent with the General Plan Land Use Element.

ATTACHMENTS

1. Draft Resolution
2. Summary of Changes
3. Draft Ordinance and Draft proposed new Chapter 17.104



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE OCTOBER 9, 2013 CITY COUNCIL MEETING

PREPARED BY: Alfred A. "Mick" Cabral, City Attorney

SUBJECT: Consider Adopting Resolution 42 -2013, A Resolution Of The City Council Of The City Of Colfax Authorizing The Mayor And Interim City Manager To Execute A Memorandum Of Understanding Between The City Of Colfax And Stationary Engineers Local 39 And Approving An Adjusted Salary Schedule.

RECOMMENDED ACTION: Staff recommends that the City Council adopt the Resolution approving the Memorandum of Understanding and the adjusted salary schedule.

ISSUE STATEMENT AND DISCUSSION:

Representatives of the City and Stationary Engineers Local 39 (the "Union") successfully negotiated the terms of a memorandum of understanding ("MOU") to replace the MOU that expired on June 30, 2013. The City Council approved those terms when it approved a tentative agreement with the Union at its September 25, 2013 meeting. The terms of the approved tentative agreement have been incorporated into a complete MOU. A copy of the new MOU is included in this agenda packet.

The proposed MOU will become effective July 1, 2013 and will expire December 31, 2015. It provides for a 4% salary increase retroactive to July 1, 2013, an additional 4% salary increase effective July 1, 2014 and an equity study to begin March 1, 2015. The equity study will be conducted by Shellie Anderson of Bryce Consulting and will compare total compensation in comparable employment positions in Placer County, Nevada County, the City of Auburn, the Town of Loomis, Nevada City, the City of Rocklin and the City of Grass Valley.

The City will implement the results of the equity study effective July 1, 2015 by adjusting total compensation for Colfax employees to equal total compensation for employees in comparable employment positions in the survey jurisdictions, disregarding the highest and lowest total compensation for each category. Total compensation for employees who receive less than the average will be increased to the average. Total compensation for employees receiving greater than the average will be frozen or "Y-rated" until their total compensation equals the average for comparable positions.

The City typically applies cost of living increases negotiated with the Union to its unrepresented employees. A revised salary schedule is attached and includes the adjusted compensation for all City employees.

FINANCIAL AND/OR POLICY IMPLICATIONS:

The total cost of increased compensation will be paid from the City's general fund.

SUPPORTING DOCUMENTS:

Resolution No. 42-2013

Memorandum of Understanding (Exhibit A to Resolution)

Adjusted Salary Schedule (Exhibit B to Resolution)

COMMITTEE RECOMMENDATION:

City of Colfax

Resolution No. 42 - 2013

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLFAX
AUTHORIZING THE MAYOR AND INTERIM CITY MANAGER TO EXECUTE A
MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF COLFAX AND
STATIONARY ENGINEERS LOCAL 39 AND APPROVING AN ADJUSTED SALARY
SCHEDULE**

WHEREAS, the City of Colfax (“City”) and the International Union Of Operating Engineers, Stationary Engineers Local 39 (the “Union”) are parties to a Memorandum of Understanding with a term that began on July 1, 2008 and ended on June 30, 2013; and

WHEREAS, the City and Union, through their duly authorized representatives, negotiated a “Tentative Agreement Modifying Terms Of Memorandum Of Understanding And Extending Its Term Until December 31, 2015” (the “Tentative Agreement”) which was approved by the City Council on September 25, 2013; and

WHEREAS, the terms of the Tentative Agreement have been incorporated into a complete Memorandum of Understanding to replace the Memorandum of Understanding that expired on June 30, 2013; and

WHEREAS, a copy of the Memorandum of Understanding to be effective July 1, 2013 (the “MOU”) is attached as Exhibit A to this Resolution; and

WHEREAS, a new salary schedule reflecting adjusted compensation for all City employees is attached as Exhibit B to this Resolution; and

WHEREAS, the City Council has determined and hereby finds that approval of the MOU attached as Exhibit A and the new salary schedule attached as Exhibit B is in the best interests of the City and its employees.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Colfax as follows:

1. The foregoing recitals are true and correct statements of fact and are incorporated into this Resolution by this reference.
2. The Mayor and Interim City Manager are hereby authorized to execute on behalf of the City the Memorandum of Understanding with the Union substantially in the form attached as Exhibit A to this Resolution.
3. The City Council hereby approves the new salary schedule attached as Exhibit B to this Resolution.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Colfax held on the 9th day of October, 2013 by the following roll call vote of the Council:

Ayes:

Noes:

Absent:

Abstain:

Donna L. Barkle, Mayor

ATTEST:

Karen Pierce, City Clerk

MEMORANDUM OF UNDERSTANDING

BETWEEN

CITY OF COLFAX

AND

STATIONARY ENGINEERS LOCAL 39

ON BEHALF OF THE

GENERAL EMPLOYEES UNIT

July 1, 2013 – December 31, 2015

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PREAMBLE

This Memorandum of Understanding (MOU) is entered into pursuant to the Meyers-Milias-Brown Act, by and between the City Manager of the CITY OF COLFAX and I.U.O.E. STATIONARY ENGINEERS, LOCAL 39 (Union) the first day of July, 2013.

The parties have met and conferred in good faith regarding wages, hours and other items and conditions of employment of the represented employees of the City of Colfax and have exchanged freely information, opinions and proposals and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

The MOU shall be presented to the City Council as the joint recommendations of the undersigned for salaries, fringe benefits and working conditions of all represented employees of the City of Colfax.

The MOU and following agreements shall not become effective until approved by the Colfax City Council and I.U.O.E. Stationary Engineers, Local 39.

ARTICLE 1: RECOGNITION

- A. Union Recognition: The City recognizes the Union as the majority representative of the City of Colfax. Those employee classifications represented by the Union include Lead Mechanic, Maintenance Worker I and II, Wastewater Treatment Plant Operator in Training, Wastewater Treatment Plant Operator II and III, Administrative Assistant/Community Development Technician, Clerk Typist, and Accounting Assistant as found in Appendix A, Salary/Range Schedule.
- B. Union Dues, Initiation, and Agency Fees - The Employer will make a single deduction of an initiation fee from newly hired employees who choose to become Union members and deduct one month's current and periodic Union dues or Agency fees based upon a uniform dues schedule from the pay of each employee in accordance with rules and regulations to implement the employer-employee relations ordinance. Said deductions are to be made without fee charged to the Union. The Union agrees to hold the City harmless from any liability arising from such deductions.

ARTICLE 2: UNION REPRESENTED EMPLOYEE RIGHTS

- A. The Union has the right to represent its members before the City Council or advisory boards or commissions or the City Manager or his designee with regard to wages, hours and conditions of employment or other matters within the scope of representation.

- B. Agency Shop / Fair Share Fee –The Union owes the same responsibilities to all employees in the representation Unit and has a duty to provide fair and equal representation to all employees in all classes in the Unit whether or not they are members of Union.

Pursuant to Government Code Section 3502.5(b), all current regular employees and all new employees in the General Employees Bargaining Unit of the City of Colfax represented by Union shall, as a condition of employment, authorize payroll deductions beginning the first pay period of the month of employment for the payment of dues owing from one of the following:

Become a member of the Union and pay dues; or

Pay to Union a fair share fee.

The Union shall defend, indemnify and hold the City harmless against any and all claims, demands, expenses suits, orders, judgments or other forms of liability that shall arise out of or by reason of, action taken by the City under this article.

- C. The right to be given reasonable written notice of any proposed ordinance, rule, resolution or regulation, or amendment thereto relating to matters within the scope of representation.
- D. Reasonable access to employee work locations for officers of the Union and the officially designated representatives for the purpose of processing grievances or contacting members of the Union concerning business within the scope of representation. Access shall be restricted so as not to interfere with the normal operations of the City of established safety or security requirements.
- E. Employees represented by the Union shall be free to participate in Union activities without interference, intimidation, or discrimination, in accordance with State law and City policies, rules and regulations.

ARTICLE 3: MANAGEMENT RIGHTS

- A. The rights of the City include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service and; determine the procedures and standards of selection for employment and promotion; train and direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of government operations; determine the methods, means and personnel by which governmental operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; to exercise complete control and discretion over its organization and the technology of performing its work; and to make rules and regulations for its employees consistent with this MOU.

- B. The City maintains the right to use qualified volunteers or reserves in the City service, provided such use does not adversely affect wages, hours and other terms and conditions of employment of represented employees. Use of said individuals shall be in accordance with State law and regulations.
- C. Nothing contained within the Article is intended to, in any way, supersede or infringe upon the rights of the recognized employee organization as provided under State and Federal law, including, but not limited to, California State Government Code Sections 3500 through 3510, inclusive.

ARTICLE 4: NO DISCRIMINATION

- A. There shall be no discrimination because of race, creed, color, national origin, sex, sexual preference or legitimate Union activities against any employee or application for employment by the City and to the extent prohibited by applicable State and Federal law, there shall be no discrimination because of age. There shall be no discrimination against any handicapped person solely because of such handicap unless that handicap prevents the person from meeting the minimum standards established for the employment position the applicant seeks. Nothing in this article shall in anyway change current case law regarding employer's liability for discrimination nor shall it remove any defense currently or in the future with regard to employment discrimination.

ARTICLE 5: SCOPE OF AGREEMENT

- A. **Term:** This agreement shall remain in full force and effect until December 31, 2015. This is a 2 ½ year contract with the understanding that the city will conduct and implement an equity study on the terms and conditions hereafter provided.
- B. **Procedure for Meet and Confer:** The City, through its representatives, shall meet and confer in good faith with representatives of the Union regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment, in accordance with the provisions of the Meyers-Milias-Brown Act.

ARTICLE 6: EMPLOYEE REPRESENTATIVES

- A. The Union may, by written notice to the City Manager, designate a member of the unit as an Employee Representative. The Employee Representative shall be permitted reasonable time during regular work hours for Union activities
- B. Employee Representatives may investigate and process grievances by employees.

ARTICLE 7: HOSPITAL-MEDICAL-DENTAL-VISION-LIFE INSURANCE AND OTHER BENEFITS

- A. After one month of permanent employment, all Union represented employees are entitled to participate in the Stationary Engineers, Local 39 Health and Welfare Trust Fund as set forth in Addendum A. Employer pays 100% of the premium for the bargaining unit employee and dependents. City employees not represented by Local 39 shall not be in the Union medical plan.
- B. In the event of death prior to discharge for cause, the City shall pay to his/her estate all retirement, deferred compensation; lay off benefits and all accrued vacation, CTO and sick leave, at the employee's hourly rate of pay.

ARTICLE 8: RETIREMENT PROGRAM

- A. **Retirement Benefits:**
 - 1. Employees designated as "local miscellaneous members" by the City are currently provided retirement benefits under the Public Employees Retirement System's Local Miscellaneous 2% at age 60 Formula.
 - 2. Employees are also provided retirement benefits under Social Security.
- B. **Retirement Contributions:**
 - 1. The City shall pay the employer contribution rate to the extent and limits required by the Public Employees' Retirement System and Social Security. The City shall pay, on behalf of the employee 2% of the employee's contribution to PERS. The employee will pay 5% of the 7% employee contribution rate.
 - 2. The employee shall pay the full amount of the employee's contribution rate to Social Security.

ARTICLE 9: HOLIDAYS

- A. In accordance with Government Code and the City Personnel Rules and Regulations, the following holidays shall be observed by the City:
 - a) January 1st
 - b) The third Monday in January, (Martin Luther King Day)
 - c) One Floating Holiday instead of Lincoln's Birthday
 - d) The third Monday in February
 - e) The last Monday in May (Memorial Day)
 - f) July 4th
 - g) The first Monday in September (Labor Day)
 - h) The second Monday in October (Columbus Day)

- i) November 11th (Veterans Day)
- j) Thanksgiving Day
- k) The Friday immediately following Thanksgiving Day
- l) December 24th (Christmas Eve)
- m) December 25th (Christmas Day)
- n) Every day designated by the President or Governor for public fast, thanksgiving or holiday and approved by the City Council.

B. If any Holiday should fall on a normal day off, the Holiday will be observed on a normal workday either preceding or following the Holiday.

ARTICLE 10: SICK LEAVE

- A. Use of Sick Leave - Sick leave may be taken for absences from duty made necessary by:
- 1. Personal illness, caused by factors over which the employee has no reasonable immediate control.
 - 2. Injury not incurred in the line of duty except where traceable to employment other than the City.
 - 3. Medical, dental or eye examination or treatment for which appointment cannot be made outside of working hours.
 - 4. Death of a close relative.
 - 5. Hospitalization of a close relative or any member of the employee's household.
 - 6. Care of a close relative, or any member of the employee's household who is ill or injured, though not hospitalized.

A close relative is defined as a spouse, child, stepchild, parent, parent of a spouse, stepparent, brother, sister, grandparent and grandchild.

- B. Sick Leave Accumulation - Sick leave with pay shall be granted to all fulltime employees. An employee shall accumulate one (1) sick leave day per month from date of hire until terminated or on leave without pay.
- C. Holidays During Sick Leave - Holidays and regular days off occurring while an employee is on sick or special leave shall not be charged against such employee's sick leave credits.
- D. Sick Leave Notification and Proof of Illness - In order to receive compensation while on sick leave, the employee shall notify his/her immediate superior, prior to or at the time set for beginning his/her daily duties or as may be specified by the department head, or the reasons for requiring such. .

ARTICLE 11: LEAVE WITH PAY

The following provide for leave with pay:

- A. Military Service: Military leave shall be granted in accordance with State and Federal law.
- B. Jury Duty: All employees occupying authorized regular positions shall be allowed to leave for jury duty upon presentation of jury notice to the department head or City Manager. The employee shall receive full pay for the time served on the jury. Monies received from the courts by the employee for jury duty will be deposited with the City of Colfax, with the exception of mileage reimbursement.

ARTICLE 12: VACATION

All regular employees occupying a position shown in the Annual Salary Program become eligible for vacation leave with pay as shown below:

- A. Vacation Leave Accrual: Vacation leave with pay shall be credited to all employees at the following rates:

First two years of service	10 days per year
Beginning of year three through four	12 days per year
Beginning of year five through nine	15 days per year
Beginning of year ten through nineteen	20 days per year
Beginning of year twenty and on	25 days per year

- B. Payment for Unused Vacation Time: When an employee terminates, fractional periods of vacation shall be calculated and credited to the employee's account. Compensation will be at the employee's hourly rate.

- C. Vacation Leave Accumulation:

1. Vacation credits are earned and shall vest for the prior year upon the anniversary date of the employee's employment. Except as set forth below, vacation credits must be used during the next succeeding year. Accrued vacation credits may not be carried over from year to year without the prior approval of the City Council.
2. All eligible employees may take earned vacation after the completion of one (1) year of service not to exceed the total vested amount, upon two (2) weeks notice and approval as to the appropriate department head.
3. Vacation credits shall not be earned during periods an employee is on administrative leave pursuant to section 12.00, or sick leave in excess of the

employee's accumulated sick leave allowance. The credits set forth in section 12.05, subsection (a), shall be adjusted on a per diem basis where an employee has been on leave not qualifying for vacation credits.

- D. Sickness During Vacation Leave: Sickness occurring during vacation leave, upon doctor's certification, will be considered sick leave and not charged against vacation leave.
- E. Vacation Leave Scheduling: Requests for vacation leave shall be submitted in advance by the employee in writing to the Department Head, who shall approve the time employees may take their vacation.

ARTICLE 13: SALARY

- A. Rates of Pay: The City will provide salaries for all classifications as listed in Appendix A for the duration of this MOU. Based on merit, employees will be eligible for further step increases to be effective on the anniversary date of their employment with the City of Colfax. Once an employee reaches Step 5 of the new salary range, the employee will no longer be eligible to receive further merit step increases.
- B. Call Back Pay/Standby Pay:
 - 1. Call Back Pay: When an employee is called to return to duty after completion of their normal scheduled shift, they shall be compensated a minimum of two hours at the rate of time and one half their normal rate of pay. Any work performed beyond the initial two hours shall also be compensated at time and one half for actual hours worked. Should an emergency arise that requires a maintenance employee to be called out by either the City Manager or Community Services Director, the maintenance employee shall receive time and one half time from the time he leaves his house to the time he returns.
 - 2. Standby Pay: Wastewater Treatment Plant Operators and Maintenance Workers will be required to be on standby outside of their normal working hours and will receive \$2.50 for each hour of assigned standby time, as directed by the Community Services Director. Should a wastewater treatment plant or Maintenance Worker employee be called out, premium pay will be paid for those hours worked outside of normal eight-hour day.
- C. Cost of Living Increases:
 - 1. Effective July 1, 2013, the annual salaries for each employee covered by this MOU shall be increased by 4%.
 - 2. Effective July 1, 2014, the annual salaries for each employee covered by this MOU shall be increased by an additional 4%.

D. Wastewater Treatment Plant Operators:

Conditions: Upon successful completion, the City shall pay for all out of pocket costs related to obtaining a Grade 2 Wastewater Treatment Plant Operator's license, including paid time off for required classes and testing required during normal work hours.

E. Operator in Training Program. The parties agree to allow qualified employees to participate in the State's Operator in Training (OIT) program subject to the following conditions:

The City shall:

- a. Pay for approved schooling, including course materials
- b. Provide travel compensation to and from schooling and testing locations.
- c. Pay for certification and test.
- d. Allow adequate time working as an OIT to be qualified to become a Grade 1 wastewater treatment plant operator.
- e. Pay employees regular salary for attending classes during their normal scheduled working hours. No over time will be paid for attending classes.

Employees participating in the OIT Program shall:

- a. Study.
- b. Submit requests for City approval of qualified courses.
- c. Timely schedule and pass tests and qualify for certification.
- d. Apply with regulatory agencies for needed extensions.
- e. Keep management informed of progress.
- f. Track qualified hours and report their hours accomplished and needed to the City.

F. Pay Differential for Acting Supervisor

1. When an employee is assigned to perform the significant duties of a supervisory position for relief necessitated by a temporary vacancy caused by the incumbent's absence of more than five (5) continuous working days, said employee shall receive 5% differential pay with the approval of the supervisor and/or the City Manager.
2. The 5% differential shall cease when the absent incumbent returns to duty.

G. Out of Class Pay: When an employee is assigned to do the work of a higher paid classification (excluding supervisory classifications), said employee will be paid 5% out of class pay for the entire pay period in which the out of class work is performed.

- H. Promotion: When an employee is promoted to a position with a higher salary range than the class from which he/she was promoted, the employee shall be appointed to that step in the higher salary range which will result in a minimum of a 5% salary increase.
- I. Certification Pay: Employees will receive an additional 5% above their base pay for approved job-related certifications above what is required in their job classification. Certification pay is capped at 10% for each employee. In order to receive certificate pay, the employee must have the certificate program approved by his/her supervisor and have received a satisfactory performance rating.
- J. Extra Salary Adjustment for Outstanding Performance: The City Manager may adjust, at her/her discretion, the compensation of an employee by an additional 5% step based on the evaluation of the employee's performance that indicates the employee has substantially exceeded performance standards and the City Manager concludes that the additional step is warranted. The City Manager shall advise the Council of any such outstanding performance salary adjustments.
- K. Equity Study:

On March 1, 2015, the City shall, at City expense, cause an equity study (the "Equity Study") to be commenced subject to the following terms and conditions:

1. The Equity Study shall be conducted by Shellie Anderson of Bryce Consulting. If as of March 1, 2015, Shellie Anderson is not available to conduct the Equity Study, the City and Union shall meet and confer to select a mutually acceptable person and/or entity to conduct the Equity Study.
2. The Equity Study shall survey, evaluate and compare the cost of the total compensation paid to employees in the Survey Jurisdictions defined below. For purposes of the Equity Study, "total compensation" shall include the total cost of salaries, hospital-medical-dental-vision-life insurance, retirement benefits including contributions, and all other costs associated with employees in comparable positions in the Survey Jurisdictions.
3. Effective July 1, 2015, the City shall implement the results of the Equity Study by either (A) increasing the salaries of the employees covered by this MOU so the cost of their total compensation is equal to the average cost of total compensation of comparable employee positions in the Survey Jurisdictions as determined by the Equity Study or (B) by "freezing" or "Y-Rating" their salaries until the cost of total compensation for Y-rated employees is less than or equal to the average cost of total compensation for comparable employee positions in the Survey Jurisdictions as determined by the Equity Study. In calculating the average cost of total compensation of comparable employee positions in the Survey Jurisdictions, the highest and lowest total compensation cost for each category of employee shall be disregarded and not considered.

4. The Survey Jurisdictions for purposes of the Equity Study shall be Placer County, Nevada County, the City of Auburn, the Town of Loomis, Nevada City, the City of Rocklin and the City of Grass Valley, all located in California.

ARTICLE 14: SCHEDULING

- A. Normal work week for bargaining unit employees will be eight hours per day, 40 hours per week.
- B. For those bargaining unit employees who work at the wastewater treatment plant as wastewater treatment plant operators, the City Manager has the ability, due to the critical nature of maintaining the wastewater treatment plant, to change the normal work week schedule as follows: 10day/8hr. work schedule per pay period (hours in excess of a normal eight hour day will be calculated at overtime pay).

ARTICLE 15: USE OF CITY VEHICLES

- A. Employees will not drive City vehicles home, except as authorized in emergency situations by the City Manager or Community Services Director.

ARTICLE 16: OVERTIME

- A. Definition. Authorized time of non-exempt employees worked in excess of either (8) hours per day and forty (40) hours in one (1) week shall constitute overtime. Employees on paid status for vacation, CTO or holidays will not have such time count towards the 40-hour calculation.
- B. Policy. It is the policy of the City of Colfax to keep overtime at a minimum consistent with the efficient operation of the City. Overtime must be authorized by the Department Head in advance and be in compliance with the overtime policy as set forth in the City's Personnel Rules and Regulations.
- C. Overtime Pay. Overtime shall be paid at the rate of pay of time and one half. City may compensate for overtime by providing Compensatory Time Off (CTO) at the rate of time and one-half.
- D. Compensatory Time Off. CTO time will be capped at 80 hours. All future accrued CTO time over the new 80-hour cap will be paid out as overtime pay. Existing accrued CTO banked hours will be "frozen" with no further hours accruing to that bank. Newly accrued hours will be accrued separately in the new bank subject to the 80-hour cap. An effort is to be made to reduce the frozen hours by scheduling time off with the employee's supervisor.

ARTICLE 17: UNIFORMS FURNISHED AND MAINTAINED

- A. The City shall furnish and maintain public works department employee’s uniform. Cleaning shall be on a weekly basis.

- B. Employees assigned to maintenance, water or wastewater, and have been designated by the City Manager to wear safety boots may submit purchase receipts with their request for payment in an amount not to exceed two hundred dollars (\$200) annually. This stipend may also be used for the purchase of work jackets.

ARTICLE 18: HEALTH AND SAFETY

Safety equipment is supplied by the City of Colfax to its personnel. All employees shall possess and have immediately available for their use those items of safety equipment issued and which are described by City regulations. Furthermore, the City agrees to provide and maintain a safe and healthy work environment.

ARTICLE 19: SENIORITY

The principals of City seniority shall apply in, but not limited to, the following: promotion, layoff, vacation request, shift and days off bidding, etc. Provided, however, that due to the small size of the City workforce, strict application of seniority rules may be relaxed with respect to represented employees on a case-by-case basis after conferring with Union, if City can demonstrate a specific need to vary from seniority basis.

ARTICLE 20: PROBATIONARY PERIOD

All new regular City employees will serve a six (6) month probationary period. During such probation an employee may be terminated for any reason and is not subject to the grievance procedure. Providing that during the initial six-month period written evaluations are done at the three-month and six-month intervals, the city may extend the probationary period as determined by the employee’s supervisor two additional three (3)-month periods. If extended, an evaluation will be conducted at each three month interval to determine possible fulltime status. Probationary period will not exceed one year.

ARTICLE 21: LIMITED TERM EMPLOYEE (DEFINED)

A Limited Term assignment may be appointed by the City Manager for the purpose of filling the needs of the city for a period of not more than four (4) months and can only be extended by mutual agreement of the Union and the City.

ARTICLE 22: LAYOFF AND RE-EMPLOYMENT

- A. Notice of Layoff: The City Manager shall give at least three (3) weeks advance written notice to regular employees to be laid off. Such notice shall also be furnished to the Union. Layoffs are subject to Meet and Confer.
- B. Order to Layoff: Layoffs shall be by job classification in reverse order of seniority as determined by length of continuous service with the City in fulltime, non-probationary status. Layoffs and leaves of absence without pay shall be bridged in computing the employee's length of continuous service.
- C. Bumping Rights: A regular employee who has achieved fulltime, non-probationary status at the time of layoff may displace the least senior employee in the lower classification provided, however, that the employee to be laid off has greater seniority than the least senior employee in the lower classification and further provided that the employee to be laid off held permanent status in that lower classification.
- D. Re-employment: A regular employee who has achieved fulltime, non-probationary status at the time of layoff shall have the employee's name placed on a re-employment list which shall be maintained for twenty-four (24) months from the time of layoff.
- E. Employees on the re-employment list shall be first called by seniority to fill openings in the classification from which the employees were laid off before other employees are hired to fill those openings. Employees bumped as a result of layoff shall be allowed to return to openings in the position from which they were bumped by seniority at the salary for the position to which the employee returns. Employees restored to previously held positions shall be deemed to have returned from a leave of absence for the purpose of all rights and benefits legally permissible.

ARTICLE 23: DISCIPLINARY ACTION

The following procedure shall be adhered to for non-emergency suspension, discharges and disciplinary actions of regular represented employees:

- A. Disciplinary Procedure:
 - 1. The concerned employee shall be given written notice of the proposed action within seven (7) calendar days from the date the appointing authority becomes aware of an incident to take the appropriate disciplinary action. Such written notice shall include a statement of the reasons why the disciplinary action is being proposed and shall include a copy of the charges being considered by City management in addition to a statement of employee rights appropriate to the preliminary notice.

2. The employee shall be shown the documents or materials upon which the disciplinary action is based; and if practical, he or she shall be supplied with a copy of those documents.
 3. After being given a reasonable opportunity to review the documents and materials set forth in paragraphs 1 and 2, above, the employee shall, within ten (10) days, be given the right to respond, either orally or in writing (at the option of the employee), to the authority initially imposing discipline.
 4. No discipline shall be imposed, other than emergency suspensions prior to the conclusion of the grievance procedure; and discipline then imposed shall be effective after that time.
 5. Prior discipline may be considered in determining the appropriate level of discipline in the administration and enforcement of City work rules, and is not subject to the written notice requirement in Article 20 (A) 1 Notice of Layoff.
- B. Suspension: The Department Head, with prior approval of the City Manager, may suspend an employee without pay from his/her position at any time for cause, not to exceed three (3) working days in any one suspension or more than ten (10) working days in one fiscal year. Such suspensions shall be reported immediately to the City Manager. The City Manager may suspend an employee at any time for cause for a period not to exceed thirty (30) working days in any fiscal year.
- C. Demotion: The City Manager may demote an employee whose ability to perform the required duties of his/her position fall below standard or for disciplinary purposes. No employee shall be demoted to a position for which he/she does not possess the minimum qualifications.
- D. Reduction in Salary: The appointing authority may, with prior City Manager approval, within the minimum and maximum salary range for the position, reduce or decrease the salary level of an employee whose ability to perform the required duties of his/her position falls below standard, or for disciplinary purposes.
- E. Discharge: An employee in the career service may be discharged for cause at any time by the City Manager. Any employee who has been discharged shall receive a written statement of the reasons for such action at the time of discharge.
- F. Cause for Discipline: Disciplinary action up to and including termination may be taken for any of the following:
5. unauthorized absence
 6. the commission of conviction of any felony or any other crime involving moral turpitude
 7. disorderly conduct

8. incompetence or inefficiency
9. insubordination
10. intoxication while on duty or on standby
11. neglect of duty
12. willful or negligent damage to public property or waste of public supplies or equipment
13. violation or negligent damage to public property or waste of public supplies or equipment
14. willful violation of any of the provisions of the Ordinances of the City, these rules or others promulgated by the City Manager as Administrative Orders.

G. Aggrieved Employee Representation: An aggrieved employee may be represented by any person or organization of his/her choice at any stage of the proceedings.

ARTICLE 24: GRIEVANCE PROCEDURE

Definition: A grievance shall be defined as any claimed violation, misinterpretation, inequitable application or non-compliance with provisions of a collective bargaining agreement, or resolutions, rules, regulation, or existing practices affecting the status or working conditions of City employees.

Right to File and Representation: A grievance may be filed by an employee on the employee's own behalf, or jointly by any group of employees or by an employee organization.

An aggrieved employee may be represented by any person or organization of the employee's choice at any stage of the proceedings. A representative of an organization certified to represent a majority of employees in the representation unit, in which the aggrieved employee is included, is entitled to be present at all meetings, conferences and hearings.

The City shall act as a central repository for all grievance records. Any time limit may be extended only by mutual agreement of the parties.

- A. Informal Grievance Procedure: Within five (5) working days of the event giving rise to a grievance, the grievant shall present the grievance informally for the disposition by the immediate supervisor, or at any appropriate level of authority. Presentation of an informal grievance shall be prerequisite to the institution of a formal grievance.
- B. Formal Grievance Procedure: If the grievant believes that the grievance has not been redressed through the informal grievance procedure within five (5) working days from the date grievant informally presented the event giving rise to a grievance to his/her immediate supervisor, he/she may initiate a formal grievance within five (5) working days thereafter. A formal grievance can only be initiated by completing a memorandum and filing it with the Department Head.

Step 1 – Within ten (10) working days after a formal grievance is filed, the Department Head shall investigate the grievance and confer with the grievant in an attempt to resolve the grievance and make a decision in writing.

Step 2 – If the grievance is not resolved in Step 1 to the satisfaction of the grievant, he/she may, within not more than five (5) working days from his/her receipt of the Department Head's decision, request consideration of the grievance by the City Manager by so notifying the City Manager. Within ten (10) working days after such notification, the City Manager shall investigate the grievance, confer with the person affected and their representatives to the extent he deems necessary, and render a decision in writing. The City Manager shall advise the grievant, in writing, of the decision. If the decision does not resolve the grievance to the satisfaction of the grievant, the grievant may proceed to Step 3.

Step 3 – Mediation. The California State Mediation and Conciliation Service shall mediate any grievances or disciplinary actions before going to Step 4

Step 4 – Binding Arbitration. If the City Manager or the designated representative fails to respond in writing as provided in Step 2, or if the response is not satisfactory to the grievant, the grievant shall have the right to refer the matter to binding arbitration. Such referral shall be made by written demand submitted to the City Manager within ten (10) working days of receipt of the decision.

- A. Selection of Arbitrator: A list of five (5) arbitrators shall be provided by the State Mediation and Conciliation Service. Selection of the arbitrator shall be made by the parties alternating striking names from the list until one remains.
- B. Decision: In all cases other than termination from employment, the decision of the arbitrator shall be final and binding. The arbitrator's decision on termination shall be advisory to the City with the final decision made by the City Council. The arbitrator shall have no authority to add to, delete or alter any provisions of the Agreement, but shall limit his/her decision to the application and interpretation of its provisions.
- C. Cost: The fees and expenses of the arbitrator and the court reporter, if required by the arbitrator or requested by a party, shall be shared equally by the parties.
- D. Witnesses: The City agrees that employees shall not suffer loss of compensation for time spent as a witness at an arbitration hearing held pursuant to the Agreement. The Union agrees that the number of witnesses requested to attend and their scheduling shall be reasonable.

ARTICLE 25: PERSONNEL FILES

An employee or employee's representative, on presentation of written authorization from the employee, shall have access to the employee's personnel file. The City shall furnish copies of all performance evaluation reports and letter of reprimand or warning to the employee prior to placement of such documents into the employee's personnel file. The employee shall be required to acknowledge the receipt of any document entered into the employee's personnel file without prejudice to subsequent arguments concerning the contents of such documents.

ARTICLE 26: FULL UNDERSTANDING MODIFICATION WAIVER

- A. The parties jointly represent that this MOU sets forth the full and entire understanding of the parties regarding the matters set forth herein.
- B. Except as specifically otherwise provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its rights and agrees that the other shall not be required to meet and confer with respect to any subject or matter covered herein, nor as to wages or fringe benefits during the period of the term of this Memorandum. The foregoing shall not preclude the parties hereto from meeting and conferring at any time during the term of this agreement with respect to any subject matter within the scope of the meeting and conferring for a proposed MOU between the parties to be effective on or after July 1, 2013.

ARTICLE 27: SEVERABILITY OF PROVISIONS

Should any provision of the MOU be declared illegal by final judgment of a court of competent jurisdiction, such invalidations of such provisions shall not invalidate the remaining portions thereof; and such remaining portions shall remain in full force and effect for the duration of the MOU.

ARTICLE 28: PREVAILING RIGHTS

All matters within the scope of meeting and conferring that have previously been adopted been adopted through rules, regulations, ordinances, or resolutions which are not specifically superceded by this Memorandum of Understanding, shall remain in full force and effect through the term of this Agreement.

SIGNATORIES:

INTERNATIONAL UNION OF OPERATING
ENGINEERS, STATIONARY ENGINEERS
LOCAL 39

CITY OF COLFAX

DATED: _____

DATED: _____

BY: _____
JERRY KALMAR, BUSINESS MANAGER

BY: _____
DONNA BARKLE, MAYOR

BY: _____
TONY DEMARCO, PRESIDENT

BY: _____
GABE ARMSTRONG
INTERIM CITY MANAGER

BY: _____
GARY WINEGAR, BUSINESS AGENT

BY: _____
BRETT ELLIS, SHOP STEWARD

City of Colfax - Salary Range Schedule FY2013
Appendix "A"
July 1, 2013-June 30, 2014

		Step				
		1	2	3	4	5
Clerk Typist*	Monthly	2,100.80	2,204.80	2,314.00	2,430.13	2,553.20
	Hourly	12.12	12.72	13.35	14.02	14.73
	Annual	25,209.60	26,457.60	27,768.00	29,161.60	30,638.40
Lead Mechanic*	Monthly	3,562.00	3,740.53	3,927.73	4,125.33	4,329.87
	Hourly	20.55	21.58	22.66	23.80	24.98
	Annual	42,744.00	44,886.40	47,132.80	49,504.00	51,958.40
Maintenance Worker I*	Monthly	2,457.87	2,579.20	2,707.47	2,844.40	2,986.53
	Hourly	14.18	14.88	15.62	16.41	17.23
	Annual	29,494.40	30,950.40	32,489.60	34,132.80	35,838.40
Maintenance Worker II*	Monthly	3,028.13	3,180.67	3,338.40	3,504.80	3,679.87
	Hourly	17.47	18.35	19.26	20.22	21.23
	Annual	36,337.60	38,168.00	40,060.80	42,057.60	44,158.40
Operator in Training*	Monthly	2,778.53	2,917.20	3,062.80	3,215.33	3,376.53
	Hourly	16.03	16.83	17.67	18.55	19.48
	Annual	33,342.40	35,006.40	36,753.60	38,584.00	40,518.40
Operator II*	Monthly	3,719.73	3,905.20	4,099.33	4,305.60	4,518.80
	Hourly	21.46	22.53	23.65	24.84	26.07
	Annual	44,636.80	46,862.40	49,192.00	51,667.20	54,225.60
Operator III*	Monthly	4,199.87	4,411.33	4,631.47	4,862.00	5,106.40
	Hourly	24.23	25.45	26.72	28.05	29.46
	Annual	50,398.40	52,936.00	55,577.60	58,344.00	61,276.80
Chief Plant Operator*	Monthly	4,409.60	4,631.47	4,863.73	5,104.67	5,361.20
	Hourly	25.44	26.72	28.06	29.45	30.93
	Annual	52,915.20	55,577.60	58,364.80	61,256.00	64,334.40

* Represented Position

City of Colfax - Salary Range Schedule FY2014

Appendix "A"

July 1, 2014-June 30, 2015

		Step				
		1	2	3	4	5
Clerk Typist*	Monthly	2,184.00	2,293.20	2,405.87	2,527.20	2,655.47
	Hourly	12.60	13.23	13.88	14.58	15.32
	Annual	26,208.00	27,518.40	28,870.40	30,326.40	31,865.60
Lead Mechanic*	Monthly	3,704.13	3,889.60	4,085.47	4,290.00	4,503.20
	Hourly	21.37	22.44	23.57	24.75	25.98
	Annual	44,449.60	46,675.20	49,025.60	51,480.00	54,038.40
Maintenance Worker I*	Monthly	2,556.67	2,683.20	2,814.93	2,958.80	3,106.13
	Hourly	14.75	15.48	16.24	17.07	17.92
	Annual	30,680.00	32,198.40	33,779.20	35,505.60	37,273.60
Maintenance Worker II*	Monthly	3,149.47	3,307.20	3,471.87	3,645.20	3,827.20
	Hourly	18.17	19.08	20.03	21.03	22.08
	Annual	37,793.60	39,686.40	41,662.40	43,742.40	45,926.40
Operator in Training*	Monthly	2,889.47	3,033.33	3,185.87	3,343.60	3,511.73
	Hourly	16.67	17.50	18.38	19.29	20.26
	Annual	34,673.60	36,400.00	38,230.40	40,123.20	42,140.80
Operator II*	Monthly	3,868.80	4,061.20	4,264.00	4,477.20	4,699.07
	Hourly	22.32	23.43	24.60	25.83	27.11
	Annual	46,425.60	48,734.40	51,168.00	53,726.40	56,388.80
Operator III*	Monthly	4,368.00	4,588.13	4,816.93	5,056.13	5,310.93
	Hourly	25.20	26.47	27.79	29.17	30.64
	Annual	52,416.00	55,057.60	57,803.20	60,673.60	63,731.20
Chief Plant Operator*	Monthly	4,586.40	4,816.93	5,057.87	5,309.20	5,576.13
	Hourly	26.46	27.79	29.18	30.63	32.17
	Annual	55,036.80	57,803.20	60,694.40	63,710.40	66,913.60

*** Represented Position**

Exhibit B to Resolution No. 42-2013

**City of Colfax - Salary Range Schedule FY2013
July 1, 2013-June 30, 2014**

		Step				
		1	2	3	4	5
Clerk Typist*	Monthly	2,100.80	2,204.80	2,314.00	2,430.13	2,553.20
	Hourly	12.12	12.72	13.35	14.02	14.73
	Annual	25,209.60	26,457.60	27,768.00	29,161.60	30,638.40
City Clerk	Monthly	2,965.73	3,114.80	3,272.53	3,433.73	3,607.07
	Hourly	17.97	18.88	19.81	20.81	21.84
	Annual	35,588.80	37,377.60	39,270.40	41,204.80	43,284.80
Lead Mechanic*	Monthly	3,562.00	3,740.53	3,927.73	4,125.33	4,329.87
	Hourly	20.55	21.58	22.66	23.80	24.98
	Annual	42,744.00	44,886.40	47,132.80	49,504.00	51,958.40
Maintenance Worker I*	Monthly	2,457.87	2,579.20	2,707.47	2,844.40	2,986.53
	Hourly	14.18	14.88	15.62	16.41	17.23
	Annual	29,494.40	30,950.40	32,489.60	34,132.80	35,838.40
Maintenance Worker II*	Monthly	3,028.13	3,180.67	3,338.40	3,504.80	3,679.87
	Hourly	17.47	18.35	19.26	20.22	21.23
	Annual	36,337.60	38,168.00	40,060.80	42,057.60	44,158.40
Oil Recycling Coordinator	Monthly					2,114.67
	Hourly					12.20
	Annual					25,376.00
Operator in Training*	Monthly	2,778.53	2,917.20	3,062.80	3,215.33	3,376.53
	Hourly	16.03	16.83	17.67	18.55	19.48
	Annual	33,342.40	35,006.40	36,753.60	38,584.00	40,518.40
Operator II*	Monthly	3,719.73	3,905.20	4,099.33	4,305.60	4,518.80
	Hourly	21.46	22.53	23.65	24.84	26.07
	Annual	44,636.80	46,862.40	49,192.00	51,667.20	54,225.60
Operator III*	Monthly	4,199.87	4,411.33	4,631.47	4,862.00	5,106.40
	Hourly	24.23	25.45	26.72	28.05	29.46
	Annual	50,398.40	52,936.00	55,577.60	58,344.00	61,276.80
Chief Plant Operator*	Monthly	4,409.60	4,631.47	4,863.73	5,104.67	5,361.20
	Hourly	25.44	26.72	28.06	29.45	30.93
	Annual	52,915.20	55,577.60	58,364.80	61,256.00	64,334.40
Technical Services Administrator	Monthly	4,362.80	4,581.20	4,810.00	5,050.93	5,304.00
	Hourly	25.17	26.43	27.75	29.14	30.60
	Annual	52,353.60	54,974.40	57,720.00	60,611.20	63,648.00
Community Services Director	Monthly					6,500.00
	Hourly					37.50
	Annual					78,000.00
City Manager	Monthly					
	Hourly					
	Annual					

* Represented Position

**City of Colfax - Salary Range Schedule FY2014
July 1, 2014-June 30, 2015**

		Step				
		1	2	3	4	5
Clerk Typist*	Monthly	2,184.00	2,293.20	2,405.87	2,527.20	2,655.47
	Hourly	12.60	13.23	13.88	14.58	15.32
	Annual	26,208.00	27,518.40	28,870.40	30,326.40	31,865.60
City Clerk	Monthly	3,239.60	3,404.27	3,570.67	3,750.93	3,936.40
	Hourly	18.69	19.64	20.60	21.64	22.71
	Annual	38,875.20	40,851.20	42,848.00	45,011.20	47,236.80
Lead Mechanic*	Monthly	3,704.13	3,889.60	4,085.47	4,290.00	4,503.20
	Hourly	21.37	22.44	23.57	24.75	25.98
	Annual	44,449.60	46,675.20	49,025.60	51,480.00	54,038.40
Maintenance Worker I*	Monthly	2,556.67	2,683.20	2,814.93	2,958.80	3,106.13
	Hourly	14.75	15.48	16.24	17.07	17.92
	Annual	30,680.00	32,198.40	33,779.20	35,505.60	37,273.60
Maintenance Worker II*	Monthly	3,149.47	3,307.20	3,471.87	3,645.20	3,827.20
	Hourly	18.17	19.08	20.03	21.03	22.08
	Annual	37,793.60	39,686.40	41,662.40	43,742.40	45,926.40
Oil Recycling Coordinator	Monthly					2,199.25
	Hourly					12.69
	Annual					26,391.04
Operator in Training*	Monthly	2,889.47	3,033.33	3,185.87	3,343.60	3,511.73
	Hourly	16.67	17.50	18.38	19.29	20.26
	Annual	34,673.60	36,400.00	38,230.40	40,123.20	42,140.80
Operator II*	Monthly	3,868.80	4,061.20	4,264.00	4,477.20	4,699.07
	Hourly	22.32	23.43	24.60	25.83	27.11
	Annual	46,425.60	48,734.40	51,168.00	53,726.40	56,388.80
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	Hourly	25.20	26.47	27.79	29.17	30.64
	Annual	52,416.00	55,057.60	57,803.20	60,673.60	63,731.20
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	Hourly	26.46	27.79	29.18	30.63	32.17
	Annual	55,036.80	57,803.20	60,694.40	63,710.40	66,913.60
Technical Services Administrator	Monthly	4,537.87	4,764.93	5,002.40	5,253.73	5,515.47
	Hourly	26.18	27.49	28.86	30.31	31.82
	Annual	54,454.40	57,179.20	60,028.80	63,044.80	66,185.60
Community Services Director	Monthly					6,760.00
	Hourly					39.00
	Annual					81,120.00
City Manager	Monthly					
	Hourly					
	Annual					

* Represented Position



STAFF REPORT TO THE COLFAX CITY COUNCIL

103

FOR THE October 9, 2013 COUNCIL MEETING

FROM: Gabe Armstrong, Interim City Manager
Alfred A. "Mick" Cabral, City Attorney

PREPARED: August 21, 2013

SUBJECT: Conduct Discussion And Provide Direction To Staff Regarding Proposed Council Rules
Of Procedure

RECOMMENDED ACTION: Staff recommends that the Council discuss the proposed rules of procedure and provide direction to staff.

ISSUE STATEMENT AND DISCUSSION:

California cities are classified as general law cities or as charter cities. Colfax is a general law city organized as authorized by Government Code §34102. General law cities are subject to all constraints imposed by the general law of California.

Government Code §36813 allows the Council to establish rules for the conduct of its proceedings. The same statute permits the Council to punish a member of the Council or any other person for disorderly behavior at a meeting.

The law imposes few restrictions on the actual rules the Council can adopt for the conduct of its proceedings. The restrictions that exist are fairly obvious. For example, Government Code §54954 requires the Council to hold at least one regular meeting per month. The Council cannot adopt rules of procedure that allow for less than one regular meeting per month. The Brown Act governs the process for noticing and conducting meetings. The Council cannot adopt rules of procedure that modify the Brown Act's requirements. There are many similar examples. The relevant point is that the Council has considerable discretion to adopt local rules and is restrained only by the general statutory and case law applicable to the subject matter it proposes to locally regulate.

The rules of procedure submitted for consideration represent the first draft. Staff anticipates that every member of the Council, the City Attorney, staff and the public will suggest modifications and improvements to this initial draft. Therefore, this draft has been submitted for review and comment. The rules will be submitted for approval once all comments have been received and considered and Council is satisfied that they are appropriate adoption and implementation in Colfax.

FINANCIAL AND/OR POLICY IMPLICATIONS

Rules of procedure constitute a significant policy statement because, once adopted, they will govern many aspects of how the Council conducts its business. The draft rules warrant careful consideration before they are adopted.

SUPPORTING DOCUMENTS

City Council Rules of Procedures (Proposed – August 14, 2013)

COMMITTEE RECOMMENDATION

This report was not discussed by any committee.

CITY COUNCIL

RULES OF PROCEDURES

Proposed – August 14, 2013

TABLE OF CONTENTS

1. Authority
2. General Rules
3. Types of Meetings
4. Chairman and Duties
5. Order of Business and Agenda
6. Ordinances, Resolutions, and Motions
7. Creation of Committees, Boards and Commissions
8. Citizen's Rights
9. Amendments
10. Rules of Conduct

1. AUTHORITY

1.1 Legal Authority

The law of the State of California in general and Government Code §36813 in particular authorize the City of Colfax City Council to establish rules for the conduct of its proceedings. The following rules shall become effective on the day that the ordinance adopting them becomes effective. They shall remain in effect until such time as they are amended or new rules adopted in the manner provided by these rules and as allowed by law.

2. GENERAL RULES

2.1 Attendance

City Councilmembers are expected to attend all scheduled meetings. If absence is unavoidable, the City Manager or Mayor shall be notified as required by Colfax Municipal Code Section 2.04.020.

2.2 Ordinances

Confined to One Subject; Exceptions: No ordinance except an appropriation ordinance, an ordinance adopting or embodying an administrative or governmental code, or an ordinance adopting a code of ordinances, shall relate to more than one subject, which shall be clearly stated in its title.

2.3 Right of Floor for Council Members

Any member desiring to speak shall be recognized by the Chair of the meeting and shall confine their remarks to the subject under consideration or to be considered.

2.4 Right of Floor for Staff

The Chair will be attentive to staff's desire to provide professional advice and recommendations.

2.5 Right of Floor for Public

Members of the public wishing to comment must go to the podium to speak from the microphone at appropriately defined public comment periods during the meeting. All parties speaking shall present comments with courtesy and respect for all others attending the meeting.

1. Persons wishing to speak must announce their name and address.
2. The City Council will listen with respect and an open mind.
3. Council responses to speakers will be as follows:
 - a. Short answers by Council or staff as appropriate; or
 - b. Follow-up questions for clarification; or
 - c. Item is directed to staff for later action/follow-up; or
 - d. Item is placed on a future agenda
4. Conversation between the public and staff or the City Council will not be allowed.
5. A 3-minute time limit per speaker shall be enforced when there are numerous speakers addressing a single agenda item. The City Council (or Mayor?) Mayor, or majority of Council, shall have the right to limit the total amount of time allocated to a particular issue and for each individual speaker.

2.6 City Manager

The City Manager shall attend all meetings of the Council unless excused by the Mayor and Mayor Pro Tem. The City Manager shall designate at his/her discretion a staff representative to Subcommittees and Commission

meetings. The City Manager shall ensure the Council chambers is properly prepared by staff, including any furniture or technology that might be necessary for each meeting, and is maintained in good working order by staff.

2.7 City Attorney

The City Attorney shall attend all regular meetings of the Council unless excused by the Mayor and shall attend special meetings and workshops upon request. The City Attorney shall act as the Council's parliamentarian.

2.8 City Clerk

The City Clerk or his/her delegate shall attend all meetings of the Council unless excused by the Mayor or City Manager, and shall keep the official journal (minutes) and perform such other duties as may be requested by the Council or as otherwise specified in the Colfax Municipal Code.

2.9 Officers and Employees

Staff of the City shall attend Council meetings upon request of the City Manager when there is pertinent business from their departments on the Council agenda..

2.10 Rules of Order

"Roberts Rules of Order" are hereby adopted and shall govern the proceedings of Council meetings where they are not in conflict with state or federal law, the Colfax Municipal Code or these rules.

3. TYPES OF MEETINGS

3.1 Regular Meeting

The Council shall meet in the Council Chambers for regular meetings. Open session Council meetings are to commence at 7:00 p.m., or as close as reasonably possible thereto, on the second and fourth Wednesday of each month, unless otherwise specified in advance.

3.2 Special Meetings

Special meetings may be called by the Mayor or by a majority of the members of the Council. The Mayor or City Council shall make a finding that the issue cannot wait until the next regular meeting and/or the issue is so important and extensive that it should be discussed at a special meeting dedicated to the item. The call for a special meeting shall be filed with the City Clerk in written form and shall be delivered and posted as required by Government Code Section 54956, except that an announcement of a special meeting during any regular meeting at which all Council members are present shall be sufficient notice of such special meeting to the members of the Council. The call and notice of a special meeting shall specify the day, the hour, and the location of the special meeting and shall list the subject or subjects to be considered. No special meeting shall be held until at least twenty-four (24) hours after the call and notice is issued. Only such business may be transacted at a special meeting as may be listed in the call and notice for said meeting.

3.3. Emergency Meetings

An emergency meeting may be called when the Council determines that an emergency situation exists. At least one hour prior to the meeting, telephonic notice must be provided to all Council Members as well as all media outlets, which have requested that they receive notice of special meetings called pursuant to Government Code Section 54956.5. Emergency meetings may be held in closed session as permitted by law.

3.4 Adjourned Meetings

Any meeting of the Council may be adjourned to a later date and time, provided that no adjournment shall be for a longer period than until the next Regular Meeting.

3.5 Study Sessions

The Council may meet informally in Study Sessions open to the public at the call of the Mayor or a majority of the members of the Council. Any Study Session shall be noticed and conducted in the same manner as a special council meeting. A Study Session is for discussion only; no action can be taken by the Council at a Study Session.

3.6 Closed Sessions

Closed Sessions may be held in accordance with the provisions of the Brown Act and as otherwise allowed by law. Action taken on a matter in closed session must be reported out orally upon reconvening in open session as required by the Brown Act. A written summary of action taken shall be included in the minutes of the meeting at which the closed session is held.

3.7 Adjournment of Meetings

All City Council Meetings shall end no later than 11:00 p.m. with no new business beginning after 10:30 p.m. Agenda items which have commenced consideration before 11:00 p.m. shall be completed prior to adjournment which shall in no case extend beyond 12:00 a.m. Upon completion of that item the meeting shall be adjourned. Any agenda items not completed prior to adjournment will be continued to the next meeting agenda subject to section 3.4 above.

4. COUNCIL DUTIES, CHAIR, AND MAYORAL ROTATION

4.1 Duties and Authority of Chair

The Chair of City Council meetings shall be the Mayor. In the Mayor's absence, the Mayor Pro-Tem shall serve as chair for that meeting. The Chair at any meeting can be replaced by a Council member appointed by a majority of a quorum of the Council present and voting. If a majority of a quorum of the Council present and voting cannot agree on which member shall chair a meeting, then the member of the Council present and having the longest tenure on the Council shall chair the meeting.

4.1.1 Call to Order

The Chair shall call the meetings of the Council to order as close as reasonably possible to the hour specified in the agenda for commencement of the meeting. In the absence of both the Mayor and Mayor Pro-Tem, the senior Council Member who shall act as the temporary Chair shall call the meeting to order such that, if necessary, a new chair can be chosen immediately as described in section 4.1 above. Upon arrival of the Mayor or Mayor Pro Tem, the temporary Chair shall relinquish the chair immediately upon conclusion of the item of business being discussed when the Mayor or Mayor Pro Tem arrived.

4.1.3 Preservation of Order

The Mayor shall preserve order and decorum; prevent attacks on personalities or the impugning of members' motives, and confine all parties in debate to the question under discussion.

4.1.4 Points of Order

Point of Order may be used if rules appear to have been broken. If a Point of Order is made by any Council member, the Mayor shall make a ruling on that point of order, subject to the right of any member to request a vote of the entire City Council on the questions whether the determination of the Mayor should be sustained.

4.1.5 Questions to be stated

The Mayor shall state, or call on staff to state, all questions submitted for a vote, call for a vote on all such questions, and announce the decision. A roll call vote shall be taken upon the request of any Council member or as otherwise required by law.

4.1.6 Substitution for Chair

The Mayor may call on the Mayor Pro-Tem, or other Council Member, to temporarily chair any meeting. Such substitution shall not continue beyond adjournment.

4.1.7 Authority to Participate

The Chair may make or second any motion, present and discuss any matter as a member of the Council, vote on any question before the Council, and fully participate in Council decision making.

4.1.8 Execution of Documents

The Mayor, or in the Mayor's absence, the Mayor Pro Tem, shall sign all ordinances, resolutions and other documents necessitating the Mayor's signature unless the authority to execute such documents is lawfully dedicated to another City officer.

4.1.9 Other Powers of Chair

The Chair shall have and exercise such other powers and duties as are authorized by law.

4.2 Rights of Council to Discipline

Any deliberate assembly has the inherent right to make and enforce its own laws and to enforce its own rules and laws, including the discipline of a member of the deliberative body.

The City Council shall have a right to discipline, censure and punish a member where a majority of the entire Council finds that actions of a member are detrimental to the City of Colfax. Such discipline, after the Council duly notices and publicly conducts its investigation, and presents those results at a public hearing, can include, public censure, civil charges and, in grave or extreme cases, recommendation to the Colfax citizens at large for the removal of a sitting Council Member.

4.3 Timing of Selection of Mayor

Once each year the City Council shall select one of its members as Mayor and one of its members as Mayor Pro-Tem. During years in which a general municipal election is held in November, the selection of Mayor and Mayor Pro Tem shall occur immediately after the declaration of election results at the meeting at which the declaration of election results is made pursuant to Elections Code Sections 10262 and 10263, as amended or replaced from time-to-time. During years in which a general municipal election is not held in November, the selection of Mayor and Mayor Pro Tem shall occur at the last regular meeting of the City Council during the calendar year. The Mayor and Mayor Pro Tem shall serve a term of one year or until their successor is selected, whichever is earlier.

4.3.1 Appointing the Mayor by Council Vote

The Mayor and Mayor Pro Tem shall be chosen by majority vote of the total sitting Council. In order to be appointed as Mayor or Mayor Pro Tem, a member of the Council must receive the following affirmative votes which may include his/her vote: (1) Three (3) if there are four or five members of the Council at the time of the selection; or (2) Two (2) if there are three members of the Council at the time of the selection.

4.3.2 Eligibility to Serve as Mayor

Elected and appointed members of the City Council are eligible for appointment as Mayor or Mayor Pro Tem, subject to the following:

- (a) Elected members of the City Council shall serve before appointed members may serve.
- (b) These positions shall be filled based first on the seniority of fully and duly elected Council Members and then by the total number of votes each received at his/her most recent election as confirmed by the City Clerk and rotated until all elected City Council members have served as Mayor or Mayor Pro Tem.
- (c) A member appointed to the City Council may serve as Mayor or Mayor Pro Tem after each elected member of the City Council has served in those positions one time; or if an appointed member is the currently sitting Mayor Pro Tem.
- (d) The Mayor or Mayor Pro Tem may be removed from office at any time by the affirmative vote of a majority of the members of the City Council.

4.3.3 Inability to Serve as Mayor or Mayor Pro-Tem

In the event of a death, removal from office, extreme illness, or abdication, the City Council shall determine who shall serve as the Mayor or Mayor Pro-Tem for the term vacated based upon the rotation described in 4.8 above.

4.3.4 Appointment of Mayor Pro-Tem to Mayor

Upon completion of term as Mayor Pro-Tem, City Council shall appoint the Mayor Pro-Tem as Mayor for a term of one (1) year insofar as that appointment is consistent with 4.8 above.

5. ORDERS OF BUSINESS AND AGENDA

5.1 Order of Business

Shall be as in the agenda prepared by City Clerk as follows:

Colfax City Council Agenda

1. Open Closed Session
 - a. Call To Order
 - b. Roll Call
2. Public Comment – Closed Session Items
3. Closed Session Agenda
4. Opening of Regular Session
 - a. Pledge of Allegiance
 - b. Roll Call
 - c. Announcement of action taken during Closed Session
 - d. Approval of Agenda Order
5. Council Reports
6. Staff Reports
7. New Business Discussion
8. Consent Agenda
9. Presentations

10. Public Comment
11. Public Hearing
12. Council Business
13. Adjournment

5.2 **Agenda**

The City Clerk shall as contained in the Agenda prepare the order of business of each meeting. The Agenda and all Agenda related to be considered by the Council shall be delivered to members of the Council five calendar days [Note: this is quite a bit of time. The legal requirement is 72 hours for a regular meeting] prior to the meeting to which it pertains. The Agenda and all Agenda related reports shall be available on line, posted at identified public notice boards at City Hall and the Colfax Post Office, and distributed via email to any members of the public who request receipt of council agendas, five calendar days prior to the meeting to which it pertains. Any council member may request an agenda item through the City Manager, City Clerk and/or City Attorney. [Note: this does not address authority to place matters on or remove them from an agenda.]

5.2.1 **Supplemental Agenda**

A Supplemental Agenda and related materials may be distributed up to 72 hours before an agendized meeting upon a finding by the Mayor and the City Manager that the materials or the matter to be on the agenda came to the attention of the city after the five day agenda required by 5.2 above had been published and made available. [Note: these time limits may be impractical.]

5.3 **Presentation by Members of Council**

Matters that have not been placed on the agenda and do not relate directly to an agenda item shall not be discussed at a meeting by staff or members of the City Council, except that the Mayor and any Council Member may bring before the Council for scheduling any business or matter that is appropriate for future discussion. For the limited purpose of scheduling, the item may be described with enough sufficiency to allow the other members of the Council to determine whether the matter should be placed on a future agenda, and to set a date for future discussion.

5.4 **Process for Addressing Agenda Items before the City Council**

- Mayor reads the agenda item
- Staff presents their report
- Council questions staff
- Public Comments are heard
- Council discusses item
- A motion is made
- Final Council discussion
- Council votes or provides direction to Staff

5.5 **Consent Calendar**

The Consent Calendar is intended to allow the Council to approve multiple routine and non-controversial matters by motion, with no discussion required. Council members, staff, and members of the public can ask that an item be removed from the Consent Calendar for discussion, prior to a vote being taken on the Consent Calendar items.

No Item shall be placed on the Consent Calendar if that item relates to a contract, or expenditure or financial obligation in excess of \$25,000.00. Any item involving a contract, expenditure or financial obligation in excess of

\$25,000.00 must be scheduled as a regular agenda item with a staff report, and must be approved by separate resolution and a separate vote of the Council.

5.6 **Contracts or Expenditures over \$500,000**

Contracts or expenditures over \$500,000 shall be made available to the Council to study 14 days before the meeting on which the contract or expenditure is placed on the agenda. Facts and findings shall be made for the recommendation of approval of such expenditure or contract.

5.6.1 **Bidding of Contracts**

Competitive bidding (2 or more bids) shall be enforced on building as well as professional service contracts and consultants, unless staff can support facts and findings that no other provider is available who can perform the specialized work required. [Note: this can be problematic. I suggest something like "Competitive Bidding shall be utilized as required by law." This issue became problematic for prior Councils.]

5.7 **Reading of Minutes**

Minutes belong to the City Council. Unless a member of the Council requests a reading of the minutes of a Council meeting, such minutes may be approved without reading if the City Clerk previously furnished each member with a copy thereof. On Consent Calendar, approval of minutes shall be by a standard majority vote and items can be pulled for discussion and reinserted, or pulled for discussion and a separate vote taken.

6. **ORDINANCES**

6.1 **Ordinances Deferred**

Emergencies and Appropriations: Ordinances introduced/ read at a Council meeting shall not be formally acted upon until at least the next official meeting, except that urgency ordinances that qualify to take effect immediately under Government Code Section 36937 and similar provisions of law may be acted on immediately. A standard majority affirmative vote of the Council shall be required for the final passage of an urgency ordinance. Urgency is defined in Government Code Section 36937.

6.2 **Reading by Title Only**

Upon being introduced, each proposed ordinance shall be read by title only, unless any member of the Council requests a full reading of the ordinance.

6.3 **Majority Vote Required**

An affirmative vote of at least a majority of the members of the Council shall be necessary to pass an ordinance, but a resolution or order for the payment of money, motion, or any other proposition may be adopted by a majority voting on the issue except as otherwise specified by City Ordinance or state law. When any vote is called, each Council Member shall respond "yes (aye)," "no", "abstain", or "pass". Any Council Member who responds, "pass" will be given the opportunity at the end of the roll call to change their vote. Any "pass" response not changed shall be recorded as an abstention.

6.4 **Tie Vote**

In the event of a tie in votes on any motion, the motion shall be considered lost. unless the chair votes for the affirmative. The chair may also cast a negative vote to make a tie and thus defeat the measure. [Note: this is problematic because the Mayor can vote in any case.]

6.5 Requests for Preparation of Ordinances or Issuance of Legal Opinions

Any member of the City Council may request the City Manager to place the proposed adoption of an ordinance on the City Council agenda for discussion purposes. Upon direction by a Council Member, the City Attorney shall review proposed ordinances for consideration and adoption by the City Council. Upon direction by a Council Member, the City Attorney shall render legal opinions, either written or oral, on questions of law. Individual members of the City Council may consult with the City Attorney informally regarding legal issues pertaining to City business, but all legal inquiries requiring a substantial commitment of City Attorney time must be authorized by the City Council as a whole, except that an individual City Council member may request written legal advice regarding a potential conflict of interest which may affect that Council member's ability to participate in an upcoming decision. All written legal opinions and ordinances prepared by the City Attorney shall be provided to the City Manager, who shall distribute them to all members of the City Council so that they may be fully informed of the status of City affairs.

7. CREATION OF COMMITTEES, BOARDS AND COMMISSIONS

7.1 Citizen Committees, Boards and Commissions

The Council may create committees, boards, sub-committees and commissions to assist in the conduct of the operation of the City government with such duties as the Council may specify which are consistent with the City Code.

7.2 Membership and Selections

Membership and selection of members shall be appointed by the Mayor if not otherwise specified by the City's Municipal 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.

7.3 Removal of Members of Boards and Commissions

The Council may remove any member of any board or commission which it has created or as created by the City's Municipal Code by a vote of at least a majority of the Council.

7.4 Sub-Committees - Operation of City Council Sub-Committees

The City Council shall utilize the Sub-Committee process to assist the work of staff and to conduct preliminary policy evaluation for purpose of recommendation to the full City Council. Such Sub-Committee shall have no authority to resolve and act on policy issues and shall not act as a committee of the whole Council.

7.5 Citizen Advisory Boards

A citizen's advisory commission, along with a hired consultant, shall investigate and advise proactively the council on matters of serious integrity allegations, rather than allowing the matter to progress into an investigation by an outside law enforcement agency or the grand jury. The findings and recommendations should then be made available to the public in a report and discussed openly in a city council meeting. A citizen's selection panel shall be formed to advise the council in choosing future city managers and city attorneys, as needed. [Note: this bears discussion.]

8. CITIZENS' RIGHTS

8.1 Public Comment

Any person desiring to address the Council, Commission, Subcommittee or other established body shall first be recognized by the Chair and shall announce their name and address prior to making comment. No person, other than members of the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through the members of the Council.

8.2 Time Limits on Speakers

Disruptive Conduct: The Chair may establish reasonable limits on the amount of time allocated for public testimony on particular issues and for each individual speakers. Speaker time limits should be uniformly applied, so that all members of the public speaking to a particular item receive the same amount of speaking time. The Council shall not set arbitrary time limits, or limit speaker time or grant additional speaker time based on who is speaking or what the speaker has to say.

In addition, The Mayor may rule a speaker to be out of order if that speaker engages in disorderly conduct which disrupts, disturbs or otherwise is disruptive and impedes the orderly conduct of City Council business. A public speaker may be ruled out of order for, among other things; a) uttering loud, threatening, personal or abusive language, continuously interrupting other speakers or speaking out of turn. ; b) by being unduly repetitious; c) by making comments which are not relevant to the City Council's business; or d) by making any superfluous demonstration deemed to be made predominately for the embarrassment of any citizen, staff, or Council Member by any of the same.

8.3 Reading of Protests

Interested persons, or their authorized representatives, may address the Council for the reading of protests, petitions, or communications relating to any matter over which the Council has control when the item is under consideration by the Council., if a majority of the Council present agrees to let them be heard.

8.4 Mayor May Appoint a Committee or Refer Citizen's Complaints

The Mayor may appoint a committee of two members of the City Council to hear Citizens' complaints as the same are referred thereto by the Mayor or may refer Citizens' complaints to an Executive Session of the City Council, whenever the subject meets the criteria specified in the Brown Act. If an appropriate committee of two members of the City Council already exist that properly relates to the subject matter of Citizens' Complaints, the matter may be instead referred to that extant committee as deemed appropriate by the Mayor.

8.5 Written Communications

Interested parties, or their authorized representatives, may address the Council by written communication in regard to any matter concerning the City's business or over which the Council has control at anytime by direct mail, email, or by addressing the City Clerk and copies will be distributed to the Council Members.

9. AMENDMENTS

9.1 Amendment of These Rules

These rules may be amended, or new rules adopted, by a super majority vote of all members by resolution of the Council, provided that the proposed amendments or new rules shall have been introduced into the record at a prior Council meeting.

10. RULES OF CONDUCT

1. Council Members should be prepared to attend all meetings of the City Council.
2. Council Members should prepare themselves for all meetings by reading and reviewing the material provided to them.
3. Members of the City Council should be aware that all information covered in Closed Session is confidential and not for public discussion.
4. Council Members are encouraged to set up appointments with the City Manager, Department Heads and staff, if possible. Section 2-3.105 of the Municipal Code should always be considered when working with staff at City Hall.
5. Council Members conduct when attending meetings, as a representative of the City of Colfax, should always reflect the highest standards.
6. Members of the City Council should remember that they are representing the City of Colfax when attending events, not just themselves. The City Manager shall be advised of any speaking engagement at which a Council Member will speak about City Business within 48 hours of that engagement. The City Manager shall inform the remainder of City Council of those engagements. Council Members should also be aware that, contrary to any verbal disclaimers, audience members will still frequently attribute any personal views of City Business and an opinion of the City of Colfax or of the majority of City Council. In that regard, Council Members should maintain awareness of that likelihood and act with appropriate discretion.