

CITY OF ATWATER CITY COUNCIL AGENDA

Council Chambers
750 Bellevue Road
Atwater, California

October 9, 2017

REGULAR SESSION: (Council Chambers)

6:00 PM



CALL TO ORDER:

PLEDGE OF ALLEGIANCE TO THE FLAG:

INVOCATION:

Invocation by Police Chaplain McClellan

ROLL CALL:

Creighton ____, **Raymond** ____, **Vierra** ____, **Vineyard** ____, **Price**__

SUBSEQUENT NEED ITEMS: (The City Clerk shall announce any requests for items requiring immediate action subsequent to the posting of the agenda. Subsequent need items require a two-thirds vote of the members of the City Council present at the meeting.)

APPROVAL OF AGENDA AS POSTED OR AS AMENDED: (This is the time for the City Council to remove items from the agenda or to change the order of the agenda.)

Staff's Recommendation: Motion to approve agenda as posted or as amended.

PRESENTATIONS:

- **Introduction of Merced County Association of Governments (MCAG) Executive Director Patrick Pittenger and presentation of the Regional Transportation Plan** (MCAG Senior Planner, Matt Fell)
- **Monthly verbal report by Merced County District 3 Supervisor McDaniel**

COMMENTS FROM THE PUBLIC:

NOTICE TO THE PUBLIC

At this time any person may comment on any item which is not on the agenda. Please state your name and address for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda.

To comment on an item that is **on** the agenda, please wait until the item is read for consideration; please limit comments to a maximum of five (5) minutes.

Civility is expected from members of the public during the meeting. For more efficient use of time, disruptive behavior will not be tolerated. While you may not agree with what an individual is saying, please treat everyone with courtesy and respect.

CONSENT CALENDAR:

NOTICE TO THE PUBLIC

Background information has been provided on all matters listed under the Consent Calendar, and these items are considered to be routine. All items under the Consent Calendar are normally approved by one motion. If discussion is requested on any item, that item will be removed from the Consent Calendar for separate action.

WARRANTS:

1. October 9, 2017

Staff's Recommendation: Approval of warrants as listed.

MINUTES: (City Council)

2. Regular meeting, September 25, 2017

Staff's Recommendation: Approval of minutes as listed.

MINUTES: (Community Development and Resources Commission)

3. Regular meeting, August 16, 2017

Staff's Recommendation: Approval of minutes as listed.

AGREEMENTS:

4. Approving an Agreement with Merced Union High School District regarding School Resource Officers

Staff's Recommendation: Approval of Agreement, in a form approved by the City Attorney, with Merced Union High School District regarding School Resource Officers; and authorizing and directing the City Manager to execute the Agreement on behalf of the City.

PUBLIC IMPROVEMENTS:

5. Accepting the two (2) new Title 23, Tier 4 Dump Trucks project as complete (Grants Manager Waterman)

Staff's Recommendation: Acceptance of work done under contract with Fred M. Boerner Motor Co., Huntington Park, California to manufacture and deliver two (2) new Title 23, Tier 4 Dump Trucks, City Project No. 14-11, Bid Call No. 676-17; authorizes the City Manager to sign a Notice of Completion and have it recorded on behalf of the City; and authorizes final payment in the amount of \$214,750.18.

ORDINANCES (WAIVING SECOND READING AND ADOPTION):

6. **Waiving the second reading and adopting Ordinance No. CS 989 amending Chapter 2.10, "General Municipal Elections" of Title 2, "Administration and Personnel," of the Atwater Municipal Code," to transition from an at-large election system to a district-based system for City Council members (Interim City Manager Bramble)**

Staff's Recommendation: Waives the second reading and adopts Ordinance No. CS 989 amending Chapter 2.10, "General Municipal Elections" of Title 2, "Administration and Personnel," of the Atwater Municipal Code," to transition from an at-large election system to a district-based system for City Council members.

CLAIMS AGAINST THE CITY: (Note to the Public: Portions of this claim have been redacted because they do not affect the City Council's ability to make a decision on the claim. The claim however, is a public document and can be made available upon request by members of the public. If you have any questions or would like to request this document, please contact the City Clerk's office at (209) 357-6205).

7. **Claim No. 2017-13**

Staff's Recommendation: After consideration and investigation, it is staff's recommendation that Claim No. 2017-13 be rejected.

8. **Claim No. 2017-14**

Staff's Recommendation: After consideration and investigation, it is staff's recommendation that Claim No. 2017-14 be rejected.

INFORMATIONAL ITEMS ONLY (NO ACTION REQUIRED):

9. **Police Department activities and projects for the month of September, 2017 (Police Chief Joseph)**
10. **Fire Department activities and projects for the month of September, 2017 (CAL FIRE Battalion Chief Wight)**
11. **Water Well Levels for the months of September, 2017 (Acting Public Works Director Shaw)**

INTERIM CITY MANAGER REPORTS/UPDATES:

12. Verbal report regarding Purchasing Manual

PUBLIC HEARINGS:

13. Waiving the first reading and introducing Ordinance No. CS 982 amending the City of Atwater Municipal Code Title 8, Chapter 8.60, ‘Medical Marijuana’; Title 17, Chapter 17.06, to address commercial marijuana operations in the context of crop cultivation and industry, industrial operation; and Title 17, Chapter 17.75, of the City’s Development Code to add a new Section 17.75.120 pertaining to the standards for commercial marijuana operations

Recommendation: Open the public hearing and take any testimony given; and

Motion to waive the first reading and introduce Ordinance No. CS 982 amending the Atwater Municipal Code Title 8, Chapter 8.60, “Medical Marijuana”; Title 17, Chapter 17.06, to address commercial marijuana operations in the context of crop cultivation and industry, industrial operation; and Title 17, Chapter 17.75, of the City’s Development Code to add a new Section 17.75.120 pertaining to the standards for commercial marijuana operations.

14. Waiving the first reading and introducing Ordinance No. CS 990 amending Chapter 5.54 “Fireworks,” of Title 5, “Business Taxes, Licenses, and Regulations” of the Atwater Municipal Code

Recommendation: Open the public hearing and take any testimony given; and

Motion to waive the first reading and introduce Ordinance No. CS 990 amending Chapter 5.54 “Fireworks,” of Title 5, “Business Taxes, Licenses, and Regulations” of the Atwater Municipal Code.

15. Appealing the decision of the Community Development and Resources Commission to deny issuance of Conditional Use Permit No. 549-17 (1485 Broadway Avenue)

Recommendation: Open the public hearing and take any testimony given; and

Motion to adopt Resolution No. 2986-17, granting the appeal and: (a) overturning the decision of the Community Development and Resources Commission (“CDRC”) to deny the application for Conditional Use Permit No. 549-17 on behalf of 89 Cent Plus Store located at 1485 Broadway Avenue (“Store”) to permit the sale of alcoholic beverages, and (b) making a determination that the public convenience or necessity would be met by

issuance of a Type 20 license at the Store; or adopting Resolution No. 2987-17, denying the appeal and upholding the decision of the CDRC to deny the application for Conditional Use Permit No. 549-17 and to deny the Applicant's request for a determination by the City Council that the public convenience or necessity would be met by issuance of a Type 20 license at the Store.

CITY COUNCIL MATTERS:

16. City Council comments

ADJOURNMENT:

CERTIFICATION:

I, Don Hyler III, City Clerk/Board Secretary of the City of Atwater, do hereby certify that a copy of the foregoing agenda was posted at City Hall a minimum of 72 hours prior to the meeting.



DON HYLER III, CITY CLERK
BOARD SECRETARY

SB 343 NOTICE

In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection in the office of the City Clerk at City Hall during normal business hours at 750 Bellevue Road.

If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda at 750 Bellevue Road.



In compliance with the Federal Americans with Disabilities Act of 1990, upon request, the agenda can be provided in an alternative format to accommodate special needs. If you require special accommodations to participate in a City Council, Commission, or Committee meeting due to a disability, please contact the City Clerk's Office a minimum of three (3) business days in advance of the meeting at 357-6205. You may also send the request by email to msl@atwater.org.

~ October 2017 ~

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6 City Hall closed	7
8	9 City Council Meeting - 6:00 PM	10	11	12	13 City Hall closed	14
15	16	17	18 Community Development & Resources Commission Meeting - 6:00 PM	19	20 City Hall closed	21
22	23 Audit & Finance Committee Meeting - 4:00 PM City Council Meeting - 6:00 PM	24	25	26 Merced County District 3 Supervisor McDaniel "Mobile" Office Hours - 1:30 - 3:30 PM	27 City Hall closed	28 Fall Clean Up Day 7:00 AM - 2:00 PM
29	30	31	Notes:			

~ November 2017 ~

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3 City Hall closed	4
			5 Daylight Savings Time Ends	6	7	8
12	13 City Council Meeting - 6:00 PM	14	15 Community Development & Resources Commission Meeting - 6:00 PM	16	17 City Hall closed	18
19	20	21	22 City Holiday Thanksgiving	23 City Holiday Thanksgiving Trash pick up delayed 1 day	24 City Hall closed	25
26	27	28	29	30	Notes:	



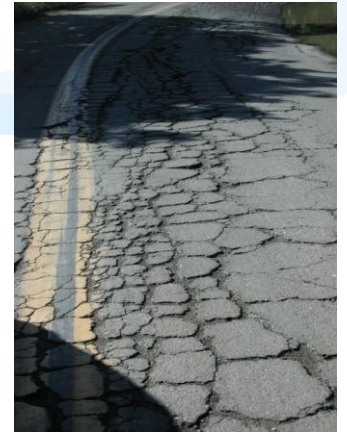
Regional Transportation Plan Update

Gustine – October 3, 2017

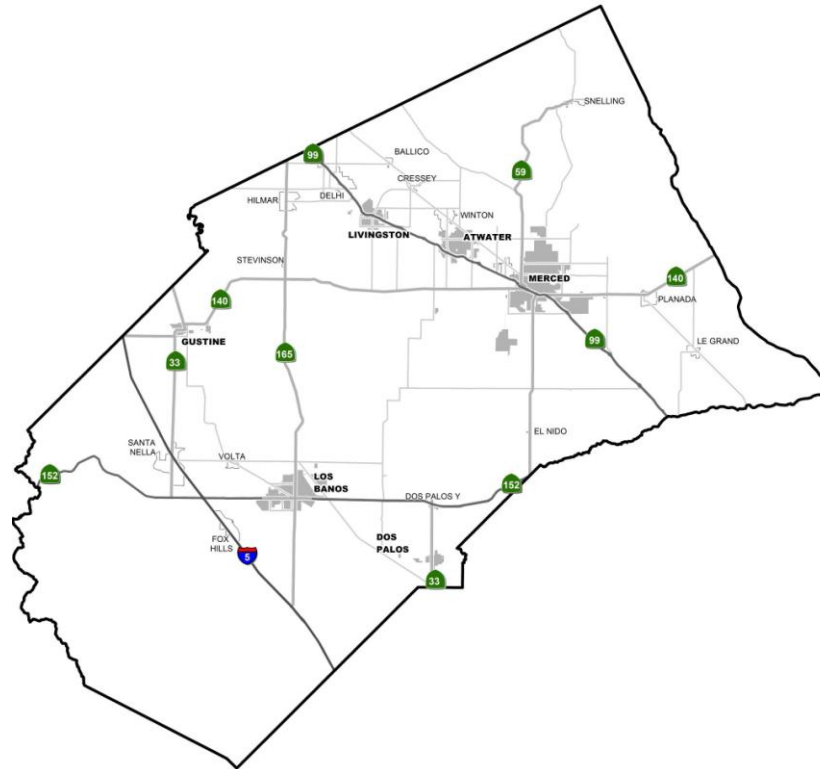


What is the RTP?

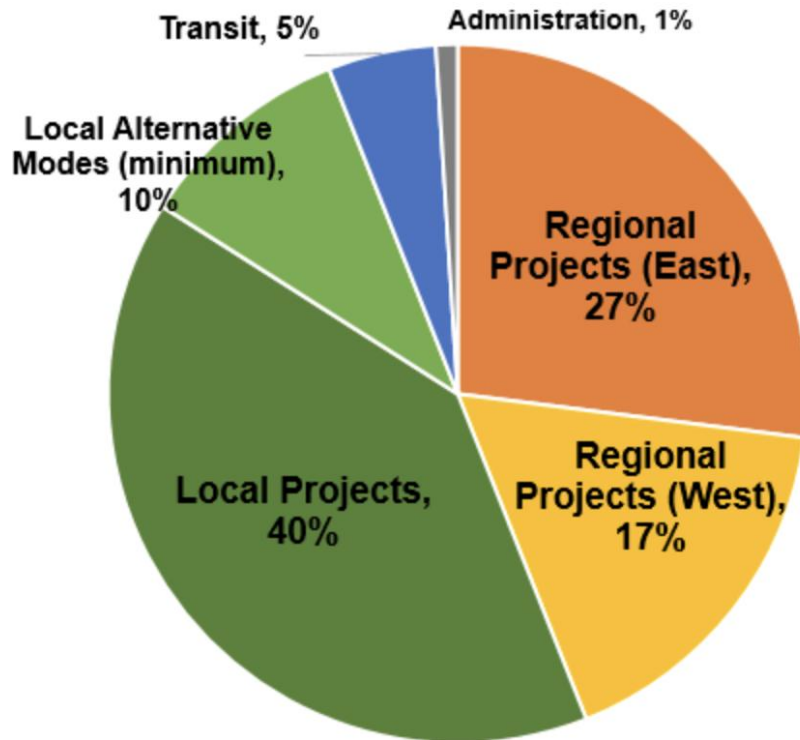
- Regional Transportation Plan
- Covers 25 years (2018-2042)
- Guides transportation investments
- Regional issues, multiple modes
- Link with land use, housing, employment
- Federal and State laws and rules



Regional Planning



The Good News!



Measure V Passed!
(County voters)

SB1 Passed!
(State Legislature & Governor)

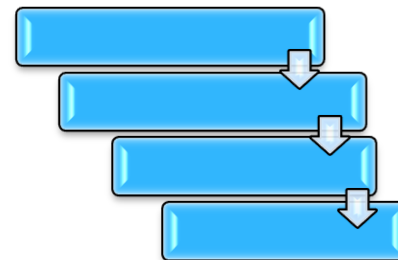
Outreach & Timeline

Outreach

- Public Workshops
 - ✓ July 2017
 - October 2017
 - March-April 2018
- Presentations
 - Cities and County
 - Community Groups
 - Focus Groups
- Website
- Online surveys

Timeline

- Scenarios – October 2017
- MCAG Board – November 2017
- Draft RTP – March 2018
- Final Draft – June/July 2018



Public Workshops – Round 2

Monday, October 23

Los Banos
City Council Chambers
520 J Street
Los Banos, CA
6:30 PM – 8:30 PM

Wednesday, October 25

Livingston
City Council Chambers
1416 C Street
Livingston, CA
6:30 PM – 8:30 PM

Thursday, November 2

Merced
City Council Chambers
678 W 18th Street
Merced, CA
6:30 PM – 8:30 PM

STEP 1 For each goal, please rank the scenarios by your preference, with 1 being the most preferable and 4 being the least preferable.

STEP 2 Rank the goals listed by how important you think the goal is to the future of the region with 1 being the most important and 7 being the least important. Please use each number only once.

	Historical Trend	New Trend	Moderate Change	More Change
Example:	3	1	4	2
<input type="radio"/> Economic & Community Viability				
<input type="radio"/> Social Equity				
<input type="radio"/> Environmental Quality				
<input type="radio"/> Sustainable Development Pattern				
<input type="radio"/> Mobility & Accessibility				
<input type="radio"/> Health & Safety				
<input type="radio"/> System Preservation				

STEP 3 Overall Preference: Rank the scenarios based on your overall preference.

- Compare four scenarios of future transportation and land use
 - Traffic, housing, quality of life
- Vote!

www.MercedRegionalVision.com

The screenshot shows the homepage of the Merced County Regional Vision website. At the top, there is a navigation menu with links for Home, Workshops and Meetings, Virtual Workshop, Document Library, and Questions?. Below the navigation is the Merced County Regional Vision logo, which features a stylized green and blue landscape with a dotted orange arc above it. The text 'Merced County Regional Vision' is prominently displayed, with 'Regional Vision' in a larger, bold font. Below the logo is the tagline 'People. Choices. Community.'.

The main content area is divided into two columns. The left column contains a paragraph of text: 'The Merced County Association of Governments is beginning the process of updating the Merced County Regional Vision. This is a long range planning document that will provide the framework for investment in roads, freeways, public transit like buses, bike trails and other ways people move around our County for the next 25 years. It includes a plan to accommodate the region's future housing needs and help us comply with State-mandated legislation to reduce greenhouse gases (SB375). Merced County Regional Vision accomplishes three main tasks:'.

The right column features an 'Upcoming events' section with a dark blue header. It lists three events:

- Oct 23 Mon**: Regional Transportation Plan Workshop: Los Banos
6:30pm-8:30pm
520 J Street, Los Banos, CA
[Read more...](#)
- Oct 25 Wed**: Regional Transportation Plan Workshop: Livingston
6:30pm-8:30pm
1416 C Street, Livingston, CA
[Read more...](#)
- Nov 2 Thu**: Regional Transportation Plan Workshop: Merced
6:30pm-8:30pm
678 W 18th Street, Merced, CA
[Read more...](#)

Questions? Comments?

- * Kendall Flint, Outreach Task Manager
Regional Government Services
kflint@rgs.ca.gov
(650) 455-1201
- * Matt Fell, Project Manager
MCAG
(209) 723-3153 Ext. 128
matt.fell@mcagov.org

WARRANTS SUMMARY FOR OCTOBER 9, 2017

TOTAL OF WARRANTS (FROM WARRANT REPORT)				\$ 190,153.87
ADDITIONAL WARRANTS (THESE AMOUNTS ARE NOT INCLUDED IN TOTAL WARRANTS)				

DATE	DESCRIPTION	AMOUNT
	Prewrittens included in this current warrant run.	\$ (17,234.24)
9/28/2017	PERS Retirement EFT 9/7/17-9/20/17	\$40,874.47
9/28/2017	Retiree Medical Reimbursement-OCT 2017	\$29,326.51
10/2/2017	AFLAC-SEPT 2017	\$763.40
9/1/2017	Dental Claims/Admin.-SEPT 2017	\$ 4,802.12
	TOTAL ADDITIONAL WARRANTS	<u>\$ 58,532.26</u>

GRAND TOTAL OF WARRANTS PAID ===== \$248,686.13

INFORMATIONAL ONLY (INCLUDED IN THE TOTAL WARRANTS TOTAL)

DATE	DESCRIPTION	AMOUNT	
9/28/2017	Net Payroll	\$154,274.60	\$215,969.82 Total Payroll
9/28/2017	Federal Taxes	\$54,910.75	
9/28/2017	State Taxes	\$6,784.47	
9/28/2017	Payroll Deductions	\$2,304.92	
	TOTAL INFORMATIONAL WARRANTS	<u><u>\$218,274.74</u></u>	



 CITY TREASURER

Accounts Payable

Checks for Approval

User: jdaniel
 Printed: 10/4/2017 - 1:58 PM

Prewritten



City of
Atwater
 Community Pride City Wide

750 Bellevue Road, Atwater CA 95301

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
71405	09/25/2017	General Fund	Training	CACEO		384.00
71405	09/25/2017	General Fund	Training	CACEO		469.00
						Check Total:
71406	09/25/2017	General Fund	Adult Slo-Pitch Softball	THOMAS E. GOFF		50.00
						Check Total:
71407	09/25/2017	Sanitation Enterprise	Accounts Payable	JACOLYN MARSHALL		13.88
71407	09/25/2017	Water Enterprise Fund	Accounts Payable	JACOLYN MARSHALL		21.72
71407	09/25/2017	Sanitation Enterprise	Accounts Payable	JACOLYN MARSHALL		4.32
71407	09/25/2017	Sewer Enterprise Fund	Accounts Payable	JACOLYN MARSHALL		41.55
						Check Total:
71408	09/25/2017	General Fund	Adult Slo-Pitch Softball	ROBERT L. MARTINEZ		200.00
						Check Total:
71409	09/25/2017	General Fund	Adult Slo-Pitch Softball	FERNANDO PERALES		75.00
						Check Total:
71410	09/25/2017	General Fund	Training	FABIAN VELAZQUEZ		967.25
						Check Total:
71411	09/25/2017	General Fund	Adult Slo-Pitch Softball	CLINTON WILLIAMS		125.00
71411	09/25/2017	General Fund	Adult Slo-Pitch Softball	CLINTON WILLIAMS		125.00
						Check Total:
71412	09/26/2017	Internal Service Fund	Professional Services	COLEMAN HEATING & A/C		238.50
71412	09/26/2017	Internal Service Fund	Professional Services	COLEMAN HEATING & A/C		196.00
71412	09/26/2017	Internal Service Fund	Professional Services	COLEMAN HEATING & A/C		185.00
71412	09/26/2017	Internal Service Fund	Professional Services	COLEMAN HEATING & A/C		135.00
71412	09/26/2017	Internal Service Fund	Special Departmental Expense	COLEMAN HEATING & A/C		550.36

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	41.56
71425	10/02/2017	General Fund	Garnishments	FRANCHISE TAX BOARD		50.00
71425	10/02/2017	General Fund	Garnishments	FRANCHISE TAX BOARD		497.80
					Check Total:	547.80
71426	10/02/2017	General Fund	Garnishments	MERCED COUNTY SHERIFF'S OFFICE		150.00
					Check Total:	150.00
71427	10/02/2017	General Fund	Pre-Paid Legal	PRE-PAID LEGAL SERVICES		28.91
					Check Total:	28.91
71428	10/02/2017	General Fund	Garnishments	STATE DISBURSEMENT UNIT		712.61
					Check Total:	712.61
71429	10/02/2017	General Fund	Deferred Compensation	VANTAGEPOINT TRANSFER AGT-457		50.00
					Check Total:	50.00
					Report Total:	17,234.24

Accounts Payable

Checks for Approval

User: jdaniel
 Printed: 10/4/2017 - 2:01 PM



City of
Atwater
 Community Pride City Wide

750 Bellevue Road, Atwater CA 95301

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
71430 ✓	10/09/2017	General Fund	Professional Services	ABS PRESORT, INC.		1,767.44
71430	10/09/2017	General Fund	Office Supplies	ABS PRESORT, INC.		679.61
71430	10/09/2017	General Fund	Office Supplies	ABS PRESORT, INC.		2,700.00
					Check Total:	5,147.05
71431 ✓	10/09/2017	General Fund	Office Supplies	ALLIED WEST PRINTING		205.57
					Check Total:	205.57
71432 ✓	10/09/2017	General Fund	Towing Fees	ALLWAYS TOWING, L.L.C.		60.00
71432	10/09/2017	General Fund	Towing Fees	ALLWAYS TOWING, L.L.C.		200.00
71432	10/09/2017	General Fund	Towing Fees	ALLWAYS TOWING, L.L.C.		160.00
71432	10/09/2017	General Fund	Towing Fees	ALLWAYS TOWING, L.L.C.		200.00
					Check Total:	620.00
71433 ✓	10/09/2017	Employee Benefits Fund	Health Insurance, Retirees	AMERICAN REPUBLIC		424.89
					Check Total:	424.89
71434 ✓	10/09/2017	Internal Service Fund	Professional Services	ATWATER CHIROPRACTIC, INC.		100.00
71434	10/09/2017	General Fund	Special Departmental Expense	ATWATER CHIROPRACTIC, INC.		225.00
71434	10/09/2017	Water Enterprise Fund	Professional Services	ATWATER CHIROPRACTIC, INC.		100.00
71434	10/09/2017	Water Enterprise Fund	Professional Services	ATWATER CHIROPRACTIC, INC.		230.00
71434	10/09/2017	Sewer Enterprise Fund	Special Departmental Expense	ATWATER CHIROPRACTIC, INC.		110.00
					Check Total:	765.00
71435 ✓	10/09/2017	Internal Service Fund	Operations & Maintenance	ATWATER PRO GLASS		262.61
71435	10/09/2017	Internal Service Fund	Operations & Maintenance	ATWATER PRO GLASS		25.00
					Check Total:	287.61
71436 ✓	10/09/2017	Internal Service Fund	Operations & Maintenance	AUTOZONE STORE #5506		259.67
					Check Total:	259.67
71437 ✓	10/09/2017	Gas Tax/Street Improvement	Professional Services	BAKER SUPPLIES AND REPAIRS		202.54

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
71450 ✓	10/09/2017	General Fund	Uniform & Clothing Expense	ELITE UNIFORMS	Check Total:	2,824.15
						118.07
71451 ✓	10/09/2017	Ferrari Ranch Project Fund	Professional Services	EMC PLANNING GROUP INC	Check Total:	118.07
						3,497.65
71452 ✓	10/09/2017	Measure H Fund	Machinery & Equipment	EMERGENCY VEHICLE OUTFITTERS	Check Total:	3,497.65
71452	10/09/2017	Measure H Fund	Machinery & Equipment	EMERGENCY VEHICLE OUTFITTERS		12,817.57
						12,817.57
71453 ✓	10/09/2017	General Fund	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCE	Check Total:	25,635.14
71453	10/09/2017	Price Annexation LMA	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCE		2,649.25
71453	10/09/2017	Gas Tax/Street Improvement	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCE		349.18
						554.45
71454 ✓	10/09/2017	Internal Service Fund	Operations & Maintenance	FASTENAL COMPANY	Check Total:	3,552.88
						38.16
71455 ✓	10/09/2017	General Fund	City County Dinner	GARY FRAGO	Check Total:	38.16
						45.00
71456 ✓	10/09/2017	General Fund	Special Departmental Expense	DONALD GARCIA	Check Total:	45.00
						1,075.87
71457 ✓	10/09/2017	Internal Service Fund	Operations & Maintenance	GARTON TRACTOR INC	Check Total:	1,075.87
						326.70
71458 ✓	10/09/2017	General Fund	Special Departmental Expense	GOLDEN WEST INDUSTRIAL SUPPLY	Check Total:	326.70
						327.11
71459 ✓	10/09/2017	Internal Service Fund	Special Departmental Expense	HOFFMAN ELECTRONIC SYSTEMS	Check Total:	327.11
						104.85
71460 ✓	10/09/2017	Gas Tax/Street Improvement	Special Departmental Expense	INTERSTATE SALES	Check Total:	104.85
						171.04
71461 ✓	10/09/2017	Internal Service Fund	Professional Services	JACK'S R BETTER INC.	Check Total:	171.04
						88.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	400.00
71470 ✓	10/09/2017	Internal Service Fund	Operations & Maintenance	MOORE'S AUTOMOTIVE LLC		423.87
					Check Total:	423.87
71471 ✓	10/09/2017	Internal Service Fund	Operations & Maintenance	MUNICIPAL MAINTENANCE EQUIP.		1,169.87
					Check Total:	1,169.87
71472 ✓	10/09/2017	General Fund	Special Departmental Expense	THE OFFICE CITY		100.61
71472	10/09/2017	General Fund	Office Supplies	THE OFFICE CITY		142.41
					Check Total:	243.02
71473 ✓	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		30.29
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		206.40
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		14.99
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		58.92
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		15.48
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		155.04
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		14.99
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-14.99
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		58.43
71473	10/09/2017	Internal Service Fund	Small Tools	O'REILLY AUTO PARTS		200.31
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		9.11
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		11.33
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		21.54
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		298.46
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		9.17
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		27.24
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		23.49
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		132.13
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		63.46
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-53.07
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-7.58
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		198.54
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-128.18
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-75.79
71473	10/09/2017	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		7.35
					Check Total:	1,277.06
71474 ✓	10/09/2017	Internal Service Fund	Special Departmental Expense	PRESTON'S LOCK & KEY		20.03
71474	10/09/2017	General Fund	Special Departmental Expense	PRESTON'S LOCK & KEY		88.23

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
71486	10/09/2017	General Fund	Communications	TEN-FOUR COMMUNICATIONS		182.79
					Check Total:	182.79
71487	10/09/2017	Water Enterprise Fund	Professional Services	THOMAS H. TERPSTRA		754.50
71487	10/09/2017	General Fund	Professional Services	THOMAS H. TERPSTRA		26,195.42
71487	10/09/2017	Sewer Enterprise Fund	Professional Services	THOMAS H. TERPSTRA		1,395.80
71487	10/09/2017	Risk Management Fund	Professional Services	THOMAS H. TERPSTRA		9,871.18
					Check Total:	38,216.90
71488	10/09/2017	Internal Service Fund	Operations & Maintenance	TESEI PETROLEUM, INC.		2,227.94
71488	10/09/2017	Internal Service Fund	Operations & Maintenance	TESEI PETROLEUM, INC.		9,092.41
71488	10/09/2017	Internal Service Fund	Operations & Maintenance	TESEI PETROLEUM, INC.		1,857.55
71488	10/09/2017	Internal Service Fund	Operations & Maintenance	TESEI PETROLEUM, INC.		8,504.72
					Check Total:	21,682.62
71489	10/09/2017	General Fund	Professional Services	THE SPYGLASS GROUP, LLC		17,960.55
					Check Total:	17,960.55
71490	10/09/2017	Information Technology Fund	Special Departmental Expense	TPX COMMUNICATIONS		5,302.40
					Check Total:	5,302.40
71491	10/09/2017	Internal Service Fund	Operations & Maintenance	TURF STAR, INC.		-35.76
71491	10/09/2017	Internal Service Fund	Operations & Maintenance	TURF STAR, INC.		770.01
					Check Total:	734.25
71492	10/09/2017	Sewer Enterprise Fund	Uniform & Clothing Expense	UNIFIRST CORPORATION		282.26
71492	10/09/2017	Bell Crossing LD	Professional Services	UNIFIRST CORPORATION		1.48
71492	10/09/2017	Meadow View LD	Professional Services	UNIFIRST CORPORATION		1.01
71492	10/09/2017	Applegate Ranch Lndscp	Professional Services	UNIFIRST CORPORATION		0.11
71492	10/09/2017	America West LNDSCP	Professional Services	UNIFIRST CORPORATION		0.10
71492	10/09/2017	Internal Service Fund	Special Departmental Expense	UNIFIRST CORPORATION		104.64
71492	10/09/2017	Cottage Gardens LD	Professional Services	UNIFIRST CORPORATION		0.11
71492	10/09/2017	Camellia Estates LD	Professional Services	UNIFIRST CORPORATION		0.30
71492	10/09/2017	Stone Creek LNDSCP	Professional Services	UNIFIRST CORPORATION		1.47
71492	10/09/2017	Airport Business Park LD	Professional Services	UNIFIRST CORPORATION		0.14
71492	10/09/2017	Sandlewood Square LD	Professional Services	UNIFIRST CORPORATION		0.83
71492	10/09/2017	Silva Ranch LD	Professional Services	UNIFIRST CORPORATION		1.18
71492	10/09/2017	Pajaro Dunes LMA	Professional Services	UNIFIRST CORPORATION		0.46
71492	10/09/2017	Juniper Meadows LD	Professional Services	UNIFIRST CORPORATION		0.04
71492	10/09/2017	Aspenwood LD	Professional Services	UNIFIRST CORPORATION		0.30
71492	10/09/2017	Sandlewood Square LMA	Professional Services	UNIFIRST CORPORATION		0.83
71492	10/09/2017	Meadow View LNDSCP	Professional Services	UNIFIRST CORPORATION		1.01

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
71494	10/09/2017	General Fund	Life Insurance Payable	UNUM LIFE INSURANCE		161.08
					Check Total:	1,712.60
71495	10/09/2017	General Fund	Communications	VERIZON WIRELESS		437.00
					Check Total:	437.00
71496	10/09/2017	Employee Benefits Fund	Vision Insurance	VISION SERVICE PLAN (CA)		861.42
					Check Total:	861.42
71497	10/09/2017	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		12.88
71497	10/09/2017	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		83.70
					Check Total:	96.58
71498	10/09/2017	Water Enterprise Fund	Special Departmental Expense	WESTAMERICA BANK		329.02
71498	10/09/2017	General Fund	Adult Co-Ed Softball	WESTAMERICA BANK		30.14
71498	10/09/2017	General Fund	Special Departmental Expense	WESTAMERICA BANK		191.00
71498	10/09/2017	General Fund	Memberships & Subscriptions	WESTAMERICA BANK		85.00
71498	10/09/2017	General Fund	Adult Slo-Pitch Softball	WESTAMERICA BANK		9.99
71498	10/09/2017	Internal Service Fund	Special Departmental Expense	WESTAMERICA BANK		178.42
71498	10/09/2017	General Fund	City County Dinner	WESTAMERICA BANK		95.12
71498	10/09/2017	General Fund	Travel\Conferences\Meetings	WESTAMERICA BANK		1,283.40
71498	10/09/2017	General Fund	Special Departmental Expense	WESTAMERICA BANK		197.56
71498	10/09/2017	Risk Management Fund	Special Departmental Expense	WESTAMERICA BANK		400.00
71498	10/09/2017	General Fund	Special Departmental Expense	WESTAMERICA BANK		261.63
71498	10/09/2017	Water Enterprise Fund	Office Supplies	WESTAMERICA BANK		10.65
71498	10/09/2017	General Fund	Recreation Donations	WESTAMERICA BANK		105.82
					Check Total:	3,177.75
71499	10/09/2017	Bell Crossing LD	Professional Services	WILLDAN FINANCIAL SERVICES		23.53
71499	10/09/2017	Applegate Ranch LD	Professional Services	WILLDAN FINANCIAL SERVICES		1.75
71499	10/09/2017	Sandlewood Square LD	Professional Services	WILLDAN FINANCIAL SERVICES		13.14
71499	10/09/2017	Cottage Gardens LD	Professional Services	WILLDAN FINANCIAL SERVICES		1.75
71499	10/09/2017	Shaffer Lakes West LD	Professional Services	WILLDAN FINANCIAL SERVICES		9.39
71499	10/09/2017	Beluga Court LD	Professional Services	WILLDAN FINANCIAL SERVICES		0.62
71499	10/09/2017	Orchard Park Estates LD	Professional Services	WILLDAN FINANCIAL SERVICES		17.52
71499	10/09/2017	Sierra Parks LD	Professional Services	WILLDAN FINANCIAL SERVICES		4.38
71499	10/09/2017	General Fund	Special Departmental Expense	WILLDAN FINANCIAL SERVICES		418.64
71499	10/09/2017	Meadow View LD	Professional Services	WILLDAN FINANCIAL SERVICES		16.02
71499	10/09/2017	Mello Ranch LD	Professional Services	WILLDAN FINANCIAL SERVICES		18.90
71499	10/09/2017	Pajaro Dunes LD	Professional Services	WILLDAN FINANCIAL SERVICES		7.26
71499	10/09/2017	Aspenwood LD	Professional Services	WILLDAN FINANCIAL SERVICES		4.76
71499	10/09/2017	Price Annexation LD	Professional Services	WILLDAN FINANCIAL SERVICES		118.27



CITY OF ATWATER

CITY COUNCIL

ACTION MINUTES

September 25, 2017

OPEN SESSION: (Council Chambers)

The City Council of the City of Atwater met in Open Session this date at 5:00 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Price presiding.

ROLL CALL:

Present: City Council Members Creighton, Raymond, Vierra, Mayor Pro Tem Vineyard, Mayor Price

Absent: None

Staff Present: Interim City Manager Bramble, City Attorney Terpstra, Deputy City Clerk Saavedra, Recording Secretary Bengtson-Jennings

CLOSED SESSION: (Conference Room A)

Mayor Price invited public comments on Closed Session items.

No one came forward to speak at this time.

Mayor Price adjourned the meeting to Conference Room A for Closed Session at 5:01 PM. Closed Session was called to order at 5:05 PM.

Conference with Legal Counsel – Anticipated Litigation – Government Code Section 54956.9(d)(2)-(4): Public Records Act

Closed Session adjourned at 6:02 PM.

REGULAR SESSION: (Council Chambers)

The City Council of the City of Atwater met in Regular Session this date at 6:07 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Price presiding.

PLEDGE OF ALLEGIANCE TO THE FLAG:

The Pledge of Allegiance was led by Mayor Price.

INVOCATION:

The Invocation was led by Police Chaplain McClellan.

ROLL CALL:

Present: City Council Members Creighton, Raymond, Vierra, Mayor Pro Tem Vineyard, Mayor Price

Absent: None

Staff Present: Interim City Manager Bramble, City Attorney Terpstra, CAL FIRE Battalion Chief Schmitz, CAL FIRE Battalion Chief Wight, Human Resources Director Del Real, Police Chief Joseph, Acting Public Works Director Shaw, Grants Manager Waterman, City Clerk Hylar III, City Treasurer Heller, Recording Secretary Bengtson-Jennings

MAYOR OR CITY ATTORNEY REPORT OUT FROM CLOSED SESSION:

City Attorney Terpstra reported that no action was taken and staff was given direction. The Closed Session agenda was completed.

SUBSEQUENT NEED ITEMS: None.

APPROVAL OF AGENDA AS POSTED OR AS AMENDED:

Agenda item #4 under Ordinances (Waiving Second Reading and Adoption), "Waiving the second reading and adopting Ordinance No. CS 987 amending Chapter 3.04 "Purchasing System" of the Atwater Municipal Code," was removed from the agenda in its entirety.

MOTION: Mayor Pro Tem Vineyard moved to approve the agenda as amended. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Raymond, Vierra, Vineyard, Creighton, Price; Noes: None; Absent: None. The motion passed.

CEREMONIAL MATTERS:

Proclamation:

- Freedom from Workplace Bullies Week

Mayor Price read the proclamation designating the week of October 15, 2017 as “Freedom from Workplace Bullies Week.”

COMMENTS FROM THE PUBLIC:

Notice to the public was read.

VIRGINIA JONES, Atwater, spoke of traffic/parking issues near Thomas Olaeta Elementary School before and after school hours and the safety of the children, and she asked that the Police Department assign a traffic officer to observe the traffic and enforce school zone law.

KATHY WOOD, Atwater, voiced her concerns regarding several issues: rarely driven vehicles parked on City streets, house trailers parked in front yards, and “junk” stored on driveways and cement pads, and she asked that City codes be enforced.

DANNY HERNANDEZ, Atwater, suggested building pedestrian bridges or installing sidewalks near schools to help ensure the children’s safety.

FRANK JOHNSON, Modesto, spoke regarding the lack of diversity in the Police Department and his desire for change.

RICHARD JOHNSON, Atwater, spoke about his past run-ins with Police Department staff.

GABRIEL SANTOS, Atwater, questioned the recent installation of a memorial bench at Manuel Bairos Park, and he asked that the Police Department enforce park rules due to increased “inappropriate” activities after-hours.

No one else came forward to speak at this time.

CONSENT CALENDAR:

City Clerk Hyler III announced a typographical error, the listing of the regular City Council meeting minutes for August 28, 2017; said minutes were approved on September 11, 2017.

MOTION: *City Council Member Raymond moved to approve the consent calendar as amended. The motion was seconded by Mayor Pro Tem Vineyard and the vote*

was: Ayes: Vineyard, Creighton, Raymond, Vierra, Price; Noes: None; Absent: None. The motion passed.

WARRANTS:

1. September 25, 2017

ACTION: Approval of warrants as listed.

MINUTES: (City Council)

2. a) Special meeting, September 11, 2017 at 5:00 PM
b) Special meeting, September 11, 2017 at 7:00 PM

ACTION: Approval of minutes as listed.

AGREEMENTS:

3. Awarding a Cooperative Purchase Agreement for the purchase of two (2) lawn mowers (Acting Public Works Director Shaw)

ACTION: Awards a Cooperative Purchase Agreement, in a form approved by the City Attorney, to Turfstar Western, Fresno, California in an amount not to exceed \$69,463.16 for the purchase of one (1) Toro Groundmasters 4000-D T4 compliant diesel 54HP mower and in an amount not to exceed \$23,730.28 for the purchase of one (1) Toro Groundmasters 3280D 2WD diesel 24.8HP mower for the Public Works Department; and authorizes and directs the Interim City Manager to execute the purchase agreement on behalf of the City.

ORDINANCES (WAIVING SECOND READING AND ADOPTION):

4. Waiving the second reading and adopting Ordinance No. CS 987 amending Chapter 3.04 "Purchasing System" of the Atwater Municipal Code (Deputy City Attorney Ruppel)

This item was removed from the agenda in its entirety.

ANNUAL PETITIONS:

5. Request from Atwater Elementary School District and Atwater Caring About Kids Community Council

ACTION: Approval of the Atwater Elementary School District's and the Atwater Caring About Kids Community Council's request for assistance with their annual Red Ribbon Week activities in support of Drug-Free Atwater on Friday, October 20, 2017; to authorize the Police and Fire Departments to assist in escorting approximately 600 students and community members through

downtown Atwater beginning at Ralston Park, down Third Street to Broadway Avenue, right on Broadway Avenue to Winton Way, right on Winton Way to Fir Avenue, right on Fir Avenue and back to Ralston Park beginning at 11:30 AM; to approve road closure on Third Street between Fir and Grove Avenues from 11:15 AM to 1:00 PM; and to provide extra trash cans at Ralston Park.

INFORMATIONAL ITEMS ONLY (NO ACTION REQUIRED):

Rosary Rally, to pray for the nation, at Ralston Park on October 14, 2017 from 12:00 PM to 3:00 PM (Ramona Geisbrect, 2017 Public Square Rosary Crusade Rally Captain)

Ramona Geisbrect, 2017 Public Square Rosary Crusade Rally Captain, spoke regarding the Rosary Rally, and she invited the public to attend.

FUNDING AND BUDGET MATTERS:

Treasurer's Report for the month of August, 2017 (City Treasurer Heller)

Mayor Pro Tem Vineyard reported on recent and upcoming activities affecting the General Fund, and he announced that the next Audit and Finance Committee meeting will be held October 23, 2017 at 4:00 PM, in which the public is invited.

MOTION: City Council Member Creighton moved to approve the Treasurer's Report for the month of August, 2017. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Vierra, Raymond, Creighton, Vineyard, Price; Noes: None; Absent: None. The motion passed.

PUBLIC HEARINGS:

Waiving the first reading and introducing Ordinance No. CS 989 amending Chapter 2.10 "General Municipal Elections" of Title 2 "Administration and Personnel" of the Atwater Municipal Code to transition from an at-large election system to a district-based election system for City Council members (Interim City Manager Bramble)

Douglas Johnson, National Demographic Corporation, provided an overview of the project timeline and spoke regarding the proposed voting district maps.

Mayor Price opened the public hearing for this item.

DANNY HERNANDEZ, Atwater, spoke in opposition to the transition from an at-large election system to a district-based election system for City Council members and how it may "divide the people."

No one else came forward to speak and Mayor Price closed the public hearing.

City Attorney Terpstra provided an overview of the reason why the City must move toward district-based elections based on state and federal law as interpreted by the courts.

MOTION: *City Council Member Vierra moved to approve the orange map creating the voting district maps for district-based Councilmember elections and to waive the first reading and introduce Ordinance No. CS 989 amending Chapter 2.10 “General Municipal Elections” of Title 2 “Administration and Personnel” of the Atwater Municipal Code to transition from an at-large election system to a district-based election system for City Council members. The motion was seconded by City Council Member Creighton and the vote was: Ayes: Creighton, Vineyard, Vierra, Price; Noes: Raymond; Absent: None. The motion passed.*

CITY COUNCIL MATTERS:

City Council comments

City Council Member Raymond wished Tami Fournier a Happy Birthday, and he asked for prayers for Andy Krotik’s brother, Bart, who is battling cancer.

City Council Member Vierra stated that the City Council struggled with the topic of transitioning to a district-based election system, which she believes will divide the City, but that putting the City at risk for a law suit is not wise.

Mayor Pro Tem Vineyard announced that the Fall Clean-Up is scheduled for October 21, 2017, and he asked for community assistance to help pick up items from senior citizens or those unable to transport their items to the drop-off location. And, he announced that Kops and Fire for Kids starts right after Thanksgiving and that volunteers are needed to staff a table at Wal-Mart to solicit and collect donations. Those wishing to volunteer may contact Mayor Pro Tem Vineyard.

City Council Member Creighton asked Interim City Manager Bramble to address the issues at Manuel Bairos Park.

Mayor Price spoke regarding the Kops and Fire for Kids kick-off and toy drive for underprivileged children, and he spoke regarding the recent Town Hall Meeting. He asked that the next regular City Council meeting agenda include two items: the possible extension of Measure H and a draft resolution stating that the City of Atwater is a law and order city.

Mayor Price announced that citizens having trouble with the sound on the broadcast of the meeting may access the City Council meeting on YouTube Live.

CLOSED SESSION:

Continuation of Closed Session was not necessary.

ADJOURNMENT:

Mayor Price adjourned the meeting to the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, on September 27, 2017 at 5:00 PM for Closed Session regarding an update on the City Manager recruitment process.

The meeting adjourned at 7:28 PM.

DON HYLER III
CITY CLERK

By: Kim Bengtson-Jennings,
Recording Secretary



COMMUNITY DEVELOPMENT AND RESOURCES COMMISSION

ACTION MINUTES

August 16, 2017

CALL TO ORDER:

The Community Development and Resources Commission of Atwater met in Regular Session this date at 6:00 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Chair Brice presiding.

PLEDGE OF ALLEGIANCE:

The pledge of allegiance was led by Chair Brice.

INVOCATION: *The Invocation was given by Police Chaplain.*

ROLL CALL:

Present: Commissioners Dash, Daugherty, Murphy III, Reed, Chair Brice
Absent: Commissioner McWatters, Warchol.
Staff Present: Senior Planner Hendrix, Police Chief Joseph, Recording Secretary Waterman

SUBSEQUENT NEED ITEMS: *None*

Commissioner McWatters arrived at 6:02

APPROVAL OF AGENDA AS POSTED OR AMENDED:

MOTION: *Commissioner Reed moved to approve the agenda as posted. The motion was seconded by Chair Brice, and the vote was: Ayes: Dash, Daugherty, Murphy III, Reed, Brice; Noes: None; Abstain: McWatters; Absent: Warchol. The motion passed.*

CEREMONIAL MATTERS: *None*

PUBLIC COMMENT:

Notice to the public was read.

ERIC LEE, Atwater, spoke in favor of the Marijuana Initiative. He stated that the Commission can be influential, and urged them not to wait until January 2018 when the State will make decisions for us. He also stressed that he felt it was not a good thing to limit the number of permits allowed. He presented the Commission with a letter from Robert Riechel and urged the Commission to move forward with this Ordinance.

No one else came forward to speak at this time.

APPROVAL OF MINUTES:

Regular Meeting of June 21, 2017

MOTION: Commissioner Reed moved to approve the minutes as amended to correct the role call to include Commissioner Warchol as present, and to include the Commission's recommended changes to the Marijuana Ordinance to include 24 hour security, a youth educational component, and a cap of 2 permits issued. The motion was seconded by Commissioner Murphy III, and the vote was: Ayes: Dash, Murphy III, Reed, Brice; Noes: None; Abstain: Daugherty, McWatters; Absent: Warchol. The motion passed.

Regular Meeting of July 19, 2017

MOTION: Commissioner Reed moved to approve the minutes as listed. The motion was seconded by Commissioner Daugherty, and the vote was: Ayes: Dash, Daugherty, McWatters, Murphy III, Reed, Brice; Noes: None; Absent: Warchol. The motion passed.

PUBLIC HEARINGS: None

REPORTS AND PRESENTATIONS FROM STAFF:

Request from Atwater Chamber of Commerce for annual Fall Festival to be held on September 23, 2017 from 8:00 AM to 5:00 PM at Ralston Park

MOTION: Commissioner Reed moved to recommend the City Council approve request from Atwater Chamber of Commerce for their Annual Fall Festival to be held on September 23, 2017 from 8:00 AM to 5:00 PM at Ralston Park. The motion was seconded by Commissioner Daugherty, and the vote was: Ayes: Dash, Daugherty, McWatters, Murphy III, Reed, Brice; Noes: None; Absent: Warchol. The motion passed.

Request from LOVE ATWATER to hold Downtown Local Businesses & Volunteer Appreciation Day on October 14, 2017 from 8:00 AM to 5:00 PM between Third and Cedar

MOTION: Commissioner Murphy III moved to recommend the City Council approve request from Request from LOVE ATWATER to hold Downtown Local Businesses & Volunteer Appreciation Day on October 14, 2017 from 8:00 AM to 5:00 PM between Third and Cedar. The motion was seconded by Commissioner

Dash, and the vote was: Ayes: Dash, Daugherty, McWatters, Murphy III, Reed, Brice; Noes: None; Absent: Warchol. The motion passed.

LOVE ATWATER is to present the City with a Map outlining proposed street closure locations.

DISCUSSION ITEMS:

Discussion regarding Atwater Municipal Code Section 17.07 related to Garage Sales

The Commission discussed enforcement related to Garage Sales, with a possible fine and registering requirement, and limiting the number of Garage Sales to possibly one (1) per quarter.

Discussion regarding Atwater Municipal Code Section 5.62 related to Donation Bins

The Commission discussed asking the City Council to recommend that the CDRC Commission review and make recommendations to the Atwater Municipal Code Section 5.62 related to Donation Bins. Recommendations discussed were permits, fines and enforcement.

COMMISSIONER MATTERS:

Comments from Community Development and Resources Commissioners

Commissioner Reed asked Police Chief Joseph about a possible business being conducted out of a residential home at 1710 Fruitland.

Vice Chair Murphy III questioned the flow of traffic coming from the Flea Market and asked if a Traffic Study had been done, or if the property owner could be responsible for the cost associated with conducting a Traffic Study. He also asked about the weeds covering over the sidewalk near Greensands.

Commissioner McWatters apologized for not making the last meeting, and announced she is going to be a grandma.

Commissioner Dash asked if there was a CUP for Atwater Boulevard and Shaffer Road, Phase 1 Construction, stating the property is unsightly with the piles of dirt. She questioned what can be done to force clean up. She asked if the people posting garage sale signs on city signs and leaving them up can be fined.

Commissioner Daugherty questioned the status of the traffic lights at Juniper and Shaffer, and asked that proposed data be brought to the commission for review before sending to the Traffic Engineer.


Chair Brice asked if money budgeted in FY 17-18 for a Traffic Engineer and questioned the Urban Forest Tree Master Plan item.

ADJOURNMENT:

The meeting adjourned at 7:08 PM.



Gary Brice, Chairperson



Lori Waterman, CMC
Recording Secretary

September 27, 2017

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of October 9, 2017

**APPROVING AN AGREEMENT WITH MERCED UNION HIGH SCHOOL
DISTRICT REGARDING SCHOOL RESOURCE OFFICERS**

RECOMMENDATION:

It is recommended that the City Council consider:

1. Approving an Agreement, in a form approved by the City Attorney, with Merced Union High School District regarding School Resource Officers; and
2. Authorizing and directing the Interim City Manager to execute the Agreement on behalf of the City.

BACKGROUND:

The Atwater Police Department (Department) implemented School Resource Officer (SRO) positions for the Merced Union High School District for services at Atwater High School and Buhach Colony High School sites approximately 15 years ago. Since then, the Department has been the sole source operation for the District sites.

The SRO program became even more crucial after the Columbine incident in 1999. The SRO position at the District's high schools are a significant asset as it dedicates one (1) officer to handle the numerous calls for service at each site instead of requiring the response of various patrol officers. The SROs are primarily dedicated to the two high schools within the District nine (9) months out of the year and the remaining three (3) months of the year, the SROs are utilized in the Department in a patrol officer capacity.

This program is vital for not only the safety of the schools within the District, it is also imperative for the safety of the citizen's of Atwater and the police personnel of the Department.

ANALYSIS:

Over the past several months, staff has reviewed the template SRO agreement and met with representatives of the District on various modifications. Significant modifications were specifically related to reimbursement of costs for services.

On September 19, 2017, staff was notified by the District that all revisions to the agreement have been accepted pending approval by the City Council on October 9, 2017.

FISCAL IMPACT:

The SRO agreement provides that the District reimburse the City 70% of the SRO's total costs (salary and benefits), vehicle maintenance, and cell phone stipend for both school sites. Reimbursements equate to approximately \$273,261 for Fiscal Year 2017-18. The District will also be responsible for payment of any services performed outside of the normal work schedule (e.g., parent meetings, athletic events, dances, graduations, summer school, etc.).

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,

/s/ *Samuel Joseph*

Samuel Joseph
Police Chief

**MEMORANDUM OF UNDERSTANDING
CITY OF ATWATER
AND THE
MERCED UNION HIGH SCHOOL DISTRICT**
School Resource Officers Program – Partnership Agreement
2017-2018 to 2019-2020

THIS AGREEMENT (“Agreement”) shall commence on the date signed by and between the Merced Union High School District (hereinafter referred to as “MUHSD”) and the City of Atwater Police Department (hereinafter referred to as “City”) for the next three (3) school fiscal years of 2017-18 through and 2019-20. MUHSD and City may each be referred to as “Party” or collectively as “Parties.”

WHEREAS the MUHSD and the City desire to set forth in this Memorandum of Understanding the specific terms and conditions of the services to be performed and provided by the School Resource Officers (hereinafter referred to as “SRO”s) in the MUHSD.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1.0 Goals and Objectives - It is understood and agreed that the MUHSD and the City share the following goals and objectives with regard to the SRO Program in the school:

- 1.1** To foster educational programs and activities that will increase students’ knowledge of and respect for the law and the function of law enforcement agencies;
- 1.2** To encourage the SRO to attend extra-curricular activities held at school, such as parent meetings, athletic events and concerts;
- 1.3** To act swiftly and cooperatively when responding to major disruptions and flagrant criminal offenses at the school, including, but not limited to: disorderly conduct by trespassers, the possession and use of weapons on campus, the illegal sales and/or distribution of controlled substances, and riots;
- 1.4** To report serious crimes that occur on campus and to cooperate with the law enforcement officials in their investigation of crimes that occur at school;
- 1.5** To cooperate with law enforcement officials in their investigations of criminal offenses which occur off campus.

2.0 Employment and Assignment of SRO

- 2.1** The City agrees to employ two SROs during the term of this agreement. The SROs shall be employees of the City and shall be subject to the administration, supervision and control of the City except as such administration, supervision and control is subject to the terms and conditions of this Agreement.
- 2.2** The City agrees to provide and to pay the SRO's salary and employment benefits in accordance with the applicable salary schedules and employment practices of the

City, including but not necessarily limited to: sick leave, annual leave, retirement compensation, disability salary continuation, workers compensation, unemployment compensation, life insurance, dental insurance, and medical/hospitalization insurance. The SROs shall be subject to all other personnel policies and practices of the City.

- 2.3** The MUHSD agrees to pay the City pursuant to the attached Addendum for each school fiscal year of the full multi-year term provided under this agreement. Each year, the City will provide an updated Addendum identifying the fiscal year costs for the regular (40 hours per week) services of each SRO. These costs are based on the actual expenses for the salary and benefits of each SRO assigned to Atwater High School and Buhach Colony High School. In the event MUHSD, site principal, or designee requests SRO services outside the normal work schedule (e.g., parent meetings, athletic events, dances, graduations, summer school, etc), the MUHSD agrees to reimburse actual costs to the City. In addition, MUHSD agrees to reimburse the City vehicle maintenance charges for the marked police vehicle assigned to each SRO and a cell phone stipend (proportionate to time spent in working status) in the amounts identified in the attached Addendum. This will cover the total costs of the SRO for Atwater High School and Buhach Colony High School.
- 2.4** The SRO's employer is the City. The City shall have sole discretion, to assign, temporarily reassign, discharge, discipline and evaluate the SRO's. Each school principal shall provide input to the City's Chief of Police on school related issues related to the assignment, discharge, discipline and evaluation of their assigned SRO.
- 2.5** In the event of a resignation, dismissal or reassignment of a SRO, or in the case of long-term absences by an SRO, the City shall provide a temporary replacement as soon as personnel are available. As soon as reasonably possible, the Selection Panel shall convene and recommend a permanent replacement for the SRO position.
- 2.6** The City shall assign one SRO to Atwater High School and one SRO to Buhach Colony High School.
- 2.7** In the event an SRO is absent from work, the SRO shall notify both his supervisor and duty Sergeant in the City and the principal (or designee) of the school to which the SRO is assigned.
- 2.8** Although nothing in this Agreement shall place MUHSD in command of, or authority over the SRO, it is agreed that the SRO is under the direct supervision of the Principal for response to the needs of the campus. The school principal will develop with the SRO and implement-plans and strategies to prevent and minimize dangerous situations which might result in student unrest or endangerment.

3.0 Duty Hours / place of performance

The City and MUHSD shall set specific SRO duty hours at the assigned schools. When school is in session, the SROs will work an equivalent of 40 hours per week (full-time) in and around the school and perform community-policing activities. The SRO will obtain written approval by the site Principal prior to working any overtime hours. Community policing activities may include:

- 3.1 Follow-up home visits when needed as a result of school related student problems.
- 3.2 School related off campus activities when officer participation is requested by the principal and approved by City.
- 3.3 Responses to off campus. School related criminal activities.
- 3.4 Responses to emergency law enforcement or court appearances.
- 3.5 Scheduled officer training.

4.0 Basic Qualifications of SRO

To be a SRO, an officer must meet the following minimum qualifications:

- 4.1 Shall be a City employed Police Officer with at least two years of law enforcement experience;
- 4.2 Shall possess sufficient knowledge of the applicable Federal and State laws, City and County ordinances, and Board of Education policies and regulations;
- 4.3 Shall be capable of conducting criminal investigations;
- 4.4 Shall possess communication skills, which would enable the officer to function effectively within the school environment.

5.0 Duties of SRO

- 5.1 The SRO shall coordinate all of his or her activities with the principal (or designee) and will seek permission, advice and guidance prior to enacting any program within the school.
- 5.2 The SRO shall develop expertise in presenting various subjects to students, staff, parents and the community. Such subjects shall include, but not be limited to: a basic understanding of the law, the role of the police officer and law related areas, tobacco, alcohol and drug issues, evidence diffusion, and violence prevention to the community.
- 5.3 The SRO shall encourage individual and small group discussions with students, based upon material presented in class to further establish rapport with students.
- 5.4 When requested by the principal, the SRO shall attend parent, staff, and administrative meetings to solicit support and understanding of the program.
- 5.5 The SRO shall make himself or herself available for conference with students, parents and faculty members in order to assist them with problems of a law enforcement or crime prevention nature.

- 5.6 The SRO shall become familiar with all community agencies which offer assistance to youths and their families such as mental health clinics, drug treatment centers, etc...
- 5.7 Should it become necessary to conduct formal police interviews with students, the SRO shall adhere to the school board policy to the extent that such policies do not conflict with police departmental general orders, regulations, policies and legal requirements to conduct such interviews.
- 5.8 The SRO shall take all law enforcement action as required. As soon as practical, the SRO shall make the principal or his designee aware of such action. The SRO shall take appropriate law enforcement action against intruders and unwanted guests who may appear at the school and related school functions, to the extent that the SRO may do so under the authority of law.
- 5.9 The SRO shall assist other law enforcement personnel in matters regarding his or her school assignment as well as responding to an officer needing assistance.
- 5.10 When requested by the MUHSD SRO supervisor, the SRO shall initiate the maintenance of records related to the program. These records, general in nature, may include, but not be limited to, general information related to the program. Examples include information on the day of classroom visits, home visits, number of parent contacts, number of formal student meetings, number of school related investigations, and list of most common duties of SRO.
- 5.11 The SRO shall **not** act as a school disciplinarian, as disciplining students **is a school responsibility**. However if the principal believes an incident is a violation of the law, the principal may contact the SRO, and the SRO shall then determine whether law enforcement action is appropriate.

6.0 Chain of Command

- 6.1 As employees of the City, the SRO shall follow the chain of command as set forth in the Atwater Police Department Policies and Procedure Manual.
- 6.2 In the performance of his or her duties, the SRO shall make every reasonable effort to coordinate and communicate with the principals or the principals' designee(s) of the assigned schools.

7.0 Training

- 7.1 The SRO shall be required by the City to attend police training sessions. Training sessions will be conducted to provide SROs with appropriate in-service training, such as updates in the law, in-service firearm training and law enforcement-school related training.
- 7.2 The MUHSD may also provide training in Board of Trustee policies, regulations and procedures, school type incidents, and student safety.

8.0 Supplies and Equipment

- 8.1** The City agrees to provide the SROs with standard issue equipment, firearm and rounds of ammunition as needed to perform their duties;
- 8.2** The MUHSD agrees to provide an office, desk, desk chair, computer and the usual and customary office supplies to the SROs.

9.0 Access to Education Records

- 9.1** School officials shall allow the SRO to inspect and copy any public records maintained by the school including student directory information, classroom assignments and discipline files. However, law enforcement officials may not inspect or copy confidential student education records except as allowed by law.
- 9.2** If some information in a student's cumulative record is needed in an emergency to protect the health or safety of the student or other individuals, school officials may disclose to the SRO that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety; the need of the information to meet the emergency situation and the extent to which time is of the essence.
- 9.3** If confidential student records are needed, but no emergency situation exists, the information may be released only as allowed by law.

10.0 Canine Services

- 10.1** It shall be the policy of the City to utilize trained police canines in a variety of law enforcement roles to include facilities of the MUHSD. Canines are owned by the City and will not be considered personal property of the handler: department canines will not be involved in any activities that are not job-related unless previously approved by the City's Chief of Police.
- 10.2** Canines will be maintained under the direct supervision of the handler.
- 10.3** USE OF NARCOTICS DETECTOR CANINES. Narcotics detector canines are generally certified to detect the following controlled substances, related derivatives, and paraphernalia:
 - a. cocaine
 - b. hashish
 - c. heroin
 - d. marijuana
 - e. methamphetamine.

Narcotics detector canines are trained to detect the odors of certain controlled substances emitting from the interior or along the exterior of a motor vehicle.

10.4 USE OF CANINES FOR BUILDING OR AREA SEARCHES

- a. Area search canines can be used to locate hidden suspects who are believed to be contained within an area:
 1. of limited size, and
 2. otherwise deserted, or from which all other persons can be removed by officers.
- b. Tracking canines are better suited to selectively follow a particular scent trail over distance or in the presence of other, non-involved persons.
- c. Motor vehicle engines should be turned off when canines are nearby.

11.0 Discrimination

The MUHSD, City, or either Party's employees shall not discriminate because of race, religion, color, national origin, disability, marital status, age, or sex against any person by refusing any person or privilege offered to or engaged by the general public.

12.0 Indemnify/Hold Harmless

- 12.1** The MUHSD shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of or in connection with the SRO's performance of work or his or her failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the active negligence by the City or the gross or willful misconduct of the SRO during the performance of work hereunder.
- 12.2** The City shall indemnify, defend, and hold harmless the MUHSD, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of the active negligence by the City or the gross or willful misconduct of the SRO during the performance of work hereunder.
- 12.3** If the MUHSD rejects a tender of defense by the City and/or the SRO under this Agreement, and it is later determined that the City and/or the SRO breached no duty of care and/or was immune from liability, MUHSD shall reimburse the City

and/or SRO for any and all litigation expenses (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost). A duty of care or immunity determination may be made by a jury or a court, including a declaratory relief determination by a court after the City and/or SRO settles a liability claim, with or without participation by the MUHSD.

12.4 The Parties acknowledge that it is not the intent of the Agreement to create a duty of care by the City or the SRO that they would not owe in the absence of the Agreement. The Agreement does not create an affirmative duty of care (including, without limitation, a duty to protect, a duty to deter and/or a duty to intervene) by the City or the SRO and the absence of the SRO and/or the patrol vehicle is not a material breach of this Agreement. The Parties further acknowledge that by entering into this Agreement neither the City nor the SRO intends to waive any immunities to which they would be entitled in the absence of the Agreement.

13.0 Notices

Any notices herein provided to be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid and addressed as follows:

To: Scott Weimer, Assistant Superintendent/CBO
Merced Union High School District
P.O. Box 2147
Merced, CA 95344

To: Lori Mollart, Director of Child Welfare and Attendance
Merced Union High School District
P.O. Box 2147
Merced, CA 95344

To: Samuel Joseph, Chief of Police
City of Atwater Police Department
750 Bellevue Road
Atwater, CA 95301

The address to which the notices to be sent may be changed by either party advising the other in writing of such change. Nothing herein shall preclude the giving of any notice by personal service.

14.0 Term and Termination

This agreement is effective from July 1, 2017 through June 30, 2020. This agreement can be canceled by either party by providing the other party 60 days written notice.

15.0 Modification of Agreement

This Agreement may not be changed or modified except in writing and signed by both Parties.

16.0 Agency Relationship

This contract is not intended to, and shall not create the relationship of principal-agent, master-servant, or employer-employee between MUHSD and City.

17.0 Copies of Agreement

This agreement is executed in counterparts, each of which shall be deemed a duplicate original.

IN WITNESS WHEREOF, the Parties the day and year first above written have affixed their signatures hereto.

ATTEST:

CITY OF ATWATER
A Municipal Corporation

BY: _____
John Bramble, Interim City Manager or designee

Date

Approved as to form:

BY: _____
Thomas P. Terpstra, City Attorney

Date

MERCED UNION HIGH SCHOOL DISTRICT

BY: _____
Scott Weimer, Asst. Superintendent - Business Services

Date

September 28, 2017

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of October 9, 2017

ACCEPTING NEW TIER 4 DUMP TRUCKS PURCHASE

RECOMMENDATION:

It is recommended that the City Council consider:

1. Accepting work done under contract to manufacture and deliver of two (2) new Tier 4 Dump Trucks, City Project No. 14-11, Bid Call No. 676-17;
2. Authorizing the Interim City Manager to sign a Notice of Completion and have it recorded on behalf of the City; and
3. Authorizing a final payment in the amount of \$212,750.18.

BACKGROUND:

At their regular meeting of April 10, 2017, the City Council awarded a contract in the amount of \$214,750.18 to Fred M. Boerner Motor Co., Huntington Park, California to manufacture and deliver two (2) new Tier 4 Dump Trucks that meet current Air Quality standards. A deposit in the amount of \$2,000 was forwarded to Fred M. Boerner Motor Co. on April 24, 2017, and the City has been reimbursed by CalTrans. The final invoice was submitted to the City in the amount of \$212,750.18 (**EXHIBIT "A"**). This project is funded with federal funds from the Congestion Mitigation and Air Quality (CMAQ) Improvement Program. CMAQ will reimburse the City 85.92% of the contract amount and the City will contribute 14.08% local funds.

The Dump Trucks passed the performance test and inspection by staff on September 11, 2017, and the City took possession of the two (2) Dump Trucks on September 11, 2017.

ANALYSIS:

The work under this contract was satisfactorily completed on September 11, 2017, in accordance with the specifications. City staff has inspected all the work and finds it meets or exceeds the specifications and is acceptable.

Should the City Council choose to accept the two (2) Dump Trucks; the final payment in the amount of \$214,750.18 would be issued. No retention will be withheld. Immediately thereafter, an invoice will be sent to Caltrans to reimburse the City for 85.92% of the remainder of the contract price in the amount of \$182,512.

Caltrans could take from 30 to 60 days after submittal of a final invoice to process the reimbursement.

Not accepting the vehicle would impact the City's ability to qualify for future CMAQ and other grant funds. Competitive grants are awarded based on points earned by meeting certain qualifications such as successfully completing projects.

The Notice of Completion has been prepared (**EXHIBIT "B"**) for this project.

FISCAL IMPACT:

The 2017/18 budget amount for the purchase of two (2) new Dump Trucks is \$214,750.18.

Caltrans will reimburse the City \$182,512 within 30-60 days of submittal of the final invoice to them. The invoice is ready to be submitted to Caltrans in anticipation of City Councils acceptance of the equipment.

Council has budgeted sufficient funds for this project in the Capital Improvement Plan for FY 2017/18, General Fund Capital, CMAQ Grant Dump Trucks Replacement; Account No. 0003.1080.M004; and Gas Tax Fund, Machinery & Equipment, Account No. 1001.3033.6021.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,

/s/ Lori Waterman

Lori Waterman, CMC
Grants Manager



VEHICLE SALES AGREEMENT / INVOICE

INVOICE NO. **511695**
 DATE **09/08/2017**
 ORDER NO. _____
 REP _____
 ACCT. NO _____
 DELIVERY DATE _____

BUYER **CITY OF ATWATER** PHONE **209/357-6206**
 ADDRESS **750 BELLEVUE ROAD** CITY **ATWATER** STATE **CA** ZIP **95301**
 SHIP TO **CITY OF ATWATER**
 ADDRESS **750 BELLEVUE ROAD** CITY **ATWATER** STATE **CA** ZIP **95301**

STOCK NO.	YEAR	NEW	USED	COLOR	MAKE	MODEL	VIN	BODY TYPE	MILEAGE	GVWR
N707152	2018	XX		WHITE	INTERNATIO	7500	1HTWKTAR5JH707152	DUMP	2470	35000
Title Brands/Comments (if applicable): <input type="checkbox"/> NONE <input type="checkbox"/> REBUILT <input type="checkbox"/> JUNK <input type="checkbox"/> SALVAGE/RECONSTRUCTED <input type="checkbox"/> DESTROYED <input type="checkbox"/> LOST										
Warranty Info: <input type="checkbox"/> NEW VEHICLE WITH MANUFACTURER STANDARD WARRANTY <input type="checkbox"/> USED VEHICLE SOLD AS-IS WITH NO WARRANTY EXPRESSED OR IMPLIED										
<input type="checkbox"/> OPTIONAL WARRANTY CONTRACT HAS BEEN PURCHASED Describe: _____										

Lienholder **CASH**
 Address _____
 City, ST, ZIP _____

(A) USED VEHICLE TRADE-IN
 YEAR _____ MAKE _____ MODEL _____
 MILEAGE _____ VIN _____
 BALANCED OWED TO: _____
 ADDRESS: _____
 MISC: _____

(B) USED VEHICLE TRADE-IN
 YEAR _____ MAKE _____ MODEL _____
 MILEAGE _____ VIN _____
 BALANCED OWED TO: _____
 ADDRESS: _____
 MISC: _____

Gross trade-in allowance for (A) \$ N/A
 Less estimated balance owed (A) \$ N/A
 Gross trade-in allowance for (B) \$ N/A
 Less estimated balance owed (B) \$ N/A
 *EST. NET ALLOWANCE ON TRADE-IN(S) \$ N/A
 (carry over to line 6)

Buyer acknowledges that the payoff and/or lien balance on the trade-in vehicle as described above is only an estimated figure, subject to verification and confirmation from the lienholder as to the exact dollar amount. In the event the payoff/lien balance exceeds the above-stated amount, such additional amount shall, at the option of the Dealer, be added to the total cash price of the vehicle and shall be paid to the dealer on request or added to the amount being financed.

X _____
 SIGNATURE (DO NOT INITIAL)

1. BASE PRICE OF VEHICLE		97298.00
2. DEALER ADDED OPTIONS:		N/A
		N/A
		N/A
		N/A
		N/A
		N/A
		N/A
3. BASE PRICE OF VEHICLE AND OPTIONS (1 + 2)		\$ 97298.00
4. DOCUMENT SERVICES FEE		N/A
5. SALES TAX [Calculated on the sum of Base Price of the Vehicle and Options (3) - Total Gross Trade-In Allowance]	BASIS	\$ 97298.00
	TAX RATE	8.2500
		\$ 8027.09
6. FEDERAL EXCISE TAX [Based on Base Price of the Vehicle and Options (3) - Body & Freight Exemption less Tire Credit]	EXEMPT AMT	\$ -N/A
	TIRE CREDIT	N/A
	TAX RATE	
7. SERVICE CONTRACT WARRANTY		2050.00
8. MAINTENANCE CONTRACT		N/A
9. SALES TAX (For Service Contract and/or Maintenance Contract)	TAX RATE	N/A
10. ESTIMATED Vehicle License, Title and Registration Fee		N/A
11. OTHER:		\$ N/A
		N/A
12. TOTAL CASH PRICE OF VEHICLE (3+4+5+6+7+8+9+10+11)		\$ 107375.09
13. DOWN PAYMENT (Not receipt of cash received)	(A) CASH	1000.00
	(B) REBATE	N/A
		\$ 1000.00
14. ESTIMATED Net Trade-In Allowance		\$ -N/A
15. UNPAID BALANCE OF CASH PRICE DUE ON DELIVERY (12 - 13 - 14)		\$ 106375.09
SETTLEMENT:		

FINANCING CONDITION IF A RETAIL INSTALLMENT CONTRACT OR NOTE AND SECURITY AGREEMENT IS SIGNED IN CONJUNCTION WITH THIS BUYER'S ORDER (COLLECTIVELY, THE "AGREEMENT"), THE AGREEMENT IS BINDING UPON EXECUTION, PROVIDED HOWEVER, THAT THE DEALER WILL HEREAFTER ASSESS THE BUYER'S CREDITWORTHINESS AND IF THE DEALER DOES NOT HEREAFTER APPROVE FINANCING ON ACCOUNT OF THE BUYER'S CREDITWORTHINESS AND SUBSEQUENTLY NOTIFIES BUYER OF SUCH DISAPPROVAL, THIS AGREEMENT IS VOID, EXCEPT AS PROVIDED IN PARAGRAPH 4 ON THE REVERSE SIDE HEREOF.

BUYER AGREES THAT THIS AGREEMENT INCLUDES ALL OF THE TERMS AND CONDITIONS ON THE FRONT AND BACK SIDE HEREOF, THAT THIS AGREEMENT CANCELS AND SUPERSEDES ANY PRIOR AGREEMENT INCLUDING ORAL AGREEMENTS AND, AS OF THE DATE BELOW, COMPRISES, WITH ANY RETAIL INSTALLMENT CONTRACT, SERVICE CONTRACT, INSURANCE CONTRACT, AND OTHER AGREEMENTS AND ACKNOWLEDGMENTS SIGNED CONTEMPORANEOUS HERewith, THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF THE AGREEMENT RELATING TO THE SUBJECT MATTERS COVERED BY THIS AGREEMENT. BY SIGNING THIS AGREEMENT, BUYER ACKNOWLEDGES THAT BUYER HAS READ ITS TERMS AND HAS RECEIVED A TRUE COPY OF THIS AGREEMENT.

Customer acknowledges receipt of above merchandise

X Sheri Waterman 09/08/2017 X _____
 Buyer's Signature Date Dealer or Dealer's Authorized Representative

X _____
 Co-Buyer's Signature Date Joe Leivian
 Salesperson's Name



VEHICLE SALES AGREEMENT / INVOICE

INVOICE NO. **511694**
 DATE **09/08/2017**
 ORDER NO. _____
 REP _____
 ACCT. NO _____
 DELIVERY DATE _____

BUYER **CITY OF ATWATER** PHONE **209/357-6206**
 ADDRESS **750 BELLEVUE ROAD** CITY **ATWATER** STATE **CA** ZIP **95301**
 SHIP TO **CITY OF ATWATER**
 ADDRESS **750 BELLEVUE ROAD** CITY **ATWATER** STATE **CA** ZIP **95301**

STOCK NO.	YEAR	NEW	USED	COLOR	MAKE	MODEL	VIN	BODY TYPE	MILEAGE	GVWR
N707151	2018	XX		WHITE	INTERNATIO	7500	1HTWKTAR3JH707151	DUMP	2425	35000
Title Brands/Comments (if applicable): <input type="checkbox"/> NONE <input type="checkbox"/> REBUILT <input type="checkbox"/> JUNK <input type="checkbox"/> SALVAGE/RECONSTRUCTED <input type="checkbox"/> DESTROYED <input type="checkbox"/> LOST										
Warranty Info: <input type="checkbox"/> NEW VEHICLE WITH MANUFACTURER STANDARD WARRANTY <input type="checkbox"/> USED VEHICLE SOLD AS-IS WITH NO WARRANTY EXPRESSED OR IMPLIED										
<input type="checkbox"/> OPTIONAL WARRANTY CONTRACT HAS BEEN PURCHASED Describe: _____										

Lienholder **CASH**
 Address _____
 City, ST, ZIP _____

(A) USED VEHICLE TRADE-IN
 YEAR _____ MAKE _____ MODEL _____
 MILEAGE _____ VIN _____
 BALANCED OWED TO: _____
 ADDRESS: _____
 MISC: _____

(B) USED VEHICLE TRADE-IN
 YEAR _____ MAKE _____ MODEL _____
 MILEAGE _____ VIN _____
 BALANCED OWED TO: _____
 ADDRESS: _____
 MISC: _____

Gross trade-in allowance for (A)	\$	N/A
Less estimated balance owed (A)	\$	N/A
Gross trade-in allowance for (B)	\$	N/A
Less estimated balance owed (B)	\$	N/A
*EST. NET ALLOWANCE ON TRADE-IN(S)	\$	N/A

(carry over to line 6)

Buyer acknowledges that the payoff and/or lien balance on the trade-in vehicle as described above is only an estimated figure, subject to verification and confirmation from the lienholder as to the exact dollar amount. In the event the payoff/lien balance exceeds the above-stated amount, such additional amount shall, at the option of the Dealer, be added to the total cash price of the vehicle and shall be paid to the dealer on request or added to the amount being financed.

X _____
 SIGNATURE (DO NOT INITIAL)

1. BASE PRICE OF VEHICLE		97298.00
2. DEALER ADDED OPTIONS:		N/A
		N/A
		N/A
		N/A
		N/A
		N/A
		N/A
3. BASE PRICE OF VEHICLE AND OPTIONS (1 + 2)		\$ 97298.00
4. DOCUMENT SERVICES FEE		N/A
5. SALES TAX [Calculated on the sum of Base Price of the Vehicle and Options (3) - Total Gross Trade-In Allowance]	BASIS	\$ 97298.00
	TAX RATE	8.2500
6. FEDERAL EXCISE TAX [Based on Base Price of the Vehicle and Options (3) - Body & Freight Exemption less Tire Credit] EXEMPTION REASON	EXEMPT AMT	\$ - N/A
	TIRE CREDIT	N/A
	TAX RATE	
7. SERVICE CONTRACT WARRANTY		2050.00
8. MAINTENANCE CONTRACT		N/A
9. SALES TAX (For Service Contract and/or Maintenance Contract)	TAX RATE	N/A
10. ESTIMATED Vehicle License, Title and Registration Fee		N/A
11. OTHER:		\$ N/A
		N/A
12. TOTAL CASH PRICE OF VEHICLE (3+4+5+6+7+8+9+10+11)		\$ 97375.09
13. DOWN PAYMENT (Not receipt of cash received)	(A) CASH	1000.00
	(B) REBATE	N/A
14. ESTIMATED Net Trade-In Allowance		\$ - N/A
15. UNPAID BALANCE OF CASH PRICE DUE ON DELIVERY (12 - 13 - 14)		\$ 106375.09
SETTLEMENT:		

FINANCING CONDITION IF A RETAIL INSTALLMENT CONTRACT OR NOTE AND SECURITY AGREEMENT IS SIGNED IN CONJUNCTION WITH THIS BUYER'S ORDER (COLLECTIVELY, THE "AGREEMENT"), THE AGREEMENT IS BINDING UPON EXECUTION, PROVIDED HOWEVER, THAT THE DEALER WILL HEREAFTER ASSESS THE BUYER'S CREDITWORTHINESS AND IF THE DEALER DOES NOT HEREAFTER APPROVE FINANCING ON ACCOUNT OF THE BUYER'S CREDITWORTHINESS AND SUBSEQUENTLY NOTIFIES BUYER OF SUCH DISAPPROVAL, THIS AGREEMENT IS VOID, EXCEPT AS PROVIDED IN PARAGRAPH 4 ON THE REVERSE SIDE HEREOF.

BUYER AGREES THAT THIS AGREEMENT INCLUDES ALL OF THE TERMS AND CONDITIONS ON THE FRONT AND BACK SIDE HEREOF, THAT THIS AGREEMENT CANCELS AND SUPERSEDES ANY PRIOR AGREEMENT INCLUDING ORAL AGREEMENTS AND, AS OF THE DATE BELOW, COMPRISES, WITH ANY RETAIL INSTALLMENT CONTRACT, SERVICE CONTRACT, INSURANCE CONTRACT, AND OTHER AGREEMENTS AND ACKNOWLEDGMENTS SIGNED CONTEMPORANEOUS HEREWITH, THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF THE AGREEMENT RELATING TO THE SUBJECT MATTERS COVERED BY THIS AGREEMENT. BY SIGNING THIS AGREEMENT, BUYER ACKNOWLEDGES THAT BUYER HAS READ ITS TERMS AND HAS RECEIVED A TRUE COPY OF THIS AGREEMENT.

Customer acknowledges receipt of above merchandise

X _____ **09/08/2017** **X**
 Buyer's Signature Date

X _____
 Co-Buyer's Signature Date

 Dealer or Dealer's Authorized Representative

Joe Leivian
 Salesperson's Name

Recorded at the request of:

CITY CLERK

Return to

CITY OF ATWATER

750 BELLEVUE ROAD

ATWATER, CA 95301

NOTICE OF COMPLETION

(INDIVIDUAL OR CORPORATION)

Notice is Hereby Given That:

1. The work of improvement as a whole was completed upon the hereinafter described real property on: September 11, 2017

2. The name and address of the owner giving and filing this notice:

Name	Street and No.	City	State
CITY OF ATWATER	750 BELLEVUE ROAD	ATWATER	CALIFORNIA

The interest of said owner was acquired subsequent to the commencement of the work of improvement from:

Name	Street and No.	City	State
	N/A		

The names and addresses of all other co-owners, if any, who own an estate or interest in said real property, whether as joint tenants or tenants in common, or otherwise, are:

Name	Street and No.	City	State
	N/A		

3. That the nature of the interest or estate of the owner in and to said real property is in fee: N/A

4. That the name of the original contractor for the work of improvement referred to above is: Fred M. Boerner Motor Co.

5. That the street address of said property is: 470 Aviator Drive, Atwater, California.

6. That the real property herein referred to is situated in the City of Atwater, County of Merced, State of California, and particularly described as follows:

Dump Trucks (2) Replacement Project
Bid Call No. 676-17; City Project No. 14-11

Verification for CORPORATE owner:

STATE OF CALIFORNIA

} ss

County of Merced

JOHN BRAMBLE, INTERIM CITY MANAGER
CITY OF ATWATER

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

On _____ before me, Lori Waterman, Deputy City Clerk, personally appeared John Bramble, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Lori J Waterman, CMC
NOTARY PUBLIC



CITY COUNCIL OF THE CITY OF ATWATER

ORDINANCE NO. CS 989

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER AMENDING CHAPTER 2.10 “GENERAL MUNICIPAL ELECTIONS,” OF TITLE 2, “ADMINISTRATION AND PERSONNEL” OF THE ATWATER MUNICIPAL CODE

WHEREAS, The City of Atwater (“City”) has determined that it is in the best interest of the City to move from its current at-large election system to a by-district election for members of the Atwater City Council (“Council”); and

WHEREAS, the City values and supports the full participation of all City residents in electing members of the Council; and

WHEREAS, the City hired demographic consulting firm National Demographic Corporation (“NDC”) to assist the City in evaluating the City’s current at-large system and assist the City in its transition to a by-district electoral system pursuant to state law; and

WHEREAS, NDC developed three (3) voter district boundary maps for consideration by the citizens of the City and the Council; and

WHEREAS, the Council conducted three separate noticed public hearings on August 14, 2017, August 28, 2017, and September 11, 2017 pursuant to Elections Code section 10010(a) to receive public input on the proposed district maps; and

WHEREAS, in good faith, the City has publicized and conducted several public hearings in an effort to include the City’s residents in the discussion of the transition plan to district elections, and in the decision-making process of the proposed district boundary maps developed by NDC; and

WHEREAS, on September 25, 2017, the Council selected a map depicting boundaries of the four (4) districts for City elections moving forward; and

WHEREAS, pursuant to Government Code Section 34886, a city council of a general law city that has a population of less than 100,000 people, is authorized to adopt an ordinance that requires the members of the city council to be elected by district in four districts with a Mayor elected at-large; and

WHEREAS, this Ordinance provides for the election of the members of the Council by-district in four (4) districts with a Mayor elected on an at-large basis; and

WHEREAS, pursuant to Government Code Section 34886, subdivision (a), changing the method of electing Council members is made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code.)

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

Section 1. Amendment of Code Chapter 2.10 “General Municipal Elections,” of Title 2 “Administration and Personnel,” (“Ordinance”) of the Atwater Municipal Code is hereby amended to read in full as follows:

CHAPTER 2.10 – GENERAL MUNICIPAL ELECTIONS

2.10.010 - Date of general municipal elections.

Under the authority of Chapter 1013 Statutes of 1981, the general municipal elections of the City of Atwater shall be held on the first Tuesday after the first Monday in November in each even-numbered year.

2.10.020 - Election of Mayor and Council.

~~The electors shall elect a Mayor and four City Councilmembers.~~

- A. **At-large election—Mayor. Pursuant to California Government Code section 34886, the mayor shall be voted on at-large.**

- B. **City Council districts established. Four City Council districts are hereby established in the City of Atwater. The boundaries and identifying number of each district shall be as described on the Council District Map attached hereto as Exhibit “A” and incorporated herein by this reference.**

- C. **Election of members of the City Council by district.**
 - 1. **Upon the commencement of “by district” elections in the order established in section D. of this section 2.10.020, members of the City Council shall be elected “by district” as defined in California Government Code Section 34871 or any successor statute. Except for the Mayor, a person shall not be eligible to be elected as a member of the City Council unless he or she is otherwise qualified as required by law, and both resided in the**

- geographical area making up the district from which he or she is nominated to be elected and was a registered voter of the City of Atwater at the time nomination papers are issued to the candidate as provided for in Section 10227 of the California Elections Code.
2. Registered voters signing nomination papers or voting for a member of the City Council shall be residents of the geographical area making up the district from which the member is to be elected.
 3. The terms of the office of each member elected to the City Council shall remain four years.
- D. Commencement of district elections. It is the intent of the City Council, in enacting this ordinance, that this section shall not affect any term of office in existence or commencing on or before the effective date of the ordinance codified in this section. Commencing with the general municipal election in November of 2018 and thereafter, the voters in districts One (1) and Four (4) shall elect members of the City Council by district and the Mayor shall be elected at large for full four-year terms. At the general municipal election in 2020 and thereafter, the voters in districts Two (2) and Three (3) shall elect members of the City Council by district for full four-year terms.
- E. Adjustment of boundaries.
1. Pursuant to Elections Code Section 21601, as it may be amended, the City Council shall, by ordinance or resolution, adjust the boundaries of any or all of the districts following each decennial federal census. Using the census as a basis, the City Council shall adjust the boundaries so that the districts shall be as nearly equal in population as practicable and in compliance with all applicable provisions of law. Any adjustment of district boundaries shall be made by ordinance or resolution, adopted by the City Council before the first day of November of the year following the year in which each decennial federal census is taken. Prior to the public hearing approving the adjustment of the district boundaries, the City Council shall hold at least one public hearing on the proposed district boundaries as required by Election Code Section 21607.
 2. At the time of any annexation of territory to the City, the City Council shall designate, by resolution adopted by a vote of at least a majority of the City Council, the contiguous district to which the annexed territory shall be a part and shall amend the

district boundaries if necessary in accordance with Election Code Section 21603, as it may be amended.

3. Pursuant to Elections Code Section 21606, the term of office of any Council member who has been elected and whose term has not expired shall not be affected by any change in the boundaries of the district from which he or she was elected. At the first election for Council following adjustment of the boundaries of the districts, a person meeting the requirements of Government Code Section 34882 shall be elected to the City Council for each district under the readjusted district plan that has the same district number as a district whose incumbent's term is due to expire.

- F. Implementation. If necessary to facilitate the implementation of this Ordinance, the City Clerk is authorized to make technical adjustments to the district boundaries that do not substantively affect the populations in the districts, the eligibility of candidates, or the residence of elected officials within any district. The City Clerk shall consult with the City Manager and City Attorney concerning any technical adjustments deemed necessary and shall advise the City Council of any such adjustments required in the implementation of the districts.

2.10.030 - Mayoral term.

The term of the office of Mayor shall be four years.

2.10.040 - Term limits.

No person shall be eligible to serve in the office of City Councilmember or Mayor for more than 12 years following the adoption of this measure, commencing with those elected in the November 4, 2014, election. No person who has held office as a City Councilmember or Mayor, or both, for a total of 12 years may seek nomination and election to either office thereafter. Notwithstanding the foregoing, any person who is appointed by the City Council or elected to fill a vacant office of a City Councilmember or Mayor for the balance of a four-year term, but who serves for less than four years in that office ("partial term"), the partial term shall count as a full four-year term for purposes of computing the term limitation, and that person shall only be eligible for nomination and election for an additional eight years of service thereafter.

SECTION 2. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 3. CEQA

The City Council hereby finds that the adoption of this Ordinance does not constitute the approval of a “project” under the California Environmental Quality Act (CEQA) pursuant to section 15060(c)(2) and (3) and 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or foreseeable indirect physical change in the environment as it does not authorize the construction of any new structures or other physical changes to the environment.

SECTION 4 . Publication. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Merced Sun Star*, the official newspaper of the City of Atwater, setting forth the title of this Ordinance, the date of its introduction and the places where this Ordinance is posted.

The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause this Ordinance, or a summary thereof to be published once in the official newspaper within 15 days after its adoption.

SECTION 5. Effective Date. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Atwater held on the 25th day of September, 2017, by Councilmember Vierra, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Creighton, was upon roll call carried and ordered printed and published by the following vote:

- AYES: Creighton, Vineyard, Vierra, Price**
- NOES: Raymond**
- ABSENT: None**

Introduced by Council Member _____ seconded by Council Member _____ on the ____ day of _____, 2017.

Passed on the __ day of _____, 2017, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

DON HYLER III, CITY CLERK

CITY OF ATWATER
SEP 20 2017
HUMAN RESOURCES

CLAIM NO. 2017-13

CLAIM FORM

FORM B

(Please Type or Print)

CLAIM AGAINST City of Atwater

(Name of Entity)

Claimant's name: Frank Johnson / NAAAP

SS#: _____ DOB: _____ Gender: Male _____ Female _____

Claimant's address: _____

Address where notices about claim are to be sent, if different from above: _____

Date of incident/accident: 9-11-17

Date injuries, damages, or losses were discovered: 9-15-17

Location of incident/accident: City Hall

What did entity or employee do to cause this loss, damage, or injury? please see attachment

Brown Act Violation

(Use back of this form or separate sheet if necessary to answer this question in detail.)

What are the names of the entity's employees who caused this injury, damage, or loss (if known)? _____

Margarita Saavedra and Mayor Price

What specific injuries, damages, or losses did claimant receive? See attached

(Use back of this form or separate sheet if necessary to answer this question in detail.)

What amount of money is claimant seeking or, if the amount is in excess of \$10,000, which is the appropriate court of jurisdiction. Note: If Superior and Municipal Courts are consolidated, you must represent whether it is a "limited civil case" [see Government Code 910(f)] _____

Damages in excess of 5,000 dollars. See attached for details.

How was this amount calculated (please itemize)? See attachment

(Use back of this form or separate sheet if necessary to answer this question in detail.)

Date Signed: 9-18-17 Signature: [Signature]

If signed by representative:

Representative's Name _____ Address _____

Telephone # _____

Relationship to Claimant _____

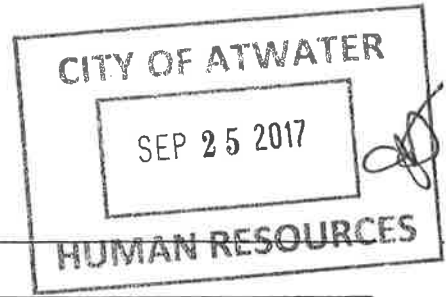
CITY OF ATWATER

CLAIM NO. 2017-14

CLAIM FORM

FORM B

(Please Type or Print)



CLAIM AGAINST City of Atwater
Claimant's name: Frank Johnson / NAAAP
(Name of Entity)

SS#: _____ DOB: _____ Gender: Male _____ Female _____

Claimant's address: _____

Address where notices about claim are to be sent, if different from above: _____

Date of incident/accident: See attached

Date injuries, damages, or losses were discovered: See attached

Location of incident/accident: See attached

What did entity or employee do to cause this loss, damage, or injury? Violations of Cal. Gov. Code Section 6250 Et. Seq. Please see attachment
(Use back of this form or separate sheet if necessary to answer this question in detail.) for details.

What are the names of the entity's employees who caused this injury, damage, or loss (if known)? refused to produce as of this date.
Margarita Saavedra and others unknown at this time.

What specific injuries, damages, or losses did claimant receive? See attachment.

(Use back of this form or separate sheet if necessary to answer this question in detail.)

What amount of money is claimant seeking or, if the amount is in excess of \$10,000, which is the appropriate court of jurisdiction. Note: If Superior and Municipal Courts are consolidated, you must represent whether it is a "limited civil case" [see Government Code 910(f)]

Damages in excess of 51,000 dollars. See attached for details.

How was this amount calculated (please itemize)? See attachment.

(Use back of this form or separate sheet if necessary to answer this question in detail.)

Date Signed: 9-21-17 Signature: [Signature]

If signed by representative:
Representative's Name _____ Address _____
Telephone # _____
Relationship to Claimant _____

ATWATER POLICE DEPARTMENT

NOTABLE CASES FOR SEPTEMBER, 2017

1. On September 3, 2017 at 2:26 pm, Atwater Police Officers responded to Winton Way and Ivy Street for a hit and run traffic accident. The adult male person fled the area but witnesses told Officers the person was at the Valero gas station near Santa Fe and Winton Way. Officers contacted the person and determined he was operating a motor vehicle under the influence of an alcoholic beverage and involved in a traffic collision. The person was arrested for DUI and a misdemeanor warrant. The person was later booked into the Merced County Jail on the above charges.
2. On September 5, 2017 at approximately 12:47 am, Atwater Police Officers were dispatched to the area of Determine and Swaps Street on a report of an assault that just occurred. Upon arrival officers located the victim staggering down the street on Determine and East Bellevue Rd. The victim had a large knife wound to the back of his head. Officers rendered medical aid until Riggs ambulance personnel arrived on scene. The victim was air lifted to a Modesto area hospital. The report referred to the Detective Division for follow up investigation.
3. On September 5, 2017 at 1:39 am, Atwater Police Dispatch center received a call from Mercy hospital in regards to an additional stabbing victim that was currently at Mercy hospital. Public safety dispatcher Goins spoke with the adult male victim, who stated that he was assaulted by an unknown person with a knife on Swaps Street. The suspect was said to be in a green Honda. Due to staffing shortages a patrol officer was unavailable to respond to the hospital. The victim was instructed to respond to the Atwater Police Department when he was released from the hospital to provide a statement. He stated that he would.
4. On September 15, 2017 06:12 pm, Atwater Police Officers were dispatched to the 1800 block of Bellevue Rd in regards to a vehicle hitting a parked vehicle and the wall of a building. There were no injuries and the driver of the vehicle was arrested for DUI. The case is still under investigation.
5. On September 18, 2017 at approximately 9:30 am, Officers Walker and Radke conducted a follow up at 6944 Chestnut Lane in Winton regarding a commercial burglary from Atwater Iron and Metal. Officers contacted several subjects on the property during the investigation. A stolen vehicle from Livingston was also located in the property. One female adult was arrested for possession of a stolen vehicle, possession of methamphetamine, possession of drug paraphernalia and a misdemeanor traffic warrant.

One adult male was arrested for possession of a stolen vehicle and a misdemeanor warrant. Four other adult males were also arrested, the second for possession of a stolen vehicle and two felony no bail warrants, the third adult male for possession of a stolen vehicle, possession of a stolen vehicle, the fourth adult male possession of a stolen vehicle and a felony no bail warrant. The vehicle was recovered and towed for evidence.

6. On September 18, 2017 at approximately 12:02 pm Officers Lee and Smith handled a stolen vehicle report in the 1500 block of Sycamore Avenue. During the investigation Officers Lee and Smith developed suspect leads and contacted the suspect. The investigation showed that the victim and suspect were acquaintances and the suspect stole the victim's vehicle after locating the spare set of keys. The vehicle was later recovered in Merced, and the suspect arrested for vehicle theft.
7. On September 25, 2017 at approximately 9:49 pm, Atwater Police Officers responded to a traffic collision at First Street and Fortuna Avenue. Officers arrived and located a brown 2005 Ford F-150 pick- up truck embedded into the back of a Toyota Land Cruiser that had been pushed into the back of Chevrolet Blazer. The driver of the Ford F-150 was found to be driving under the influence of an alcoholic beverage and was arrested. The man was later booked into the Merced County Jail for driving a motor vehicle while under the influence of an alcoholic beverage.

Fire Svc. Calls	Jan-17	Feb-17	Mar-17	Apr-17	May-17	June-17	July-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
Structure Fire	6	6	2	3	4	7	8	5	5			
Other Fires	15	11	14	10	31	21	29	18	11			
Vehicle Accidents	12	7	21	14	19	11	21	13	14			
Medical Aid	268	214	206	202	259	237	220	243	222			
Haz-Mat/ Hazardous condition	11	6	4	5	3	6	7	3	2			
Public Assistance/ Service Calls	14	12	23	18	20	23	17	28	12			
Total	326	256	270	252	336	305	302	313	266			
Weed Abatement												
Weed abatement properties inspected	0	0	5	75	50	75	45	0	0			
Number of properties abated by contractors	0	0	0	2	0	1	3	0	0			
# of properties serviced by most used contractor	0	0	0	0	0	0	0	0	0			
Avg weed abatements per contractor	0	0	0	0	0	0	0	0	0			
Projects												
Hydrants inspected/serviced	1	0	5	4	7	5	0	5	0			
Public education [qty. of presentations]	2	2	4	4	3	2	1	5	4			
Hose Testing	0	0	0	0	0	0	0	0	0			
Buisness Inspection	35	50	40	62	50	43	38	16	15			
Training Sessions	4	6	6	5	8	4	6	8	10			
Reserve Program												
# hours worked	74	24	48	42	36	55	40	84	36			
Training Hours	10	8	11	12	8	12	14	10	4			
Meetings												
Staff meetings attended	3	3	4	4	4	4	4	4	7			
City Council meetings attended	2	2	2	2	2	4	4	1	4			
Public Safety meetings attended	15	10	8	12	7	5	3	7	13			
Local, State, and Federal meetings/activities	10	12	16	8	10	8	15	0	4			

**WELL WATER LEVELS
2017**

PUMP		JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
WELL #	SETTING	STATIC	RESIDUAL	STATIC	RESIDUAL	STATIC	RESIDUAL	STATIC	RESIDUAL	STATIC	RESIDUAL	STATIC	RESIDUAL
9*													
13	165	90	86	89	87	100	106	107	95	96			
14	175	89	89	90	89	105	96	98	96	95			
15*	175	125	125	94	96	155	152	151	148	140			
16	230	154	155	152	128	144	148	148	153	146			
17	240	117	119	114	114	126	116	125	134	129			
18	295	94	96	97	93	109	110	112	117	118			
19	305	95	87	91	87	130	135	133	139	136			
20													
21	160	110	107	108	107	113	123	125	123	119			

October 2, 2017

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of October 9, 2017

**ORDINANCE NO. CS 982 AMENDING TITLE 8, CHAPTER 8.52,
PERTAINING TO MEDICAL MARIJUANA; AMENDING THE
DEFINITIONS SECTION OF TITLE 17, CHAPTER 17.06, TO ADDRESS
COMMERCIAL MARIJUANA OPERATIONS IN THE CONTEXT OF
CROP CULTIVATION AND INDUSTRY, INDUSTRIAL OPERATION;
AND AMENDING TITLE 17, CHAPTER 17.75 SPECIFIC USES, ADDING
SECTION 17.75.120 PERTAINING TO STANDARDS FOR
COMMERCIAL MARIJUANA OPERATIONS IN THE CITY**

RECOMMENDATION:

It is recommended that the City Council take the following actions:

1. Opening the Public Hearing and receiving testimony given; and
2. Waiving the first reading and introduce Ordinance No. CS 982 – an Ordinance of the City amending Title 8, Chapter 8.52 Medical Marijuana, Title 17, Chapter 17.06 Definitions, and adding standards for Commercial Marijuana under Title 17 Zoning, Chapter 17.75 Specific Uses.

BACKGROUND:

On January 31, 2017 the Atwater City Council and Community Development & Resource Commission (CDRC) held a Joint Special Meeting regarding the topic of Commercial Marijuana. At that time staff was given direction by the Atwater City Council to prepare an ordinance which if adopted would potentially allow for commercial marijuana operations within the City of Atwater. Additionally, due to the passage of Proposition 64 in November 2016 and other changes that took effect in June 2016 with the passage of SB 837 the City's existing Medical Marijuana Codes needed some updates for consistency purposes.

On April 24, 2017 the Atwater City Council reviewed a Draft Ordinance and provided staff with general direction. Members of the public also addressed the Draft Ordinance. The Draft Ordinance has been created using several samples from cities and counties in California which allow for commercial marijuana activities. Any ordinance however should reflect the policy and vision of the local community.

On September 20, 2017 the Community Development and Resources Commission reviewed the latest draft ordinance. A public hearing was held and members of the public addressed the Commission on this subject. The CDRC recommended adding onsite patrols for buildings that are used for commercial marijuana businesses and also including a section for Development Agreements. Every commercial marijuana business in the City would be required to enter into a Development Agreement with the City prior

to operating in the City. The CDRC also recommended removing language that limits the number of licenses in the City since some operators would need to obtain multiple licenses from the State to operate.

ANALYSIS:

A Public Hearing Notice has been prepared and advertised regarding a Public Hearing on this topic. Ordinance No. CS 982, if adopted, would amend Title 8, Chapter 8.52 pertaining to Medical Marijuana as well as amending two sections of Title 17 Zoning, Chapter 17.06 Definitions and Chapter 17.75 Specific Uses. Under the Specific Uses Chapter the proposed ordinance would create standards and processes for Commercial Marijuana Operations within the City Limits of the City of Atwater. As proposed the ordinance would provide for the following;

- Define the purpose and need for the regulations
- Add definitions specific to terms in the regulations
- Permit specific Commercial Marijuana operations in specific established City Zoning Districts
- Establish and list non permitted activities
- Identify and define required operational, security, and development standards
- Establish procedures for applications for Employee Permits, Security Plans, as well as Regulatory Permits needed to operate the business
- Establish requirements for the applications and review processes of the permits as well as appeal procedures
- Establish repeal procedures and reasons why a repeal may be processed
- Create fees associated with processing the permits and for on-going monitoring of the business operations

With regard to revenue, separate City Council Resolutions will need to be drafted and considered by the Atwater City Council which addresses the costs for applications and renewals of the required permits. In general those costs are required to off-set the cost to provide the associated services. Those would include the Employee Permits, Security Plan, and Regulatory Permit. They can be included in the City's Miscellaneous Fee Schedule or be a separate resolution.

In addition to the application fees within the proposed ordinance the City is also seeking to create a Revenue Raising Fee as a franchise arrangement for the privilege and right to operate within the City. The fees are based upon a cost per square foot of canopy area for cultivation and nursery uses as well as for other uses such as processing, extraction, manufacturing, testing, distribution, and transportation. The ordinance does allow for integrated operations, so that businesses can do more than one of the activities.

The proposed ordinance does not allow for operation of a medical dispensary or any retail sales of marijuana or marijuana products. Should those types of activities be sought it would require a new Ordinance.

ENVIRONMENTAL IMPACT:

None.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,

A handwritten signature in blue ink that reads "John Bramble". The signature is written in a cursive style and is positioned above a horizontal line.

John Bramble
Interim City Manager



**CITY COUNCIL
OF THE
CITY OF ATWATER**

ORDINANCE NO. CS 982

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER: (1) AMENDING TITLE 8, CHAPTER 8.52, PERTAINING TO MEDICAL MARIJUANA; (2) AMENDING THE DEFINITIONS SECTION OF TITLE 17, CHAPTER 17.06, TO ADDRESS COMMERCIAL MARIJUANA OPERATIONS IN THE CONTEXT OF CROP CULTIVATION AND INDUSTRY, INDUSTRIAL OPERATION; AND (3) AMENDING TITLE 17, CHAPTER 17.75, OF THE CITY'S DEVELOPMENT CODE TO ADD A NEW SECTION 17.75.120 PERTAINING TO THE STANDARDS FOR COMMERCIAL MARIJUANA OPERATIONS IN THE CITY

The City Council of the City of Atwater does hereby ordain:

SECTION 1: FINDINGS.

1. State Law Findings.

a. On November 5, 1996, with the adoption of Proposition 215, the California voters approved the Compassionate Use Act ("CUA") (Health and Safety Code § 11362.5) to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where medical use is deemed appropriate and has been recommended by a physician, without fear of criminal prosecution under limited, specified circumstances.

b. On January 1, 2004, the State Legislature enacted SB 420 to clarify the scope of the CUA and provide additional statutory guidance regarding medical marijuana use. These statutes are codified in Health and Safety Code § 11362.7 et seq. and allow cities and counties to adopt supplemental rules and regulations.

c. On October 9, 2015, almost 20 years after passage of the CUA, the Governor signed the Medical Marijuana Regulation and Safety Act (“Act”), comprised of California legislative bills AB 243, AB 266, and SB 643. The Act creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis, all subject to local control. One of the purposes of the Act is to ensure uniformity among jurisdictions that wished to allow commercial marijuana operations.

d. On June 27, 2016, the Governor signed SB 837, effective immediately, changing the terms in the Act from “medical marijuana” or “marijuana” to “medical cannabis” or “cannabis”, and making other technical changes to the Act. SB 837 also adopted regulations relating to the use and diversion of water in connection with the cultivation of cannabis.

e. On November 8, 2016, the people of the State of California passed Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”)), legalizing the possession, use, and cultivation of marijuana by adults, subject to certain limitations. The AUMA permits local governments to regulate the cultivation of marijuana or cannabis within its jurisdiction, subject to state law limitations.

2. City of Atwater Marijuana Regulatory History.

a. In 2016, the City adopted Title 8, Chapter 8.52, of the Atwater Municipal Code pertaining to Medical Marijuana (Ordinance CS 969). The CS 969 placed a complete ban on marijuana cultivation and dispensaries in the City based in part upon the fact that there were no State regulatory controls. The City was concerned that without adequate uniform State wide regulatory controls in place, marijuana cultivation and dispensaries would become a nuisance.

b. At the time the City adopted the marijuana cultivation ban, the issue of commercial marijuana operations, such as manufacturing, testing and distribution, were not considered an area of concern in need of regulation. Now, with the adoption of the Act, commercial marijuana operations are imminent.

c. To avoid possible ambiguity created through the development of laws relating to commercial marijuana operations, it is necessary to amend Chapter 17.06 of the City’s Development Code to incorporate a definition for Crop Cultivation and amend the definition for Industry, Industry Operation.

d. In removing the commercial cultivation ban for the reasons set forth below and in light of commercial marijuana operations being imminent, there is a need to impose regulatory requirements on commercial marijuana operations to protect the public health, safety and welfare.

|

3. Failure to Have Regulations: Health and Safety Consequences.

a. As noted, on October 9, 2015, the State adopted the Act, which took effect January 1, 2016. The Act mandated a comprehensive state licensure and regulatory framework for cultivation, manufacturing, distribution, transportation, testing, and dispensing of medical marijuana on a commercial basis, but implementing regulations have yet been written and state licenses may not be available until as late as 2018.

b. Since the passage of AUMA, there have been inquiries from individuals and entities, both from within and outside the City of Atwater, seeking to start a commercial marijuana operation in the City. The qualifications, expertise, and backgrounds of most of these individuals and entities are unknown. In the absence of a formal regulatory framework, there are potential serious adverse consequences to the community. There are numerous well publicized studies and reports, as well as numerous documented incidents in Merced County and throughout the State, which show that unregulated marijuana operations have a significant adverse effect on the community.

c. The numerous health, safety, and welfare concerns associated with unregulated marijuana operations include, among others, home drug labs, offensive odors, trespassing, theft, violent encounters between growers and persons attempting to steal plants, fire hazards, problems associated with mold, fungus, and pests, and environmental contamination. These concerns have been exemplified throughout Merced County and the State as evidenced by numerous area agency police reports and news articles and stories.

d. The City finds that in the absence of a formal regulatory framework the adverse impacts frequently associated with commercial marijuana operations will occur, resulting in an unregulated and potentially significant negative impact upon the environment and upon the public health, safety, and welfare of the community.

4. Inability to Open: Health and Safety Consequences.

a. There is a large black market run by criminal organizations in the Atwater area, and State wide, where medical marijuana patients have to acquire their marijuana. Every time a patient purchases marijuana from the black market they not only have no idea as to the quality and dosage of the product, they are dealing with dangerous criminals, often hardened gang members. Purchasing on the black market is directly associated with criminal activity and is harmful to the surrounding neighborhoods. Purchasing marijuana in this way is a significant health and safety risk to the patient, and the neighborhood where these transactions take place, that must be addressed now that there is a mechanism to address the problem with the Act.

b. Since the passage of AUMA, this problem has been magnified. AUMA specifically recognizes that, prior to its passage, the adult use of marijuana could only be accessed through an illegal and unregulated market. In order for law enforcement to crackdown on the underground black market that currently benefits drug cartels and

gangs, it is necessary to facilities processing a safe product. If safe facilities are not in place, users will continue to use the dangerous black market.

SECTION 2: Chapter 8.52 of the City of Atwater Municipal Code is hereby amended to read in full as follows:

8.52.010 – Legislative findings and statement of purpose.

A. The City Council finds that the ~~prohibitions-regulation on-of~~ indoor and outdoor marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's ~~prohibition~~ regulation of such activities is within the authority conferred upon the City Council in its Charter and state law.

B. On October 9, 2015, the governor signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law, which became effective on January 1, 2016. On June 27, 2016, the Governor signed SB 837, effective immediately, changing the terms in the Act from "medical marijuana" or "marijuana" to "medical cannabis" or "cannabis", and making other technical changes to the Act. The Act ~~becomes effective January 1, 2016 and~~ contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health and Safety Code section 11362.777 for the cultivation of marijuana (Health and Safety Code § 11362.777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business and Professions Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business and Professions Code § 19316(c)); and
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business and Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business and Professions Code § 19340(a)).

C. The City Council finds that this chapter: (1) expresses its intent to prohibit the ~~indoor and~~ outdoor cultivation of marijuana in the City and to not administer a conditional permit program pursuant to Health and Safety Code ~~§section~~ 11362.777 for the cultivation of marijuana in the City; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the delivery of marijuana in the City.

D. The City Council further finds that this Chapter is necessary to regulate the cultivation of Marijuana or Cannabis in a manner that protects the health, safety and welfare of the community consistent with Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”). This Chapter is not intended to interfere with a patient’s right to medical Marijuana or Cannabis, as provided for in California Health & Safety Code Section 11362.5, nor does it criminalize medical Marijuana or Cannabis possession or cultivation by specifically defined classifications of persons, pursuant to state law. This Chapter is not intended to give any person unfettered legal authority to grow Marijuana or Cannabis; it is intended to impose zoning restrictions on the personal indoor Cultivation of Marijuana or Cannabis permitted under AUMA when it is authorized by California state law for medical or other lawful purposes.

E. No part of this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.

8.52.020 – Definitions.

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

A. “Authorized Grower” means a person twenty-one (21) years or older who is authorized by, and in compliance with, federal or state law to Cultivate Marijuana indoors for personal or medical use.

B. “Cannabis” has the same meaning as in Section 19300.5 of the Business and Professions Code.

C. “Fully Enclosed and Secure Structure” means a fully-enclosed space within a building that complies with the California Building Code (“CBSC”), as adopted in the City of Atwater, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent.

Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Atwater.

D. "Immature Marijuana Plant" means a Marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

E. "Indoors" means within a Fully Enclosed and Secure Structure as that structure is defined above in subsection C.

A-F. "Marijuana" means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code §Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code §§Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

B-G. "Marijuana or Cannabis cultivation" means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana, whether such activities take place indoors or outdoors.

C. ~~"Marijuana processing" means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.~~

D-H. "Marijuana dispensary" or "marijuana dispensaries" means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business and Professions Code §section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code §Section 11362.5 (Compassionate

Use Act of 1996) or California Health and Safety Code ~~§§Sections~~ 11362.7 to 11362.83 (Medical Marijuana Program Act).

~~E.I. "Mature Marijuana Plant" means a Marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.~~

~~"Medical marijuana collective" or "cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).~~

~~F.J. "Outdoor" means any location within the City of Atwater that is not within a Fully Enclosed and Secure Structure.~~

~~G.K. "Parcel" means property assigned a separate parcel number by the Merced County Assessor.~~

~~H.L. "Private Residence" means a house, apartment unit, mobile home, or other similar dwelling unit.~~

8.52.040 – Prohibited activities.

~~Outdoor Mmarijuana or cannabis cultivation, (whether it occurs indoors or outdoors), marijuana processing, marijuana delivery, and marijuana dispensaries shall be prohibited activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of outdoor marijuana cultivation, marijuana processing, marijuana delivery, or the establishment or operation of a marijuana dispensary in the City, and no person shall otherwise establish or conduct such activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.~~

8.52.050 – Cultivation of Marijuana or Cannabis for personal use; regulations for residential zones.

~~A. When authorized by state law, an authorized grower shall be allowed to Cultivate Marijuana or Cannabis only in a Private Residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:~~

1. The Marijuana or Cannabis Cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted, as long as it is fully enclosed, secure, not visible from a public right-of-way and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

2. The use of gas products such as, but not limited to CO2, butane, methane, or any other flammable or non-flammable gas for Marijuana or Cannabis Cultivation or processing is prohibited.

3. There shall be no exterior visibility or evidence of Marijuana or Cannabis Cultivation outside the Private Residence from the public right-of-way, including but not limited to any Marijuana or Cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from Cultivation lighting.

4. The authorized grower shall reside full-time in the residence where the Marijuana or Cannabis cultivation occurs.

5. The Authorized Grower shall not participate in Marijuana or Cannabis Cultivation in any other location within the City.

6. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for Marijuana or Cannabis Cultivation.

7. The Marijuana or Cannabis Cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

8. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

9. The Marijuana or Cannabis Cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

10. No more than six (6) Marijuana or Cannabis plants, mature or immature, are permitted for indoor personal cultivation under this Chapter.

11. Marijuana or Cannabis in excess of twenty-eight and 5/10 (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the Private Residence not visible from the public right-of-way.

B. Outdoor Cultivation of Marijuana or Cannabis and Cultivation of Marijuana or Cannabis for non-personal uses are expressly prohibited in all zones and districts of the City of Atwater.

8.52.060 – Indoor Cultivation of Marijuana or Cannabis restricted to authorized growers.

A. It is hereby declared to be unlawful, a public nuisance and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to cause or allow such parcel to be used for the Cultivation of Marijuana or Cannabis, unless the person is authorized by state law to grow Marijuana or Cannabis for a specifically authorized purpose within a Private Residence in a residential zone, and such authorized grower is complying with all requirements of this Chapter.

A.B. No person shall grow Marijuana or Cannabis in a structure upon any parcel until and unless they first secure a building permit from the building department and pay such fee as may be required and set forth by resolution of the City Council. If said structure is exempt and not required to obtain a building permit no fee shall be required.

8.52.070 – Commercial Operations.

Notwithstanding anything to the contrary in this chapter, Commercial Marijuana Operations may occur as allowed by the applicable zoning and pursuant to Title 17, Chapter 17.75, Specific Uses, Section 17.75.120, Marijuana Cultivation, Manufacturing, Testing, Transportation and Distribution.

8.52.0850 – Public nuisance.

Any violation of this chapter is hereby declared to be a public nuisance. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of Cultivating Marijuana or Cannabis Plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

A. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

B. Responses to the parcel by law enforcement personnel wherein the property owner, licensee, operator, or authorized grower is deemed to have caused nuisance by their direct actions.

C. A disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

D. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling greenhouse or other legal structure, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

~~B.E.~~ Outdoor growing or Cultivation of Marijuana or Cannabis.

8.52.09680 – Violations.

A. The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Atwater Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Atwater Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance.

B. It shall be unlawful for any Person to violate, or to permit the violation of, any provision of this Chapter. All Owners, Occupants and other Persons at or on the property or premises where a violation of this Chapter occurs may be cited and convicted, provided, however, that an Owner who is not in possession of his/her property, and who has instead permitted another Person(s) to occupy the property, shall not be convicted of a violation unless: (1) the Owner was in fact present at the property during the time in which the violation occurred; or (2) the Owner has been previously issued a citation from the City of Atwater describing a violation of this Chapter and has failed to remedy the violation within a reasonable time; or (3) the Owner has actual knowledge of the existence of a violation of this Chapter and failed to take reasonable steps to remedy the violation on his/her property.

~~A.C.~~ Any violation of this chapter shall be punishable as a misdemeanor. In the alternative, and in the discretion of the Chief of Police, a violation of this chapter may be prosecuted as an infraction punishable pursuant to the provisions of Section 1.01.110 of this Code. In addition, the City may abate any public nuisance associated with any violation of this chapter using the abatement procedures set forth in Chapter 8.32.

SECTION 3: Section 17.06.187 of Chapter 17.06 of the City of Atwater Municipal Code is hereby adopted to read in full as follows:

17.06.187 – Crop Cultivation.

The cultivation of tree, vine, field, forage, and other plant crops intended to provide food or fibers. The classification excludes wholesale or retail nurseries, vineyards and ancillary wineries and distilleries. This classification includes the indoor cultivation of cannabis, [marijuana, and cannabis, marijuana nurseries.](#)

SECTION 4: Section 17.06.305 of Chapter 17.06 of the City of Atwater Municipal Code is hereby amended to read in full as follows:

17.06.305 – Industry, industrial operation.

The manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character or appearance thereof and including storage elevators, storage yards, warehouses, wholesale storage and other similar types of enterprises. This classification includes the cultivation, [nurseries, processing, extraction, manufacturing, testing, distribution, and transportation of cannabis and cannabis products.](#)

SECTION 5: Section 17.75.120 of Chapter 17.75 of the City of Atwater Municipal Code is hereby adopted to read in full as follows:

17.75.120 – Marijuana Cultivation, [Nursery, Manufacturing, Testing, Transportation and Distribution.](#)

A. **Purpose.** The purpose of this section is to adopt local regulations applicable to commercial marijuana operations as may be permitted under the California Medical Marijuana Regulation and Safety Act, adopted on October 9, 2015, with legislative bills AB 243, AB 266, and SB 643, or subsequently enacted State law pertaining to the same or similar uses for recreational cannabis. The Medical Marijuana Regulation and Safety Act has been retitled as the Medical Cannabis Regulation and Safety Act, and is hereinafter referred to as the “Act”.

B. **Definitions.** Except as set forth herein, or where a different meaning is clearly intended by the language, the definitions set forth in the Act shall apply to interpretations under this section.

“Act” means the Medical Marijuana Regulation and Safety Act, now called the Medical Cannabis Regulation and Safety Act. Both names may be used interchangeably, but shall have the same meaning.

“Applicant” means a person who is required to file an application for a permit under this section.

“Business Owner” means the owner(s) of the Marijuana Operations. For corporations and limited liability companies, Business Owner means the President, Vice President, and any shareholder owning a 10% or greater share of the corporation or company. For partnerships, Business Owner means all general partners and managing partners.

“Cannabis” or “marijuana” shall have the meaning set forth in California Business and Professions Code § 19300.5(f). Cannabis and marijuana may be used interchangeably, but shall have the same meaning.

“City” means the City of Atwater.

“Commercial Marijuana Operation” or “Marijuana Operation” means any commercial marijuana activity allowed under the Act and the implementing regulations, as the Act and the implementing regulations may be amended from time to time, and all uses permitted under any subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.

“Commercial Marijuana Regulatory Permit” or “Regulatory Permit” means the permit required under this section to have a Commercial Marijuana Operation.

~~“Employee Permit” means the permit required under this section for every employee or independent contractor working at a Commercial Marijuana Operation or involved in transportation/delivery related services for a Commercial Marijuana Operation. “Distribution” means the procurement, sale, and transport of marijuana and marijuana products between entities licensed pursuant to this chapter or similar entities licensed in other jurisdictions within the State of California and/or by The State of California.~~

~~“Employee Permit” means the permit required under this section for every employee or independent contractor working at a Commercial Marijuana Operation or involved in transportation/delivery related services for a Commercial Marijuana Operation~~

~~“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.~~

~~“Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of marijuana or marijuana products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages marijuana or marijuana products or labels or re-labels its container, that holds a state license pursuant to this division.~~

“Non-Commercial and Recreational Marijuana Activity” means all uses not included within the definition of Commercial Marijuana Operation, including the personal use, cultivation, or consumption of marijuana, whether medical or recreational.

“Nursery” means a licensee or operator that produces clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of marijuana.

“Operator” means the Business Owner and any other person designated by the Business Owner as responsible for the day to day Marijuana Operations.

“Ordinance” means the ordinance adopting this section, and including the terms of this section, which may be commonly referred to as the City’s “Commercial Marijuana Ordinance”.

“Police Chief” means the Police Chief of the City of Atwater or his or her designee.

“Premises” or “Site” means the actual building(s), and/or designated units/suites, as well as any accessory structures, parking areas, or other immediate surroundings, and includes the entire parcel of property used by the Business Owner in connection with the Marijuana Operations.

“Premises Owner” means the fee owner(s) of the Premises where Marijuana Operations are occurring.

“Responsible Party” shall mean the Business Owner, Operator, manager(s), and any employee having significant control over the Marijuana Operations.

“Testing” means a laboratory, facility, or entity in the state, that offers or performs tests of marijuana or marijuana products, including the equipment provided by such laboratory, facility, or entity, and that is both of the following: (1) Accredited by an accrediting body that is independent from all other persons involved in commercial marijuana activity in the state. (2) Registered with the Department of Public Health.

“Transportation” or “Transport” means the transfer of marijuana from the commercial marijuana operation of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial marijuana activity authorized pursuant to this chapter or by the State of California.

C. Permitted Uses and Zoning. Business Owners meeting the requirements of this section shall be allowed to conduct the following Commercial Marijuana Operations in the M-1 Light Industrial Zone, M-2 Heavy Industrial Zone, and B-P

Business Park District Overlay district of the City provided they first obtain approval by the Community Development and Resource Commission of a regulatory permit pursuant to this section:

- Cultivation.
- Processing.
- Extraction.
- Manufacturing.
- Nursery operations.
- Testing.
- Distribution.
- Transportation.

The Commercial Marijuana Operation shall at all times be in compliance with this section as it may be amended from time to time or repealed and replaced by another section governing the Commercial Marijuana Operation.

It is the intent of this Ordinance to provide for the ability for Business Owners to have multiple Commercial Marijuana Operations vertically integrated within one building or location. Business Owners can conduct any of the Permitted Uses provided that the Regulatory Permit specifically identifies the permitted uses. Separate locations, physical properties or parcels, shall require separate Regulatory Permits for each location.

Dispensaries are expressly prohibited unless approved by the voters of the City of Atwater.

D. Minimum Operational Requirements and Restrictions. The following operational requirements and restrictions shall apply to all Commercial Marijuana Operations:

1. The Act and Other State Laws. The Marijuana Operations shall at all times be in compliance with the Act and the implementing regulations, as they may be amended from time to time, as well as all required State license(s) under the Act, and any other applicable State law. The Operator shall obtain required licenses under the Act prior to opening for business, or if the State is not ready to issue licenses under the Act prior to the time of opening, within twelve (12) months of the State being ready to issue the required license(s). Provided, however, that the Operator shall at all times be in compliance with all other requirements of the Act and implementing regulations, and any other applicable State law, regardless of the timing of the issuance of a license under the Act.

If the Operator uses the approved Marijuana Operations for commercial, medical or recreational cannabis, the Operator shall meet or exceed the health and safety requirements of the Act in any operations relating to recreational marijuana.

2. Register of Employees. The Operator shall maintain a current register of the names of persons required to have Employee Permits. The register shall be available to the Police Chief at all times immediately upon request.

3. Signage. There shall be no signage or markings on the Premises, or off site, which in any way evidences that Marijuana Operations are occurring on the property. Interior building signage is permissible provided the signage is not visible outside of the building.

4. Marijuana Consumption. No marijuana shall be smoked, ingested or otherwise consumed on the Premises. Adequate signage of this prohibition shall be displayed throughout the facility.

5. Alcoholic Beverages. No Marijuana Operation shall hold or maintain a retail license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol for personal consumption shall not be provided, stored, kept, located, sold, dispensed, or used on the Premises.

6. Transportation. Transportation shall only be conducted according to activity permitted by State law.

7. Distribution. There shall be no deliveries from the Premises of cannabis or cannabis containing products except to another State or local licensed or permitted cannabis business.

8. Non-Commercial Marijuana Activity. No Non-Commercial or Recreational Marijuana Activity shall occur on the Premises.

9. Retail Sales. The retail sale of marijuana is expressly prohibited.

10. Public Access. There shall be no public access to the Premises.

11. Minors. It shall be unlawful for any Operator to employ any person who is not at least eighteen (18) years of age, or any older age if set by the State.

12. Distance separation from schools. Commercial Marijuana Operations shall comply with the distance separation requirements from schools as required by State law, six hundred (600) feet. In addition, a Commercial Marijuana Operation shall not be located within 1800 feet from any existing school or proposed school site as identified in the General Plan. In addition, Commercial Marijuana Operation shall also not be located within six hundred (600) feet of a proposed school site as identified in the General Plan. Measurements shall be from property boundary to property boundary. For purposes of this section, school means any public or private school providing

instruction in kindergarten or grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

13. Hours of Operation. Commercial Marijuana Operations shall be allowed to operate per the requirements of the underlying zone district and subject to the City's noise and nuisance ordinances.

14. Building and Related Codes. The Marijuana Operation shall be subject to the following requirements:

a. The Premises in which the Marijuana Operations occur shall comply with all applicable local, state and federal laws, rules, and regulations including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the Building Official of the City. The Operator shall obtain all required building permits and comply with all applicable City standards.

b. The Responsible Party shall ensure that the Premises has sufficient electrical load for the Marijuana Operations.

c. Butane and other flammable materials are permitted to be used for extraction and processing provided the Operator complies with all applicable fire and building codes, [including obtaining an Aerosol Permit,](#) and any other laws and regulations relating to the use of those products, to ensure the safety of that operation. The Atwater Fire Department shall inspect and approve the Premises for use of the products prior to City's issuance of a certificate of occupancy, or otherwise prior to opening for business, to ensure compliance with this requirement. [The Atwater Fire Department shall also conduct annual inspections and shall charge a fee as adopted by the Atwater City Council for the conduct of the inspection.](#)

d. The Operator shall comply with all laws and regulations pertaining to use of commercial kitchen facilities for the Marijuana Operations.

e. The Operator shall comply with all environmental laws and regulations pertaining to the Marijuana Operations, including the use and disposal of water and pesticides, and shall otherwise use best practices to avoid environmental harm.

15. Odor control. Marijuana Operations shall provide ~~a~~ sufficient odor absorbing ventilation and exhaust system so that odor generated inside the facility that is distinctive to its operation is not detected outside the Premises, outside the building housing the Marijuana Operations, or anywhere on adjacent property or public rights-of-way. As such, Marijuana Operations must install and maintain the following equipment or any other equipment which the City's Building Official determines has the same or better effectiveness, if a smell extends beyond a property line:

a. An exhaust air filtration system with odor control that prevents internal odors and pollen from being emitted externally; or

b. An air system that creates negative air pressure between the cannabis facility's interior and exterior so that the odors generated inside the cannabis facility are not detectable outside the cannabis facility.

16. Consumable Products. Marijuana Operations that manufacture products in the form of food or other comestibles shall obtain and maintain the appropriate approvals from the State Department of Public Health for the provision of food or other comestibles, unless otherwise governed by the Act and licensed by the State.

17. Secure Building. All Marijuana Operations shall occur entirely inside of a building that shall be secure, locked, and fully enclosed, with a ceiling, roof or top. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures (including, without limitation, commercial greenhouse structures), and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid translucent material provided other security measures exist to ensure that the Marijuana Operation cannot be seen, heard or smelled beyond the property line. The precise building construction and material to be used shall be identified and provided to the City prior to construction and provided with the application.

18. Premises Security. The following security conditions shall apply:

a. Alarm System (both perimeter and fire and panic).

b. Remote monitoring of alarm systems.

c. Perimeter lighting systems (motion sensor) for after-hours security.

d. Perimeter security and lighting must be approved by the Police Chief and Community Development Director.

e. Use of drive gates with card key access or similar to access the facility. The operator shall install facilities as directed and only as approved by the Police Department to ensure emergency services.

f. Entrance areas to be locked at all times, and under the control of a designated Responsible Party.

g. Use of access control systems to limit access to grow and processing areas.

h. Exterior and interior camera systems approved by the Police Chief. The camera systems shall meet the minimum requirements of the Act, include interior monitoring of all access points of the site from the interior, and be at a minimum of 5 mega pixels in resolution.

i. All security systems at the site must be attached to an uninterruptable power supply, battery backup, or generator supply that provides 24 hours of operational power.

j. 24 hour private security surveillance and/or patrols by a recognized security company licensed by the California Department of Consumer Affairs or otherwise acceptable to the Police Chief.

k. All current contact information regarding the security company shall be provided to the Police Chief.

l. Atwater Police Department or Department designee shall have access to all security systems.

~~m. Subject to the provisions below regarding the use and handling of Confidential Information, IP access for remote monitoring of security cameras by the Atwater Police Department or Department designee.~~

n.m. Subject to the provisions below regarding the use and handling of Confidential Information, any and all video or audio tape recordings made for security or other purposes shall be marked with the date and time made and shall be kept, in an unaltered state, for a period of thirty (30) days and must be made available to the Atwater Police Department or Department designee for duplication upon demand. In addition, upon request by the Atwater Police Department the Responsible Party shall duplicate the records for the Atwater Police Department or Department designee.

o.n. Hardened bullet resistant windows for exterior windows as part of any new or existing construction, except for commercial green house structures.

p.o. Accounting software systems need to be in place to provide audit trails of both product and cash, where applicable.

q.p. Electronic track and trace systems for cannabis products as approved by the Police Chief.

r.g. Premises may be inspected and records of the Business Owner audited by the City for compliance on a quarterly basis.

s. State of the art network security protocols and equipment need to be in place to protect computer information.

t.r. The foregoing requirements shall constitute the Security Plan and shall be approved by the Police Chief prior to commencing operations. The Police Chief may supplement these security requirements once operations begin if at their professional discretion additional measures are required. Those requirements may be, subject to review by the Community Development and Resource Commission-City Council if requested by the Business Owner. The review and decision by the Community Development and Resource Commission may also be appealed to the Atwater City Council by the Business Owner.

Confidentiality Statement.

The City, Police Chief, Police Department employees, and any other law enforcement official acting under the direction of the Police Chief who access the Premises and video and/or audio feeds or recordings of the Premises ("Recipients") may receive or be provided with confidential information relating to the Marijuana Operations, which may include the following: data, records, plans, and matters relating to customers, vendors, tenants, agreements, and business records (collectively "Confidential Information").

To the extent Confidential Information is acquired without a warrant from access to the Premises and video and/or audio feeds or recordings as authorized under this section, the Recipients shall, to the maximum extent possible, keep such Confidential Information confidential and not disclose the Confidential Information to any third parties. Provided, however, that the Recipients may disclose Confidential Information to the State or Federal courts in California in connection with any criminal law enforcement action against the Business Owner or Operator (including its employees, contractors and agents conducting business within the Premises) arising from or related to the Marijuana Operations, but only to the extent it is necessary and relevant to such criminal prosecution, and the Recipients shall file any such documents under seal to the extent they contain any Confidential Information.

Notwithstanding the foregoing, the City may disclose Confidential Information:

1. As may be required by the California Public Records Act or pursuant to a civil subpoena, provided however, the City shall notify the Operator and provide the Operator with a reasonable opportunity to obtain a protective order before disclosing the Confidential Information.
2. In connection with any City enforcement proceeding relating to compliance with the City's Municipal Code and this section, but only to the extent the Confidential Information is relevant to the proceeding.

19. Deliveries of Supplies and Transportation of Product. The following rules apply to the deliveries and transportation:

a. Deliveries to the Premises of supplies shall only occur as provided for in the diagram and floor plan on file with the City as part of the application process. Delivery vehicles shall not have any markings indicating that deliveries are being made to a Marijuana Operation.

b. The transportation of marijuana samples and product to and from the Premises shall be in unmarked vehicles with no indication that the vehicles are transporting marijuana samples and products, unless otherwise required by state law. The Responsible Party shall stagger transportation times, vary routes from the facility, and take other security measures if and as requested by the Police Chief.

20. Premises Maintenance. —The Business Owner, Operator, and all Responsible Parties shall continually maintain the Premises and its infrastructure so that it is visually attractive and not dangerous to the health, safety and general welfare of employees, patrons, surrounding properties, and the general public. The Premises or Commercial Marijuana Operation shall not be maintained in a manner that causes a public or private nuisance.

21. Location of Uses. The Commercial Marijuana Operation permitted by this section shall only be allowed in the locations designated on the diagram and floor plan of the Premises submitted with the application for a Regulatory Permit. The Commercial Marijuana Operation shall not operate at any place other than the address of the Marijuana Operation stated in the Regulatory Permit.

E. Commercial Marijuana Regulatory Permit. No person or entity shall operate a Commercial Marijuana Operation within the City of Atwater without first obtaining a Commercial Marijuana Regulatory Permit from the City. The Regulatory Permit shall be site specific and shall specifically identify the commercial marijuana activity that will be allowed at that site. No commercial marijuana activity will be allowed unless specifically identified in the Regulatory Permit.

F. Development Agreements.

1. Notwithstanding any other provision of this section, prior to operating in the City, and as a condition of issuance of any applicable permits, including, but not limited to, a cannabis business permit, the applicant seeking to operate a medical cannabis business shall enter into a development agreement with the City setting forth the terms and conditions under which the medical cannabis business will operate. Such development agreement shall be in addition to the requirements of this section, including, but not limited to, public outreach and education, community service, payment of fees and other charges

as mutually agreed upon, approval of architectural plans (including site plan, floor plan, and elevation), and such other terms and conditions that will protect and promote the public health, safety, and welfare of all persons in the City.

4.2. Every development agreement approved by the City pursuant to this section shall be subject to an annual review by the City Council to determine compliance with the terms of the development agreement, applicable local and state laws and regulations, this section, and the Atwater Municipal Code.

A. Conditional Use Permit. Prior to, or concurrently with, applying for a Regulatory Permit, the Applicant shall process a Conditional Use Permit as required by the City's Land Use Regulations. Information that may be duplicative in the two applications can be incorporated by reference. The Conditional Use Permit shall run with the Regulatory Permit and not the land.

E.G. Applications for Regulatory Permits and Responsible Party Designation.

1. Application. Applications for Regulatory Permits shall be filed by the proposed Business Owner(s) with the Police Chief or designee and include the information set forth herein. The Police Chief or designee may request such information he or she deems necessary to determine the identity of the applicant. The applicant shall certify under penalty of perjury that all of the information contained in the application is true and correct. The application shall contain the following items for the Business Owner(s), Operator(s) and all Responsible Parties known at the time (if different than the Business Owner), and any other party designated below, to the extent the same shall apply:

a. The full name(s), present address(es), and telephone number(s), including such information to the Premises Owner.

b. Date(s) of birth.

c. Tax identification number(s).

d. The address to which notices relating to the application is to be mailed.

e. Previous addresses for the five (5) years immediately preceding the date of submittal of the application form.

f. The height(s), weight(s), eye color(s) and hair color(s).

g. Photographs for identification purposes (photographs shall be taken by the Police Department).

h. All business, occupation, or employment for the five (5) years immediately preceding the date of submittal of the application form.

i. The Marijuana Operation business history, including whether the Business Owner(s) and Responsible Parties while previously operating in this or another city, county or state has had a marijuana related license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation.

j. Complete property ownership and lease details, where applicable. If the Business Owner(s) are/is not the Premises Owner, the application form must be accompanied with a notarized acknowledgment from the Premises Owner that Marijuana Operations will occur on its property.

k. A descriptive business plan for the Marijuana Operation, including a detailed list of all Marijuana Operations proposed to occur on the Premises.

l. A diagram and floor plan of the entire Premises, denoting all the use of areas proposed for Marijuana Operations, including, but not necessarily limited to, cultivation, processing, manufacturing, testing, transportation, deliveries, and storage. The diagram and floor plan need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the Premises to an accuracy of plus or minus six (6) inches.

m. The name or names of the Operator(s). The Operator(s) shall designate one or more Responsible Parties, one of which shall at all times be available as a point of contact for the City, 24 hours per day. The contact information and schedule of the Operator and Responsible Parties shall be provided to the Police Chief and updated within twenty-four (24) hours of any changes.

n. The proposed security arrangements for insuring the safety of persons and to protect the Premises from theft.

o. An accurate straight-line drawing prepared within thirty (30) days prior to the application depicting the building and the portion thereof to be occupied by the Marijuana Operation and the property line of any school as set forth in the Operational Requirements.

p. Authorization for the City, its agents and employees to seek verification of the information submitted.

2. Improper or Incomplete Application. If the applicant has completed the application improperly, or if the application is incomplete, the Police Chief or designee shall, within thirty (30) days of receipt of the original application, notify the applicant of such fact.

3. Changes in Information. Except as may otherwise be provided, the information provided in this subsection shall be updated to the Police Chief or designee upon any change within ten (10) days.

4. Other Permits or Licenses. The fact that an applicant possesses other types of State or City permits or licenses does not exempt the applicant from the requirement of obtaining a Regulatory Permit.

F.H. Employee Permits.

1. Permit Required. Every employee or independent contractor working at a Commercial Marijuana Operation or involved in transportation/delivery related services for a Marijuana Operation shall obtain an Employee Permit. It shall be the duty of the Operator to ensure that Employee Permits are obtained from the Police Department prior to the employee or independent contractor commencing work. Persons who are listed as a Business Owner on a Regulatory Permit shall not be required to obtain an Employee Permit if such person also serves as an employee or contractor. All Responsible Parties, except the Business Owner, shall be required to obtain an Employee Permit.

2. Application. Each employee and independent contractor shall be required to provide the following information under penalty of perjury, so that the Police Department can perform a background check:

- a. Name, current resident address, and telephone number.
- b. Date of birth.
- c. Tax identification number.
- d. Height, weight, eye color and hair color.
- e. Photographs for identification purposes (photographs shall be taken by the Police Department).
- f. Be fingerprinted by the Police Department.
- g. Such other identification and information as deemed necessary by the Police Chief and pertinent to the Employee Permit.
- h. Authorization for the City, its agents and employees to seek verification of the information contained within the application.

- i. The name of the Business Owner holding the Regulatory Permit and the Operator for which such person is proposed to work.

G.I. Application Fees.

Every application for a Security Plan, Regulatory Permit, Employee Permit, or renewals shall be accompanied by a nonrefundable fee, as established by resolution of City Council. This fee shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies. The fee shall include an amount to cover the costs of fingerprinting, photographing, background checks as well as general review and processing of the application. No applications shall be issued until all fees are paid in full.

H.J. Investigation and Action on Application.

1. Upon the filing of a properly completed application and the payment of the fee, the Police Chief shall conduct an investigation of the application, including a background check of the applicant and all employees and independent contractors. All applicants for a Regulatory Permit and Employee Permit shall be required to submit to a fingerprint-based criminal history records check conducted by the Atwater Police Department.

2. For Regulatory Permits, after the background checks and investigation are complete, and in no case later than ninety (90) days after receipt of a properly completed application, the Police Chief shall issue a recommendation that the Community Development and Resource Commission City Council approve or deny a Regulatory Permit in accordance with the provisions of this section. The recommendation shall be forwarded to the Community Development and Resource Commission for action following any required noticing, shall be subject to a public hearing, and may be processed concurrently with any other entitlements necessary for the Marijuana Operation. The recommendation for approval shall include conditions the Police Chief deems reasonable under the circumstances to protect the public health, safety, and welfare of the community and shall incorporate any conditions specific to the Security Plan as approved by the Police Chief. The recommendation shall be forwarded to the City Council for action following any required noticing and public hearings, and may be processed concurrently with any other entitlements necessary for the Marijuana Operation.

3. For Employee Permits, after the background checks and investigation are complete, and in no case later than thirty (30) days after receipt of a properly completed application, the Police Chief shall either approve or deny an Employee Permit. At the discretion of the Police Chief, Employee Permits may be conditionally approved pending the background investigation and formal approval of the Regulatory Permit.

I.K. Term of Permits, ~~and~~ Renewals, Transfer of Ownership.

Regulatory Permits issued under this Chapter shall expire one (1) year following the date of issuance. Applications for renewal shall be made at least forty-five (45) days prior to the expiration date of the permit and shall be accompanied by the nonrefundable fee as adopted by resolution of the Atwater City Council referenced in this section. When made less than forty-five (45) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on similar to applications for permits except that the Police Chief shall renew annual permits for additional one year periods if the circumstances and information provided with the initial application have not materially changed. A Regulatory Permit Holder may file a request to Transfer Ownership of the business and Permit to the Police Chief, the request needs to be in writing and shall be made at least forty-five (45) days prior to the transfer. The Police Chief shall review the request and may require additional background material on the proposed operator. The original term of the Regulatory Permit shall stay in effect including the renewal date.

J.L. Grounds for Denial of Regulatory Permit.

The grounds for denial of a Regulatory Permit shall be one or more of the following:

1. The business or conduct of the business at a particular location is prohibited by any local or State law, statute, rule or regulation.

2. The Business Owner or Operator has been issued a local or state permit related to Marijuana Operations at any other location in California, or another state, and that permit was suspended or revoked, or the Business Owner or Operator has had disciplinary action relating to the permit.

3. The Business Owner or Operator has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application.

4. The inability of the Community Development and Resource Commission and/or the City Council to find that all of the following are true:

a. Consistency. The proposed use is consistent with the goals, policies, standards, and maps of the General Plan, any applicable Master Plan, Specific Plan, and Special Purpose Plan, and any other applicable plan adopted by the City;

b. Improvements. Adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, and the proposed improvements are properly related to existing and proposed roadways;

c. Site Suitability. The site is physically suitable for the type of development and for the intensity of development;

d. Issuance Not Detrimental. Issuance of the permit will not be significantly detrimental to the public health, safety, or welfare, or be injurious to the property or improvements adjacent properties; and

a-e. Compatibility. The use is compatible with adjoining land uses.

3.5. Consistent with the Act or other applicable State law, the Business Owner or Operator, or any Responsible Person, has been:

a. Convicted of a serious or violent offense as listed under California Penal Code §§ 667.5 and 1192.7(c); or

b. Convicted of any of the offenses listed in Business and Professions Code § 19323; or.

c. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or

d. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless that conviction was subsequently dismissed pursuant to sections 1203.4, 1203.4a or 1203.41 of the Penal Code or any other provision allowing for dismissal of a conviction, or, the individual has received a Certificate of Rehabilitation as defined in the Act; or

e. Has engaged in misconduct related to the qualifications, functions or duties of a permittee, such as lying on an application, falsifying legal documents, or anything that would otherwise ban the permittee from obtaining a State license under the Act.

A conviction within the meaning of this subsection means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

5. Consistent with the Act or other applicable State law, the Business Owner or Operator has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

6. The Business Owner or Operator is under eighteen (18) years of age, or any older age set by the State.

7. The Marijuana Operation does not comply with the zoning ordinance standards of the City of Atwater or the development standards set forth in this Title.

8. The required annual business license fee, annual regulatory fee or revenue raising fee has not been paid.

K.M. Grounds for Denial of Employee Permit. The grounds for denial of an Employee Permit shall be one or more of the following:

1. The applicant has been issued a local or state permit related to Marijuana Operations at any other location in California, or another state, and that permit was suspended or revoked, or the applicant has had disciplinary action relating to the permit.

2. Consistent with the Act or other applicable State law, the applicant has been:

a. Convicted of a serious or violent offense as listed under California Penal Code §§ 667.5 and 1192.7(c); or

b. Convicted of any of the offenses listed in Business and Professions Code § 19323; or.

c. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or

d. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the [that conviction was subsequently dismissed pursuant to sections 1203.4, 1203.4a or 1203.41 of the Penal Code or any other provision allowing for dismissal of a conviction, or, individual has received a Certificate of Rehabilitation as defined in the Act; or](#)

e. Has engaged in misconduct related to the qualifications, functions or duties of a permittee.

3. Consistent with the Act or other applicable State law, the applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

4. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocation of a permit.

5. An applicant is under eighteen (18) years of age, or any older age set by the State.

L.N. Notice of Decision and Final Action.1. Regulatory Permit. Action on the Regulatory Permit shall be as follows:

- a. The Police Chief shall cause a written notice of his or her recommendation on the issuance or denial of a Regulatory Permit, and the date and time when the [Community Development and Resource Commission City Council](#) will hold the public hearing to consider action on the Regulatory Permit, to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid.
- b. Following a public hearing before the [Community Development and Resource Commission City Council](#), the [Council Commission](#) may grant the Regulatory Permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the [community,community](#) or it may deny the issuance of the Regulatory Permit for any of the grounds specified in this section. The decision of the [Commission](#) may be appealed to the [City Council](#) within seven business days of the action by the [Community Development and Resource Commission](#). The decision of the [City Council](#) shall be final, subject to judicial review below.

2. Employee Permit. Action on the Employee Permit shall be as follows:

- a. The Police Chief shall cause a written notice of his or her determination on the issuance or denial of an Employee Permit to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid. The Police Chief's decision on an Employee permit shall be final, subject to judicial review.

M.O. Suspension and Revocation of Regulatory Permit or Employee Permit.

1. Regulatory Permit. [Following a public hearing at which time a review of the Regulatory Permit is conducted the Community Development and Resource Commission, The City Council](#) may suspend or revoke the Regulatory Permit of a Commercial Marijuana Operation, [subject to appeal to the Atwater City Council](#), when any of the following occur:

- a. The Marijuana Operation is conducted in violation of any provision of this section, the Act, or any other applicable state law.
- b. The Marijuana Operation is conducted in such a manner as to create a public or private nuisance.
- c. A failure to pay the Regulatory Fee or Revenue Raising Fee required by this section.
- d. A failure to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the Premises, traffic control problems, or obstruction of the operation of another business.
- e. A failure to comply with the terms and conditions of the Regulatory Permit or any conditional use permit issued in connection therewith.
- f. Any act which would be considered grounds for denial of the Regulatory Permit in the first instance.

2. Employee Permit. The Police Chief may suspend or revoke an Employee Permit when the permittee or the employee has committed any one or more of the following acts:

- a. Any act which would be considered a ground for denial of the permit in the first instance.
- b. Any act which violates any provision of this section, the Act, or any other applicable law relating to the Marijuana Operation.
- c. Any act which violates or fails to comply with the terms and conditions of the Employee Permit.

3. Procedures for Revoking Regulatory Permits. For Regulatory Permits, the procedures for revoking conditional use permits shall be utilized ~~except that the matter shall be heard by the City Council in the first instance,~~ and shall be subject to the same judicial process as applied to a Conditional Use Permit. (See, Atwater Municipal Code Chapter 17.71.)

4. Procedures for Revoking Employee Permits. Prior to suspension or revocation of an Employee Permit, the Police Chief shall conduct an **administrative** hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be

relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid. Any permittee aggrieved by the decision of the Police Chief in suspending or revoking an Employee Permit shall have no appeal rights and the Police Chief's decision shall be final, subject to judicial review as set forth in this section.

5. Immediate Suspension. The Police Chief may immediately suspend or revoke a Regulatory Permit and an Employee Permit without notice or a hearing, subject to the appeal rights set forth herein, under either of the following circumstances:

- a. The Business Owner or Operator is convicted of a public offense in any court for the violation of any law which relates to the Marijuana Operation, or in the case of an Employee Permit, the employee is convicted of a public offense in any court for the violation of any law which relates to the permit.
- b. The Police Chief determines that immediate suspension is necessary to protect the public health, safety, and welfare of the community. The Police Chief shall articulate the grounds for the immediate suspension in writing and the suspension shall only be for as long as necessary to address the circumstances which led to the immediate suspension.

N.P. Effect of Denial or Revocation. When the [Community Development and Resource Commission-City Council](#), or if their decision is appealed and the [City Council](#) shall have denied a Regulatory Permit or revoked a Regulatory Permit, or the Police Chief shall have denied or revoked an Employee Permit, no new application for a Regulatory Permit and no new application for an Employee Permit shall be accepted and no Regulatory Permit or Employee Permit shall be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the Regulatory Permit or Employee Permit.

O.Q. Abandonment. In addition to the suspension or revocation of a Regulatory Permit, a Regulatory Permit shall be deemed abandoned if Marijuana Operations cease for a period of more than ninety (90) consecutive days. Before restarting operations, a new Regulatory Permit shall be secured. The 90 day period shall be tolled during periods of force majeure, which shall be defined as follows: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; or any other causes beyond the reasonable control of the permittee.

P. Water Availability. As a condition of opening for business, the Premises Owner, Business Owner, Operator, and all Responsible Parties shall be deemed to have acknowledged and agreed to the following if the Marijuana Operation is connected to the City's water system:

The City's source of water comes through a contract with the Bureau of Reclamation ("Bureau"). The Bureau has indicated that it will report the use of City water for Marijuana Operations to the Department of Justice. While the City believes that supplying water to the site does not impair the Bureau contract, should the Bureau, Department of Justice, or other governing agency take actions affecting the City's Bureau contract because of the Marijuana Operation, the City may be forced to curtail or commingle water supply to the Site. Under those circumstances, the Marijuana Operation may be required to find alternative sources of water supply. If that happens, the City agrees to work with the Premises Owner, Business Owner, and Operator to find an alternative water source, which may include the commingling of water, accessing a well, or having water delivered to the Site by separate contract, but the City cannot provide any guarantees. The Premises Owner, Business Owner, and Operator assume all risk associated with water supply to the Site, including all costs associated therewith. The Premises Owner, Business Owner, Operator, and all Responsible Parties shall hold harmless, release, indemnify, and defend the City, its officers, employees, and agents, from any liability associated with the curtailment of water because of the foregoing. This release includes any damages to the Premises Owner, Business Owner, Operator, and all Responsible Parties, its employees and contractors, and third parties, and includes the risk of lost revenue, profits and consequential damages.

Q-R. Fees and taxes. All Marijuana Operations shall pay applicable fees and taxes, which may include one or more of the following.

1. Business License Fee. The Business Owner shall at all times maintain a current and valid business certificate and pay all business taxes required by Title 5, Chapter 5.04, of the Atwater Municipal Code pertaining to Business Licensing.

2. Regulatory License Fee. The Business Owner shall pay an annual regulatory license fee ("Regulatory Fee") to cover the costs of anticipated enforcement relating to the Marijuana Operation. The Regulatory license may encompass multiple permitted uses by a single commercial marijuana operation. The regulatory license fee shall cover all permitted aspects or uses conducted by the license holder. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Marijuana Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.

3. Revenue Raising Fee. An annual revenue raising fee (“Revenue Fee”) for the privilege of having the right to operate in the City.

a. Revenue Fee Finding. The City Council specifically finds that it is approving this Ordinance allowing Commercial Marijuana Operations to open in the City on the express understanding that the business will pay the Revenue Fee to the City as set forth herein, and that without the Revenue Fee, the City Council would not have adopted this Ordinance allowing Commercial Marijuana Operations to open in the City. By opening a Commercial Marijuana Operation in the City, the Premise Owner, Business Owner, Operator, and all Responsible Parties agree that if the Revenue Fee is challenged by any one of them or a third party and set aside, the business must cease operations.

b. Amount of Fee and Terms of Payment. The Revenue Fee shall be paid based upon the type of Commercial Marijuana Operations as follows:

c. Cultivation and Nurseries – The annual fee shall be based on a per square foot of canopy basis. This fee shall apply to cultivation and nurseries in industrial buildings as well as commercial green houses. The fee shall be ten dollars (\$10.00) per square foot for the first two thousand five hundred (2,500) square feet of canopy and two dollars and fifty cents (\$2.50) per square foot of canopy for the remaining space utilized in connection with each Commercial Marijuana Operation. The square footage calculation shall be determined by including all portions of the Premises under the control of the Business Owner and deducting there from driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Marijuana Operation (such as a janitorial closet). The annual fee shall be paid in quarterly installments. The first quarter payment shall be pro-rated based on the date of issuance of the Regulatory Permit. Payments shall be paid as follows; January 1st, April 1st, July 1st, and October 1st. If the City is closed due to a holiday or furlough on those dates the due date shall be the next business day or day the City is open. If more than one Commercial Marijuana Operation operates on the Premises, whether within a single building or multiple buildings, each Regulatory Permit holder shall be responsible for paying the Fee relative to their proportion of the business size per square foot.

b-d. All other uses including Processing, Extraction, Manufacturing, Testing, Distribution, and Transportation the annual fee shall be based on a building area per square foot basis. The fee shall be ~~fifteen~~ **ten** dollars (\$10.00) per square foot for three thousand (3,000) square feet and two dollars and fifty cents (\$2.50) per square foot for ~~for~~ the remaining space utilized in connection with each Commercial Marijuana Operation. The square footage calculation shall be determined by including all portions of the Premises under the control of the Business Owner and deducting there from vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Marijuana Operation

~~(such as a janitorial closet). The annual fee shall be paid in quarterly installments. The first quarter payment shall be pro-rated based on the date of issuance of the Regulatory Permit. Payments shall be paid as follows; January 1st, April 1st, July 1st, and October 1st. If the City is closed due to a holiday or furlough on those dates the due date shall be the next business day or day the City is open. If more than one Commercial Marijuana Operation operates on the Premises, whether within a single building or multiple buildings, each Regulatory Permit holder shall be responsible for paying the Fee relative to their proportion of the business size per square foot. ~~an annual fee of twenty-five (\$25.00) per square foot for the first 3,000 square feet and ten dollars (\$10.00) per square foot for the remaining space utilized in connection with each Commercial Marijuana Operation. The square footage calculation shall be determined by including all portions of the Premises under the control of the Business Owner and deducting therefrom driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Marijuana Operation (such as a janitorial closet).~~~~

~~In addition to the foregoing, for cultivation operations the total under canopy square footage shall be included in the square footage calculation.~~

~~If more than one Commercial Marijuana Operation operates on the Premises, whether within a single building or multiple buildings, each Regulatory Permit holder shall be responsible for paying the Fee. The Fee shall be payable in advance, in not less than quarterly installments, with the first quarterly payment due prior to issuance of a certificate of occupancy. The first payment shall be prorated so that future payments coincide with calendar year quarters, but in no event shall the first payment be less than the equivalent of one full quarterly payment. Except for the first quarterly payment, all quarterly payments shall be received by the City before the end of the quarter.~~

~~c.e. Alternative Voter Approved Tax. If the voters of the City approve a tax rate which is equivalent to the Revenue Fee, the Business Owner shall pay the tax in lieu of the Revenue Fee, or portion thereof, once the City begins to collect the tax revenue. In no event shall the Business Owner be required to pay more than the Revenue Fee.~~

~~4. Youth Education Fee. The Business Owner may be required to pay an annual youth education fee to contribute to the costs of providing youth programs for drug education, prevention and treatment within the City of Atwater.~~

~~Record Keeping. The Responsible Party shall make and maintain complete, accurate and legible records of the permitted Marijuana Operations evidencing compliance with the requirements of this section. Those records shall be maintained for a minimum of five (5) years.~~

R.S. Inspection. Marijuana Operations shall be open for inspection by any City law enforcement officer, ~~or~~ City code enforcement, Fire Department Representative, or Building & Safety Inspector-officer at any time the Marijuana Operation is operating, at any other time upon responding to a call for service related to the property where the Marijuana Operations is occurring, or otherwise upon reasonable notice. Recordings made by security cameras at any Marijuana Operation shall be made immediately available to the Police Chief upon verbal request. No search warrant or subpoena shall be needed to view the recorded materials. All premises shall also be subject to annual random inspections.

S.T. Indemnification. In authorizing Commercial Marijuana Operations under this section, the City makes no guarantees or promises as to the lawfulness of the approved activity under State or Federal law, and the Business Owner, Operator and all Responsible Parties are obligated to comply with all applicable laws. To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to the adoption of this Ordinance or the operation of any Commercial Marijuana Operation approved pursuant to this Ordinance or under State or Federal law. The Business Owner, Operator and all Responsible Parties shall defend, hold harmless, release, and indemnify the City, its agents, officers, and employees, from any liability associated with the approved use or adverse determinations made by the State or Federal government. An adverse determination could include cessation of operations.

The Business Owner agrees to reimburse the City for any court costs and attorney's fees that the City may be required to pay as a result of any legal challenge related to Commercial Marijuana Operations operating under the authority of this Ordinance. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the permittee of its obligations hereunder.

If requested by the City Attorney, the Business Owner shall execute an agreement memorializing the requirements of this subsection.

T.U. Insurance. The Business Owner shall at all times carry a comprehensive general liability policy in the minimum amount of One Million Dollars (\$1,000,000) combined single limit policy, as shall protect the Business Owner and City from claims for such damages, ~~and which policy shall be issued by an "A" rated insurance carrier.~~ Such policy or policies shall be written on an occurrence form. The City Manager, in consultation with City's Risk Manager, may allow the Business Owner to obtain lesser amounts of insurance where multiple Business Owners are operating on the Premises, provided at all times the minimum insurance set forth herein is applicable to the Marijuana Operations.

The Business Owner shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name City and its respective officers, agents,

employees, and volunteers, as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination.

Coverage provided hereunder by the Business Owner shall be primary insurance and shall not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City.

U.V. Violations: Enforcement.

1. Any person that violates any provision of this section shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

2. Any use or condition caused or permitted to exist in violation of any of the provisions of this section shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the City of Atwater Municipal Code.

3. Any person who violates, causes, or permits another person to violate any provision of this section commits a misdemeanor.

4. The violation of any provision of this section shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

5. In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this section may be subject to an administrative fine of up to one thousand dollars (\$1,000.00) for each violation and for each day the violation continues to persist. [If not paid the City shall take such actions as necessary to collect the fine including but not limited to property liens, tax liens, and adding penalties to City utility bills.](#)

V.W. Severability. The provisions of this section are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this section or of the Regulatory Permit issued pursuant to this section, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this section.

W.X. Judicial review. Judicial review of a decision made under this section or any actions taken pursuant to this section, may be had by filing a petition for a

writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure § 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure § 1094.6, which shall be applicable for such actions.

SECTION 6. SEVERABILITY: If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION 7. EFFECTIVE DATE: This ordinance shall take effect and be in force thirty (30) days after the date of its passage and the City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published in the Atwater Signal within fifteen (15) days from the adoption hereof.

INTRODUCED:

ADOPTED:

AYES:

NOES:

ABSENT:

APPROVED:

JAMES PRICE, MAYOR

ATTEST:

DON HYLER III, CITY CLERK



**CITY COUNCIL
OF THE
CITY OF ATWATER**

ORDINANCE NO. CS 982

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER: (1) AMENDING TITLE 8, CHAPTER 8.52, PERTAINING TO MEDICAL MARIJUANA; (2) AMENDING THE DEFINITIONS SECTION OF TITLE 17, CHAPTER 17.06, TO ADDRESS COMMERCIAL MARIJUANA OPERATIONS IN THE CONTEXT OF CROP CULTIVATION AND INDUSTRY, INDUSTRIAL OPERATION; AND (3) AMENDING TITLE 17, CHAPTER 17.75, OF THE CITY'S DEVELOPMENT CODE TO ADD A NEW SECTION 17.75.120 PERTAINING TO THE STANDARDS FOR COMMERCIAL MARIJUANA OPERATIONS IN THE CITY

The City Council of the City of Atwater does hereby ordain:

SECTION 1: FINDINGS.

1. **State Law Findings.**

a. On November 5, 1996, with the adoption of Proposition 215, the California voters approved the Compassionate Use Act ("CUA") (Health and Safety Code § 11362.5) to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where medical use is deemed appropriate and has been recommended by a physician, without fear of criminal prosecution under limited, specified circumstances.

b. On January 1, 2004, the State Legislature enacted SB 420 to clarify the scope of the CUA and provide additional statutory guidance regarding medical marijuana use. These statutes are codified in Health and Safety Code § 11362.7 et seq. and allow cities and counties to adopt supplemental rules and regulations.

c. On October 9, 2015, almost 20 years after passage of the CUA, the Governor signed the Medical Marijuana Regulation and Safety Act (“Act”), comprised of California legislative bills AB 243, AB 266, and SB 643. The Act creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis, all subject to local control. One of the purposes of the Act is to ensure uniformity among jurisdictions that wished to allow commercial marijuana operations.

d. On June 27, 2016, the Governor signed SB 837, effective immediately, changing the terms in the Act from “medical marijuana” or “marijuana” to “medical cannabis” or “cannabis”, and making other technical changes to the Act. SB 837 also adopted regulations relating to the use and diversion of water in connection with the cultivation of cannabis.

e. On November 8, 2016, the people of the State of California passed Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”)), legalizing the possession, use, and cultivation of marijuana by adults, subject to certain limitations. The AUMA permits local governments to regulate the cultivation of marijuana or cannabis within its jurisdiction, subject to state law limitations.

2. City of Atwater Marijuana Regulatory History.

a. In 2016, the City adopted Title 8, Chapter 8.52, of the Atwater Municipal Code pertaining to Medical Marijuana (Ordinance CS 969). The CS 969 placed a complete ban on marijuana cultivation and dispensaries in the City based in part upon the fact that there were no State regulatory controls. The City was concerned that without adequate uniform State wide regulatory controls in place, marijuana cultivation and dispensaries would become a nuisance.

b. At the time the City adopted the marijuana cultivation ban, the issue of commercial marijuana operations, such as manufacturing, testing and distribution, were not considered an area of concern in need of regulation. Now, with the adoption of the Act, commercial marijuana operations are imminent.

c. To avoid possible ambiguity created through the development of laws relating to commercial marijuana operations, it is necessary to amend Chapter 17.06 of the City’s Development Code to incorporate a definition for Crop Cultivation and amend the definition for Industry, Industry Operation.

d. In removing the commercial cultivation ban for the reasons set forth below and in light of commercial marijuana operations being imminent, there is a need to impose regulatory requirements on commercial marijuana operations to protect the public health, safety and welfare.

3. Failure to Have Regulations: Health and Safety Consequences.

a. As noted, on October 9, 2015, the State adopted the Act, which took effect January 1, 2016. The Act mandated a comprehensive state licensure and regulatory framework for cultivation, manufacturing, distribution, transportation, testing, and dispensing of medical marijuana on a commercial basis, but implementing regulations have yet been written and state licenses may not be available until as late as 2018.

b. Since the passage of AUMA, there have been inquiries from individuals and entities, both from within and outside the City of Atwater, seeking to start a commercial marijuana operation in the City. The qualifications, expertise, and backgrounds of most of these individuals and entities are unknown. In the absence of a formal regulatory framework, there are potential serious adverse consequences to the community. There are numerous well publicized studies and reports, as well as numerous documented incidents in Merced County and throughout the State, which show that unregulated marijuana operations have a significant adverse effect on the community.

c. The numerous health, safety, and welfare concerns associated with unregulated marijuana operations include, among others, home drug labs, offensive odors, trespassing, theft, violent encounters between growers and persons attempting to steal plants, fire hazards, problems associated with mold, fungus, and pests, and environmental contamination. These concerns have been exemplified throughout Merced County and the State as evidenced by numerous area agency police reports and news articles and stories.

d. The City finds that in the absence of a formal regulatory framework the adverse impacts frequently associated with commercial marijuana operations will occur, resulting in an unregulated and potentially significant negative impact upon the environment and upon the public health, safety, and welfare of the community.

4. Inability to Open: Health and Safety Consequences.

a. There is a large black market run by criminal organizations in the Atwater area, and State wide, where medical marijuana patients have to acquire their marijuana. Every time a patient purchases marijuana from the black market they not only have no idea as to the quality and dosage of the product, they are dealing with dangerous criminals, often hardened gang members. Purchasing on the black market is directly associated with criminal activity and is harmful to the surrounding neighborhoods. Purchasing marijuana in this way is a significant health and safety risk to the patient, and the neighborhood where these transactions take place, that must be addressed now that there is a mechanism to address the problem with the Act.

b. Since the passage of AUMA, this problem has been magnified. AUMA specifically recognizes that, prior to its passage, the adult use of marijuana could only be accessed through an illegal and unregulated market. In order for law enforcement to crackdown on the underground black market that currently benefits drug cartels and

gangs, it is necessary to facilities processing a safe product. If safe facilities are not in place, users will continue to use the dangerous black market.

SECTION 2: Chapter 8.52 of the City of Atwater Municipal Code is hereby amended to read in full as follows:

8.52.010 – Legislative findings and statement of purpose.

A. The City Council finds that the regulation of indoor and outdoor marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's regulation of such activities is within the authority conferred upon the City Council in its Charter and state law.

B. On October 9, 2015, the governor signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law, which became effective on January 1, 2016. On June 27, 2016, the Governor signed SB 837, effective immediately, changing the terms in the Act from "medical marijuana" or "marijuana" to "medical cannabis" or "cannabis", and making other technical changes to the Act. The Act contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health and Safety Code section 11362.777 for the cultivation of marijuana (Health and Safety Code § 11362.777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business and Professions Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business and Professions Code § 19316(c)); and
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business and Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business and Professions Code § 19340(a)).

C. The City Council finds that this chapter: (1) expresses its intent to prohibit the outdoor cultivation of marijuana in the City and to not administer a conditional permit program pursuant to Health and Safety Code § 11362.777 for the cultivation of

marijuana in the City; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the delivery of marijuana in the City.

D. The City Council further finds that this Chapter is necessary to regulate the cultivation of Marijuana or Cannabis in a manner that protects the health, safety and welfare of the community consistent with Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”). This Chapter is not intended to interfere with a patient’s right to medical Marijuana or Cannabis, as provided for in California Health & Safety Code Section 11362.5, nor does it criminalize medical Marijuana or Cannabis possession or cultivation by specifically defined classifications of persons, pursuant to state law. This Chapter is not intended to give any person unfettered legal authority to grow Marijuana or Cannabis; it is intended to impose zoning restrictions on the personal indoor Cultivation of Marijuana or Cannabis permitted under AUMA when it is authorized by California state law for medical or other lawful purposes.

E. No part of this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.

8.52.020 – Definitions.

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

- A. “Authorized Grower” means a person twenty-one (21) years or older who is authorized by, and in compliance with, federal or state law to Cultivate Marijuana indoors for personal or medical use.
- B. “Cannabis” has the same meaning as in Section 19300.5 of the Business and Professions Code.
- C. “Fully Enclosed and Secure Structure” means a fully-enclosed space within a building that complies with the California Building Code (“CBSC”), as adopted in the City of Atwater, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Atwater.

- D. "Immature Marijuana Plant" means a Marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.
- E. "Indoors" means within a Fully Enclosed and Secure Structure as that structure is defined above in subsection C.
- F. "Marijuana" means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code § 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code §§ 11362.7 to 11362.83 (Medical Marijuana Program Act).
- G. "Marijuana or Cannabis cultivation" means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana, whether such activities take place indoors or outdoors.
- H. "Marijuana dispensary" or "marijuana dispensaries" means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business and Professions Code § 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code § 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code §§ 11362.7 to 11362.83 (Medical Marijuana Program Act).
- I. "Mature Marijuana Plant" means a Marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.
- J. "Outdoor" means any location within the City of Atwater that is not within a Fully Enclosed and Secure Structure.

- K. "Parcel" means property assigned a separate parcel number by the Merced County Assessor.
- L. "Private Residence" means a house, apartment unit, mobile home, or other similar dwelling unit.

8.52.040 – Prohibited activities.

Outdoor marijuana or cannabis cultivation, marijuana delivery, and marijuana dispensaries shall be prohibited activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of outdoor marijuana cultivation, marijuana delivery, or the establishment or operation of a marijuana dispensary in the City, and no person shall otherwise establish or conduct such activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

8.52.050 – Cultivation of Marijuana or Cannabis for personal use; regulations for residential zones.

A. When authorized by state law, an authorized grower shall be allowed to Cultivate Marijuana or Cannabis only in a Private Residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

1. The Marijuana or Cannabis Cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

2. The use of gas products such as, but not limited to CO2, butane, methane, or any other flammable or non-flammable gas for Marijuana or Cannabis Cultivation or processing is prohibited.

3. There shall be no exterior visibility or evidence of Marijuana or Cannabis Cultivation outside the Private Residence from the public right-of-way, including but not limited to any Marijuana or Cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from Cultivation lighting.

4. The authorized grower shall reside full-time in the residence where the Marijuana or Cannabis cultivation occurs.

5. The Authorized Grower shall not participate in Marijuana or Cannabis Cultivation in any other location within the City.

6. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for Marijuana or Cannabis Cultivation.

7. The Marijuana or Cannabis Cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

8. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

9. The Marijuana or Cannabis Cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

10. No more than six (6) Marijuana or Cannabis plants, mature or immature, are permitted for indoor personal cultivation under this Chapter.

11. Marijuana or Cannabis in excess of twenty-eight and 5/10 (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the Private Residence not visible from the public right-of-way.

B. Outdoor Cultivation of Marijuana or Cannabis and Cultivation of Marijuana or Cannabis for non-personal uses are expressly prohibited in all zones and districts of the City of Atwater.

8.52.060 – Indoor Cultivation of Marijuana or Cannabis restricted to authorized growers.

A. It is hereby declared to be unlawful, a public nuisance and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to cause or allow such parcel to be used for the Cultivation of Marijuana or Cannabis, unless the person is authorized by state law to grow Marijuana

or Cannabis for a specifically authorized purpose within a Private Residence in a residential zone, and such authorized grower is complying with all requirements of this Chapter.

B. No person shall grow Marijuana or Cannabis in a structure upon any parcel until and unless they first secure a building permit from the building department and pay such fee as may be required and set forth by resolution of the City Council. If said structure is exempt and not required to obtain a building permit no fee shall be required.

8.52.070 – Commercial Operations.

Notwithstanding anything to the contrary in this chapter, Commercial Marijuana Operations may occur as allowed by the applicable zoning and pursuant to Title 17, Chapter 17.75, Specific Uses, Section 17.75.120, Marijuana Cultivation, Manufacturing, Testing, Transportation and Distribution.

8.52.080 – Public nuisance.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of Cultivating Marijuana or Cannabis Plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

A. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

B. Responses to the parcel by law enforcement personnel wherein the property owner, licensee, operator, or authorized grower is deemed to have caused nuisance by their direct actions.

C. A disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

D. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling greenhouse or other legal structure, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

E. Outdoor growing or Cultivation of Marijuana or Cannabis.

8.52.0980 – Violations.

A. The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Atwater Municipal

Code. None of the penalties or remedies authorized by, or set forth in, the Atwater Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance.

B. It shall be unlawful for any Person to violate, or to permit the violation of, any provision of this Chapter. All Owners, Occupants and other Persons at or on the property or premises where a violation of this Chapter occurs may be cited and convicted, provided, however, that an Owner who is not in possession of his/her property, and who has instead permitted another Person(s) to occupy the property, shall not be convicted of a violation unless: (1) the Owner was in fact present at the property during the time in which the violation occurred; or (2) the Owner has been previously issued a citation from the City of Atwater describing a violation of this Chapter and has failed to remedy the violation within a reasonable time; or (3) the Owner has actual knowledge of the existence of a violation of this Chapter and failed to take reasonable steps to remedy the violation on his/her property.

C. Any violation of this chapter shall be punishable as a misdemeanor. In the alternative, and in the discretion of the Chief of Police, a violation of this chapter may be prosecuted as an infraction punishable pursuant to the provisions of Section 1.01.110 of this Code. In addition, the City may abate any public nuisance associated with any violation of this chapter using the abatement procedures set forth in Chapter 8.32.

SECTION 3: Section 17.06.187 of Chapter 17.06 of the City of Atwater Municipal Code is hereby adopted to read in full as follows:

17.06.187 – Crop Cultivation.

The cultivation of tree, vine, field, forage, and other plant crops intended to provide food or fibers. The classification excludes wholesale or retail nurseries, vineyards and ancillary wineries and distilleries. This classification includes the indoor cultivation of cannabis, marijuana, and cannabis, marijuana nurseries.

SECTION 4: Section 17.06.305 of Chapter 17.06 of the City of Atwater Municipal Code is hereby amended to read in full as follows:

17.06.305 – Industry, industrial operation.

The manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character or appearance thereof and including storage elevators, storage yards, warehouses, wholesale storage and other similar types of enterprises. **This classification includes the cultivation, nurseries, processing, extraction, manufacturing, testing, distribution, and transportation of cannabis and cannabis products.**

SECTION 5: Section 17.75.120 of Chapter 17.75 of the City of Atwater Municipal Code is hereby adopted to read in full as follows:

17.75.120 – Marijuana Cultivation, Nursery, Manufacturing, Testing, Transportation and Distribution.

A. **Purpose.** The purpose of this section is to adopt local regulations applicable to commercial marijuana operations as may be permitted under the California Medical Marijuana Regulation and Safety Act, adopted on October 9, 2015, with legislative bills AB 243, AB 266, and SB 643, or subsequently enacted State law pertaining to the same or similar uses for recreational cannabis. The Medical Marijuana Regulation and Safety Act has been retitled as the Medical Cannabis Regulation and Safety Act, and is hereinafter referred to as the “Act”.

B. **Definitions.** Except as set forth herein, or where a different meaning is clearly intended by the language, the definitions set forth in the Act shall apply to interpretations under this section.

“Act” means the Medical Marijuana Regulation and Safety Act, now called the Medical Cannabis Regulation and Safety Act. Both names may be used interchangeably, but shall have the same meaning.

“Applicant” means a person who is required to file an application for a permit under this section.

“Business Owner” means the owner(s) of the Marijuana Operations. For corporations and limited liability companies, Business Owner means the President, Vice President, and any shareholder owning a 10% or greater share of the corporation or company. For partnerships, Business Owner means all general partners and managing partners.

“Cannabis” or “marijuana” shall have the meaning set forth in California Business and Professions Code § 19300.5(f). Cannabis and marijuana may be used interchangeably, but shall have the same meaning.

“City” means the City of Atwater.

“Commercial Marijuana Operation” or “Marijuana Operation” means any commercial marijuana activity allowed under the Act and the implementing regulations, as the Act and the implementing regulations may be amended from time to time, and all uses permitted under any subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.

“Commercial Marijuana Regulatory Permit” or “Regulatory Permit” means the permit required under this section to have a Commercial Marijuana Operation.

"Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities licensed pursuant to this chapter or similar entities licensed in other jurisdictions within the State of California and/or by The State of California.

"Employee Permit" means the permit required under this section for every employee or independent contractor working at a Commercial Marijuana Operation or involved in transportation/delivery related services for a Commercial Marijuana Operation "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

"Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of marijuana or marijuana products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages marijuana or marijuana products or labels or re-labels its container, that holds a state license pursuant to this division.

"Non-Commercial and Recreational Marijuana Activity" means all uses not included within the definition of Commercial Marijuana Operation, including the personal use, cultivation, or consumption of marijuana, whether medical or recreational.

"Nursery" means a licensee or operator that produces clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of marijuana.

"Operator" means the Business Owner and any other person designated by the Business Owner as responsible for the day to day Marijuana Operations.

"Ordinance" means the ordinance adopting this section, and including the terms of this section, which may be commonly referred to as the City's "Commercial Marijuana Ordinance".

"Police Chief" means the Police Chief of the City of Atwater or his or her designee.

"Premises" or "Site" means the actual building(s), and/or designated units/suites, as well as any accessory structures, parking areas, or other immediate surroundings, and includes the entire parcel of property used by the Business Owner in connection with the Marijuana Operations.

"Premises Owner" means the fee owner(s) of the Premises where Marijuana Operations are occurring.

"Responsible Party" shall mean the Business Owner, Operator, manager(s), and any employee having significant control over the Marijuana Operations.

"Testing" means a laboratory, facility, or entity in the state, that offers or performs tests of marijuana or marijuana products, including the equipment provided by such laboratory, facility, or entity, and that is both of the following: (1) Accredited by an accrediting body that is independent from all other persons involved in commercial marijuana activity in the state. (2) Registered with the Department of Public Health.

"Transportation" or "Transport" means the transfer of marijuana from the commercial marijuana operation of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial marijuana activity authorized pursuant to this chapter or by the State of California.

C. Permitted Uses and Zoning. Business Owners meeting the requirements of this section shall be allowed to conduct the following Commercial Marijuana Operations in the M-1 Light Industrial Zone, M-2 Heavy Industrial Zone, and B-P Business Park District Overlay of the City provided they first obtain approval by the Community Development and Resource Commission of a regulatory permit pursuant to this section:

- Cultivation.
- Processing.
- Extraction.
- Manufacturing.
- Nursery operations.
- Testing.
- Distribution.
- Transportation.

The Commercial Marijuana Operation shall at all times be in compliance with this section as it may be amended from time to time or repealed and replaced by another section governing the Commercial Marijuana Operation.

It is the intent of this Ordinance to provide for the ability for Business Owners to have multiple Commercial Marijuana Operations vertically integrated within one building or location. Business Owners can conduct any of the Permitted Uses provided that the Regulatory Permit specifically identifies the permitted uses. Separate locations, physical properties or parcels, shall require separate Regulatory Permits for each location.

Dispensaries are expressly prohibited unless approved by the voters of the City of Atwater.

D. Minimum Operational Requirements and Restrictions. The following operational requirements and restrictions shall apply to all Commercial Marijuana Operations:

1. The Act and Other State Laws. The Marijuana Operations shall at all times be in compliance with the Act and the implementing regulations, as they may be amended from time to time, as well as all required State license(s) under the Act, and any other applicable State law. The Operator shall obtain required licenses under the Act prior to opening for business, or if the State is not ready to issue licenses under the Act prior to the time of opening, within twelve (12) months of the State being ready to issue the required license(s). Provided, however, that the Operator shall at all times be in compliance with all other requirements of the Act and implementing regulations, and any other applicable State law, regardless of the timing of the issuance of a license under the Act.

If the Operator uses the approved Marijuana Operations for commercial, medical or recreational cannabis, the Operator shall meet or exceed the health and safety requirements of the Act in any operations relating to recreational marijuana.

2. Register of Employees. The Operator shall maintain a current register of the names of persons required to have Employee Permits. The register shall be available to the Police Chief at all times immediately upon request.

3. Signage. There shall be no signage or markings on the Premises, or off site, which in any way evidences that Marijuana Operations are occurring on the property. Interior building signage is permissible provided the signage is not visible outside of the building.

4. Marijuana Consumption. No marijuana shall be smoked, ingested or otherwise consumed on the Premises. Adequate signage of this prohibition shall be displayed throughout the facility.

5. Alcoholic Beverages. No Marijuana Operation shall hold or maintain a retail license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol for personal consumption shall not be provided, stored, kept, located, sold, dispensed, or used on the Premises.

6. Transportation. Transportation shall only be conducted according to activity permitted by State law.

7. Distribution. There shall be no deliveries from the Premises of cannabis or cannabis containing products except to another State or local licensed or permitted cannabis business.

8. Non-Commercial Marijuana Activity. No Non-Commercial or Recreational Marijuana Activity shall occur on the Premises.

9. Retail Sales. The retail sale of marijuana is expressly prohibited.

10. Public Access. There shall be no public access to the Premises.
11. Minors. It shall be unlawful for any Operator to employ any person who is not at least eighteen (18) years of age, or any older age if set by the State.
12. Distance separation from schools. Commercial Marijuana Operations shall comply with the distance separation requirements from schools as required by State law, six hundred (600) feet. In addition, Commercial Marijuana Operation shall also not be located within six hundred (600) feet of a proposed school site as identified in the General Plan. Measurements shall be from property boundary to property boundary. For purposes of this section, school means any public or private school providing instruction in kindergarten or grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes.
13. Hours of Operation. Commercial Marijuana Operations shall be allowed to operate per the requirements of the underlying zone district and subject to the City's noise and nuisance ordinances.
14. Building and Related Codes. The Marijuana Operation shall be subject to the following requirements:
 - a. The Premises in which the Marijuana Operations occur shall comply with all applicable local, state and federal laws, rules, and regulations including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the Building Official of the City. The Operator shall obtain all required building permits and comply with all applicable City standards.
 - b. The Responsible Party shall ensure that the Premises has sufficient electrical load for the Marijuana Operations.
 - c. Butane and other flammable materials are permitted to be used for extraction and processing provided the Operator complies with all applicable fire and building codes, including obtaining an Aerosol Permit, and any other laws and regulations relating to the use of those products, to ensure the safety of that operation. The Atwater Fire Department shall inspect and approve the Premises for use of the products prior to City's issuance of a certificate of occupancy, or otherwise prior to opening for business, to ensure compliance with this requirement. The Atwater Fire Department shall also conduct annual inspections and shall charge a fee as adopted by the Atwater City Council for the conduct of the inspection.
 - d. The Operator shall comply with all laws and regulations pertaining to use of commercial kitchen facilities for the Marijuana Operations.

e. The Operator shall comply with all environmental laws and regulations pertaining to the Marijuana Operations, including the use and disposal of water and pesticides, and shall otherwise use best practices to avoid environmental harm.

15. Odor control. Marijuana Operations shall provide sufficient odor absorbing ventilation and exhaust system so that odor generated inside the facility that is distinctive to its operation is not detected outside the Premises, outside the building housing the Marijuana Operations, or anywhere on adjacent property or public rights-of-way. As such, Marijuana Operations must install and maintain the following equipment or any other equipment which the City's Building Official determines has the same or better effectiveness, if a smell extends beyond a property line:

a. An exhaust air filtration system with odor control that prevents internal odors and pollen from being emitted externally; or

b. An air system that creates negative air pressure between the cannabis facility's interior and exterior so that the odors generated inside the cannabis facility are not detectable outside the cannabis facility.

16. Consumable Products. Marijuana Operations that manufacture products in the form of food or other comestibles shall obtain and maintain the appropriate approvals from the State Department of Public Health for the provision of food or other comestibles, unless otherwise governed by the Act and licensed by the State.

17. Secure Building. All Marijuana Operations shall occur entirely inside of a building that shall be secure, locked, and fully enclosed, with a ceiling, roof or top. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures (including, without limitation, commercial greenhouse structures), and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid translucent material provided other security measures exist to ensure that the Marijuana Operation cannot be seen, heard or smelled beyond the property line. The precise building construction and material to be used shall be identified and provided to the City prior to construction and provided with the application.

18. Premises Security. The following security conditions shall apply:

a. Alarm System (both perimeter and fire and panic).

b. Remote monitoring of alarm systems.

- c. Perimeter lighting systems (motion sensor) for after-hours security.
- d. Perimeter security and lighting must be approved by the Police Chief.
- e. Use of drive gates with card key access or similar to access the facility. The operator shall install facilities as directed and only as approved by the Police Department to ensure emergency services.
- f. Entrance areas to be locked at all times, and under the control of a designated Responsible Party.
- g. Use of access control systems to limit access to grow and processing areas.
- h. Exterior and interior camera systems approved by the Police Chief. The camera systems shall meet the minimum requirements of the Act, include interior monitoring of all access points of the site from the interior, and be at a minimum of 5 mega pixels in resolution.
- i. All security systems at the site must be attached to an uninterruptable power supply, battery backup, or generator that provides 24 hours of operational power.
- j. 24 hour private security surveillance and/or patrols by a recognized security company licensed by the California Department of Consumer Affairs or otherwise acceptable to the Police Chief.
- k. All current contact information regarding the security company shall be provided to the Police Chief.
- l. Atwater Police Department or Department designee shall have access to all security systems.
- m. Subject to the provisions below regarding the use and handling of Confidential Information, any and all video or audio tape recordings made for security or other purposes shall be marked with the date and time made and shall be kept, in an unaltered state, for a period of thirty (30) days and must be made available to the Atwater Police Department or Department designee for duplication upon demand. In addition, upon request by the Atwater Police Department the Responsible Party shall duplicate the records for the Atwater Police Department or Department designee.

n. Hardened bullet resistant windows for exterior windows as part of any new or existing construction, except for commercial green house structures.

o. Accounting software systems need to be in place to provide audit trails of both product and cash, where applicable.

p. Electronic track and trace systems for cannabis products as approved by the Police Chief.

q. Premises may be inspected and records of the Business Owner audited by the City for compliance on a quarterly basis.

r. The foregoing requirements shall constitute the Security Plan and shall be approved by the Police Chief prior to commencing operations. The Police Chief may supplement these security requirements once operations begin if at their professional discretion additional measures are required. Those requirements may be subject to review by the Community Development and Resource Commission if requested by the Business Owner. The review and decision by the Community Development and Resource Commission may also be appealed to the Atwater City Council by the Business Owner.

Confidentiality Statement.

The City, Police Chief, Police Department employees, and any other law enforcement official acting under the direction of the Police Chief who access the Premises and video and/or audio feeds or recordings of the Premises (“Recipients”) may receive or be provided with confidential information relating to the Marijuana Operations, which may include the following: data, records, plans, and matters relating to customers, vendors, tenants, agreements, and business records (collectively “Confidential Information”).

To the extent Confidential Information is acquired without a warrant from access to the Premises and video and/or audio feeds or recordings as authorized under this section, the Recipients shall, to the maximum extent possible, keep such Confidential Information confidential and not disclose the Confidential Information to any third parties. Provided, however, that the Recipients may disclose Confidential Information to the State or Federal courts in California in connection with any criminal law enforcement action against the Business Owner or Operator (including its employees, contractors and agents conducting business within the Premises) arising from or related to the Marijuana Operations, but only to the extent it is necessary and relevant to such criminal prosecution, and the Recipients shall file any such documents under seal to the extent they contain any Confidential Information.

Notwithstanding the foregoing, the City may disclose Confidential Information:

1. As may be required by the California Public Records Act or pursuant to a civil subpoena, provided however, the City shall notify the Operator and provide the Operator with a reasonable opportunity to obtain a protective order before disclosing the Confidential Information.
2. In connection with any City enforcement proceeding relating to compliance with the City's Municipal Code and this section, but only to the extent the Confidential Information is relevant to the proceeding.

19. Deliveries of Supplies and Transportation of Product. The following rules apply to the deliveries and transportation:

a. Deliveries to the Premises of supplies shall only occur as provided for in the diagram and floor plan on file with the City as part of the application process. Delivery vehicles shall not have any markings indicating that deliveries are being made to a Marijuana Operation.

b. The transportation of marijuana samples and product to and from the Premises shall be in unmarked vehicles with no indication that the vehicles are transporting marijuana samples and products, unless otherwise required by state law. The Responsible Party shall stagger transportation times, vary routes from the facility, and take other security measures if and as requested by the Police Chief.

20. Premises Maintenance. The Business Owner, Operator, and all Responsible Parties shall continually maintain the Premises and its infrastructure so that it is visually attractive and not dangerous to the health, safety and general welfare of employees, patrons, surrounding properties, and the general public. The Premises or Commercial Marijuana Operation shall not be maintained in a manner that causes a public or private nuisance.

21. Location of Uses. The Commercial Marijuana Operation permitted by this section shall only be allowed in the locations designated on the diagram and floor plan of the Premises submitted with the application for a Regulatory Permit. The Commercial Marijuana Operation shall not operate at any place other than the address of the Marijuana Operation stated in the Regulatory Permit.

E. Commercial Marijuana Regulatory Permit. No person or entity shall operate a Commercial Marijuana Operation within the City of Atwater without first obtaining a Commercial Marijuana Regulatory Permit from the City. The Regulatory Permit shall be site specific and shall specifically identify the commercial marijuana activity that will be allowed at that site. No commercial

marijuana activity will be allowed unless specifically identified in the Regulatory Permit.

F. Development Agreements.

1. Notwithstanding any other provision of this section, prior to operating in the City, and as a condition of issuance of any applicable permits, including, but not limited to, a cannabis business permit, the applicant seeking to operate a medical cannabis business shall enter into a development agreement with the City setting forth the terms and conditions under which the medical cannabis business will operate. Such development agreement shall be in addition to the requirements of this section, including, but not limited to, public outreach and education, community service, payment of fees and other charges as mutually agreed upon, approval of architectural plans (including site plan, floor plan, and elevation), and such other terms and conditions that will protect and promote the public health, safety, and welfare of all persons in the City.

2. Every development agreement approved by the City pursuant to this section shall be subject to an annual review by the City Council to determine compliance with the terms of the development agreement, applicable local and state laws and regulations, this section, and the Atwater Municipal Code.

G. Applications for Regulatory Permits and Responsible Party Designation.

1. Application. Applications for Regulatory Permits shall be filed by the proposed Business Owner(s) with the Police Chief or designee and include the information set forth herein. The Police Chief or designee may request such information he or she deems necessary to determine the identity of the applicant. The applicant shall certify under penalty of perjury that all of the information contained in the application is true and correct. The application shall contain the following items for the Business Owner(s), Operator(s) and all Responsible Parties known at the time (if different than the Business Owner), and any other party designated below, to the extent the same shall apply:

a. The full name(s), present address(es), and telephone number(s), including such information to the Premises Owner.

b. Date(s) of birth.

c. Tax identification number(s).

d. The address to which notices relating to the application is to be mailed.

e. Previous addresses for the five (5) years immediately preceding the date of submittal of the application form.

- f. The height(s), weight(s), eye color(s) and hair color(s).
- g. Photographs for identification purposes (photographs shall be taken by the Police Department).
- h. All business, occupation, or employment for the five (5) years immediately preceding the date of submittal of the application form.
- i. The Marijuana Operation business history, including whether the Business Owner(s) and Responsible Parties while previously operating in this or another city, county or state has had a marijuana related license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation.
- j. Complete property ownership and lease details, where applicable. If the Business Owner(s) are not the Premises Owner, the application form must be accompanied with a notarized acknowledgment from the Premises Owner that Marijuana Operations will occur on its property.
- k. A descriptive business plan for the Marijuana Operation, including a detailed list of all Marijuana Operations proposed to occur on the Premises.
- l. A diagram and floor plan of the entire Premises, denoting all the use of areas proposed for Marijuana Operations, including, but not necessarily limited to, cultivation, processing, manufacturing, testing, transportation, deliveries, and storage. The diagram and floor plan need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the Premises to an accuracy of plus or minus six (6) inches.
- m. The name or names of the Operator(s). The Operator(s) shall designate one or more Responsible Parties, one of which shall at all times be available as a point of contact for the City, 24 hours per day. The contact information and schedule of the Operator and Responsible Parties shall be provided to the Police Chief and updated within twenty-four (24) hours of any changes.
- n. The proposed security arrangements for insuring the safety of persons and to protect the Premises from theft.
- o. An accurate straight-line drawing prepared within thirty (30) days prior to the application depicting the building and the portion thereof to be occupied by the Marijuana Operation and the property line of any school as set forth in the Operational Requirements.

p. Authorization for the City, its agents and employees to seek verification of the information submitted.

2. Improper or Incomplete Application. If the applicant has completed the application improperly, or if the application is incomplete, the Police Chief or designee shall, within thirty (30) days of receipt of the original application, notify the applicant of such fact.

3. Changes in Information. Except as may otherwise be provided, the information provided in this subsection shall be updated to the Police Chief or designee upon any change within ten (10) days.

4. Other Permits or Licenses. The fact that an applicant possesses other types of State or City permits or licenses does not exempt the applicant from the requirement of obtaining a Regulatory Permit.

H. Employee Permits.

1. Permit Required. Every employee or independent contractor working at a Commercial Marijuana Operation or involved in transportation/delivery related services for a Marijuana Operation shall obtain an Employee Permit. It shall be the duty of the Operator to ensure that Employee Permits are obtained from the Police Department prior to the employee or independent contractor commencing work. Persons who are listed as a Business Owner on a Regulatory Permit shall not be required to obtain an Employee Permit if such person also serves as an employee or contractor. All Responsible Parties, except the Business Owner, shall be required to obtain an Employee Permit.

2. Application. Each employee and independent contractor shall be required to provide the following information under penalty of perjury, so that the Police Department can perform a background check:

- a. Name, current resident address, and telephone number.
- b. Date of birth.
- c. Tax identification number.
- d. Height, weight, eye color and hair color.
- e. Photographs for identification purposes (photographs shall be taken by the Police Department).
- f. Be fingerprinted by the Police Department.

- g. Such other identification and information as deemed necessary by the Police Chief and pertinent to the Employee Permit.
- h. Authorization for the City, its agents and employees to seek verification of the information contained within the application.
- i. The name of the Business Owner holding the Regulatory Permit and the Operator for which such person is proposed to work.

I. Application Fees.

Every application for a Security Plan, Regulatory Permit, Employee Permit, or renewals shall be accompanied by a nonrefundable fee, as established by resolution of City Council. This fee shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies. The fee shall include an amount to cover the costs of fingerprinting, photographing, background checks as well as general review and processing of the application. No applications shall be issued until all fees are paid in full.

J. Investigation and Action on Application.

1. Upon the filing of a properly completed application and the payment of the fee, the Police Chief shall conduct an investigation of the application, including a background check of the applicant and all employees and independent contractors. All applicants for a Regulatory Permit and Employee Permit shall be required to submit to a fingerprint-based criminal history records check conducted by the Atwater Police Department.

2. For Regulatory Permits, after the background checks and investigation are complete, and in no case later than ninety (90) days after receipt of a properly completed application, the Police Chief shall issue a recommendation that the Community Development and Resource Commission approve or deny a Regulatory Permit in accordance with the provisions of this section. The recommendation shall be forwarded to the Community Development and Resource Commission for action following any required noticing, shall be subject to a public hearing, and may be processed concurrently with any other entitlements necessary for the Marijuana Operation. The recommendation for approval shall include conditions the Police Chief deems reasonable under the circumstances to protect the public health, safety, and welfare of the community and shall incorporate any conditions specific to the Security Plan as approved by the Police Chief. .

3. For Employee Permits, after the background checks and investigation are complete, and in no case later than thirty (30) days after receipt of a properly completed application, the Police Chief shall either approve or deny

an Employee Permit. At the discretion of the Police Chief, Employee Permits may be conditionally approved pending the background investigation and formal approval of the Regulatory Permit.

K. Term of Permits, Renewals, Transfer of Ownership.

Regulatory Permits issued under this Chapter shall expire one (1) year following the date of issuance. Applications for renewal shall be made at least forty-five (45) days prior to the expiration date of the permit and shall be accompanied by the nonrefundable fee as adopted by resolution of the Atwater City Council. When made less than forty-five (45) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on similar to applications for permits except that the Police Chief shall renew annual permits for additional one year periods if the circumstances and information provided with the initial application have not materially changed. A Regulatory Permit Holder may file a request to Transfer Ownership of the business and Permit to the Police Chief, the request needs to be in writing and shall be made at least forty-five (45) days prior to the transfer. The Police Chief shall review the request and may require additional background material on the proposed operator. The original term of the Regulatory Permit shall stay in effect including the renewal date.

L. Grounds for Denial of Regulatory Permit.

The grounds for denial of a Regulatory Permit shall be one or more of the following:

1. The business or conduct of the business at a particular location is prohibited by any local or State law, statute, rule or regulation.

2. The Business Owner or Operator has been issued a local or state permit related to Marijuana Operations at any other location in California, or another state, and that permit was suspended or revoked, or the Business Owner or Operator has had disciplinary action relating to the permit.

3. The Business Owner or Operator has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application.

4. The inability of the Community Development and Resource Commission and/or the City Council to find that all of the following are true:

a. Consistency. The proposed use is consistent with the goals, policies, standards, and maps of the General Plan, any applicable Master Plan, Specific Plan, and Special Purpose Plan, and any other applicable plan adopted by the City;

b. Improvements. Adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, and the proposed improvements are properly related to existing and proposed roadways;

c. Site Suitability. The site is physically suitable for the type of development and for the intensity of development;

d. Issuance Not Detrimental. Issuance of the permit will not be significantly detrimental to the public health, safety, or welfare, or be injurious to the property or improvements adjacent properties; and

e. Compatibility. The use is compatible with adjoining land uses.

5. Consistent with the Act or other applicable State law, the Business Owner or Operator, or any Responsible Person, has been:

a. Convicted of a serious or violent offense as listed under California Penal Code §§ 667.5 and 1192.7(c); or

b. Convicted of any of the offenses listed in Business and Professions Code § 19323; or.

c. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or

d. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless that conviction was subsequently dismissed pursuant to sections 1203.4, 1203.4a or 1203.41 of the Penal Code or any other provision allowing for dismissal of a conviction, or, the individual has received a Certificate of Rehabilitation as defined in the Act; or

e. Has engaged in misconduct related to the qualifications, functions or duties of a permittee, such as lying on an application, falsifying legal documents, or anything that would otherwise ban the permittee from obtaining a State license under the Act.

A conviction within the meaning of this subsection means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

5. Consistent with the Act or other applicable State law, the Business Owner or Operator has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

6. The Business Owner or Operator is under eighteen (18) years of age, or any older age set by the State.

7. The Marijuana Operation does not comply with the zoning ordinance standards of the City of Atwater or the development standards set forth in this Title.

8. The required annual business license fee, annual regulatory fee or revenue raising fee has not been paid.

M. Grounds for Denial of Employee Permit. The grounds for denial of an Employee Permit shall be one or more of the following:

1. The applicant has been issued a local or state permit related to Marijuana Operations at any other location in California, or another state, and that permit was suspended or revoked, or the applicant has had disciplinary action relating to the permit.

2. Consistent with the Act or other applicable State law, the applicant has been:

a. Convicted of a serious or violent offense as listed under California Penal Code §§ 667.5 and 1192.7(c); or

b. Convicted of any of the offenses listed in Business and Professions Code § 19323; or.

c. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or

d. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the that conviction was subsequently dismissed pursuant to sections 1203.4, 1203.4a or 1203.41 of the Penal Code or any other provision allowing for dismissal of a conviction, or, individual has received a Certificate of Rehabilitation as defined in the Act; or

e. Has engaged in misconduct related to the qualifications, functions or duties of a permittee.

3. Consistent with the Act or other applicable State law, the applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

4. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocation of a permit.

5. An applicant is under eighteen (18) years of age, or any older age set by the State.

N. Notice of Decision and Final Action.

1. Regulatory Permit. Action on the Regulatory Permit shall be as follows:

a. The Police Chief shall cause a written notice of his or her recommendation on the issuance or denial of a Regulatory Permit, and the date and time when the Community Development and Resource Commission will hold the public hearing to consider action on the Regulatory Permit, to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid.

b. Following a public hearing before the Community Development and Resource Commission, the Commission may grant the Regulatory Permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community or it may deny the issuance of the Regulatory Permit for any of the grounds specified in this section. The decision of the Commission may be appealed to the City Council within seven business days of the action by the Community Development and Resource Commission. The decision of the City Council shall be final, subject to judicial review below.

2. Employee Permit. Action on the Employee Permit shall be as follows:

a. The Police Chief shall cause a written notice of his or her determination on the issuance or denial of an Employee Permit to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid. The Police Chief's decision on an Employee permit shall be final, subject to judicial review.

O. Suspension and Revocation of Regulatory Permit or Employee Permit.

1. Regulatory Permit. Following a public hearing at which time a review of the Regulatory Permit is conducted the Community Development and Resource Commission, may suspend or revoke the Regulatory Permit of a Commercial Marijuana Operation, subject to appeal to the Atwater City Council, when any of the following occur:

- a. The Marijuana Operation is conducted in violation of any provision of this section, the Act, or any other applicable state law.
- b. The Marijuana Operation is conducted in such a manner as to create a public or private nuisance.
- c. A failure to pay the Regulatory Fee or Revenue Raising Fee required by this section.
- d. A failure to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the Premises, traffic control problems, or obstruction of the operation of another business.
- e. A failure to comply with the terms and conditions of the Regulatory Permit or any conditional use permit issued in connection therewith.
- f. Any act which would be considered grounds for denial of the Regulatory Permit in the first instance.

2. Employee Permit. The Police Chief may suspend or revoke an Employee Permit when the permittee or the employee has committed any one or more of the following acts:

- a. Any act which would be considered a ground for denial of the permit in the first instance.
- b. Any act which violates any provision of this section, the Act, or any other applicable law relating to the Marijuana Operation.
- c. Any act which violates or fails to comply with the terms and conditions of the Employee Permit.

3. Procedures for Revoking Regulatory Permits. For Regulatory Permits, the procedures for revoking conditional use permits shall be utilized and shall be subject to the same judicial process as applied to a Conditional Use Permit. (See, Atwater Municipal Code Chapter 17.71.)

4. Procedures for Revoking Employee Permits. Prior to suspension or revocation of an Employee Permit, the Police Chief shall conduct an administrative hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by

personal delivery or by certified U.S. mail, postage prepaid. Any permittee aggrieved by the decision of the Police Chief in suspending or revoking an Employee Permit shall have no appeal rights and the Police Chief's decision shall be final, subject to judicial review as set forth in this section.

5. Immediate Suspension. The Police Chief may immediately suspend or revoke a Regulatory Permit and an Employee Permit without notice or a hearing, subject to the appeal rights set forth herein, under either of the following circumstances:

- a. The Business Owner or Operator is convicted of a public offense in any court for the violation of any law which relates to the Marijuana Operation, or in the case of an Employee Permit, the employee is convicted of a public offense in any court for the violation of any law which relates to the permit.
- b. The Police Chief determines that immediate suspension is necessary to protect the public health, safety, and welfare of the community. The Police Chief shall articulate the grounds for the immediate suspension in writing and the suspension shall only be for as long as necessary to address the circumstances which led to the immediate suspension.

P. Effect of Denial or Revocation. When the Community Development and Resource Commission, or if their decision is appealed and the City Council shall have denied a Regulatory Permit or revoked a Regulatory Permit, or the Police Chief shall have denied or revoked an Employee Permit, no new application for a Regulatory Permit and no new application for an Employee Permit shall be accepted and no Regulatory Permit or Employee Permit shall be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the Regulatory Permit or Employee Permit.

Q. Abandonment. In addition to the suspension or revocation of a Regulatory Permit, a Regulatory Permit shall be deemed abandoned if Marijuana Operations cease for a period of more than ninety (90) consecutive days. Before restarting operations, a new Regulatory Permit shall be secured. The 90 day period shall be tolled during periods of force majeure, which shall be defined as follows: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; or any other causes beyond the reasonable control of the permittee.

R. Fees and taxes. All Marijuana Operations shall pay applicable fees and taxes, which may include one or more of the following.

1. Business License Fee. The Business Owner shall at all times maintain a current and valid business certificate and pay all business taxes required by Title 5, Chapter 5.04, of the Atwater Municipal Code pertaining to Business Licensing.

2. Regulatory License Fee. The Business Owner shall pay an annual regulatory license fee ("Regulatory Fee") to cover the costs of anticipated enforcement relating to the Marijuana Operation. The Regulatory license may encompass multiple permitted uses by a single commercial marijuana operation. The regulatory license fee shall cover all permitted aspects or uses conducted by the license holder. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Marijuana Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.

3. Revenue Raising Fee. An annual revenue raising fee ("Revenue Fee") for the privilege of having the right to operate in the City.

a. Revenue Fee Finding. The City Council specifically finds that it is approving this Ordinance allowing Commercial Marijuana Operations to open in the City on the express understanding that the business will pay the Revenue Fee to the City as set forth herein, and that without the Revenue Fee, the City Council would not have adopted this Ordinance allowing Commercial Marijuana Operations to open in the City. By opening a Commercial Marijuana Operation in the City, the Premise Owner, Business Owner, Operator, and all Responsible Parties agree that if the Revenue Fee is challenged by any one of them or a third party and set aside, the business must cease operations.

b. Amount of Fee and Terms of Payment. The Revenue Fee shall be paid based upon the type of Commercial Marijuana Operations as follows:

c. Cultivation and Nurseries – The annual fee shall be based on a per square foot of canopy basis. This fee shall apply to cultivation and nurseries in industrial buildings as well as commercial green houses. The fee shall be ten dollars (\$10.00) per square foot for the first two thousand five hundred (2,500) square feet of canopy and two dollars and fifty cents (\$2.50) per square foot of canopy for the remaining space utilized in connection with each Commercial Marijuana Operation. The square footage calculation shall be determined by including all portions of the Premises under the control of the Business Owner and deducting there from driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Marijuana Operation (such as a janitorial closet). The annual fee shall be paid in quarterly installments. The first quarter payment shall be pro-rated based on the date of issuance of the

Regulatory Permit. Payments shall be paid as follows; January 1st, April 1st, July 1st, and October 1st. If the City is closed due to a holiday or furlough on those dates the due date shall be the next business day or day the City is open. If more than one Commercial Marijuana Operation operates on the Premises, whether within a single building or multiple buildings, each Regulatory Permit holder shall be responsible for paying the Fee relative to their proportion of the business size per square foot.

d. All other uses including Processing, Extraction, Manufacturing, Testing, Distribution, and Transportation the annual fee shall be based on a building area per square foot basis. The fee shall be ten dollars (\$10.00) per square foot for three thousand (3,000) square feet and two dollars and fifty cents (\$2.50) per square foot for the remaining space utilized in connection with each Commercial Marijuana Operation. The square footage calculation shall be determined by including all portions of the Premises under the control of the Business Owner and deducting there from vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Marijuana Operation (such as a janitorial closet). The annual fee shall be paid in quarterly installments. The first quarter payment shall be pro-rated based on the date of issuance of the Regulatory Permit. Payments shall be paid as follows; January 1st, April 1st, July 1st, and October 1st. If the City is closed due to a holiday or furlough on those dates the due date shall be the next business day or day the City is open. If more than one Commercial Marijuana Operation operates on the Premises, whether within a single building or multiple buildings, each Regulatory Permit holder shall be responsible for paying the Fee relative to their proportion of the business size per square foot.

e. Alternative Voter Approved Tax. If the voters of the City approve a tax rate which is equivalent to the Revenue Fee, the Business Owner shall pay the tax in lieu of the Revenue Fee, or portion thereof, once the City begins to collect the tax revenue. In no event shall the Business Owner be required to pay more than the Revenue Fee.

4. Youth Education Fee. The Business Owner may be required to pay an annual youth education fee to contribute to the costs of providing youth programs for drug education, prevention and treatment within the City of Atwater.

S. Inspection. Marijuana Operations shall be open for inspection by any City law enforcement officer, City code enforcement, Fire Department Representative, or Building & Safety Inspector at any time the Marijuana Operation is operating, at any other time upon responding to a call for service related to the property where the Marijuana Operations is occurring, or otherwise upon reasonable notice. Recordings made by security cameras at any Marijuana Operation shall be made immediately available to the Police Chief upon verbal request. No search warrant

or subpoena shall be needed to view the recorded materials. All premises shall also be subject to annual random inspections.

T. Indemnification. In authorizing Commercial Marijuana Operations under this section, the City makes no guarantees or promises as to the lawfulness of the approved activity under State or Federal law, and the Business Owner, Operator and all Responsible Parties are obligated to comply with all applicable laws. To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to the adoption of this Ordinance or the operation of any Commercial Marijuana Operation approved pursuant to this Ordinance or under State or Federal law. The Business Owner, Operator and all Responsible Parties shall defend, hold harmless, release, and indemnify the City, its agents, officers, and employees, from any liability associated with the approved use or adverse determinations made by the State or Federal government. An adverse determination could include cessation of operations.

The Business Owner agrees to reimburse the City for any court costs and attorney's fees that the City may be required to pay as a result of any legal challenge related to Commercial Marijuana Operations operating under the authority of this Ordinance. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the permittee of its obligations hereunder.

If requested by the City Attorney, the Business Owner shall execute an agreement memorializing the requirements of this subsection.

U. Insurance. The Business Owner shall at all times carry a comprehensive general liability policy in the minimum amount of One Million Dollars (\$1,000,000) combined single limit policy, as shall protect the Business Owner and City from claims for such damages. Such policy or policies shall be written on an occurrence form. The City Manager, in consultation with City's Risk Manager, may allow the Business Owner to obtain lesser amounts of insurance where multiple Business Owners are operating on the Premises, provided at all times the minimum insurance set forth herein is applicable to the Marijuana Operations.

The Business Owner shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name City and its respective officers, agents, employees, and volunteers, as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination.

Coverage provided hereunder by the Business Owner shall be primary insurance and shall not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City.

V. Violations: Enforcement.

1. Any person that violates any provision of this section shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

2. Any use or condition caused or permitted to exist in violation of any of the provisions of this section shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the City of Atwater Municipal Code.

3. Any person who violates, causes, or permits another person to violate any provision of this section commits a misdemeanor.

4. The violation of any provision of this section shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

5. In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this section may be subject to an administrative fine of up to one thousand dollars (\$1,000.00) for each violation and for each day the violation continues to persist. If not paid the City shall take such actions as necessary to collect the fine including but not limited to property liens, tax liens, and adding penalties to City utility bills.

W. Severability. The provisions of this section are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this section or of the Regulatory Permit issued pursuant to this section, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this section.

X. Judicial review. Judicial review of a decision made under this section or any actions taken pursuant to this section, may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure § 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure § 1094.6, which shall be applicable for such actions.

SECTION 6. SEVERABILITY: If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect

other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION 7. EFFECTIVE DATE: This ordinance shall take effect and be in force thirty (30) days after the date of its passage and the City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published in the Atwater Signal within fifteen (15) days from the adoption hereof.

INTRODUCED:

ADOPTED:

AYES:

NOES:

ABSENT:

APPROVED:

JAMES PRICE, MAYOR

ATTEST:

DON HYLER III, CITY CLERK

October 2, 2017

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of October 9, 2017

**WAIVING THE FIRST READING AND INTRODUCING ORDINANCE NO.
CS 990 AMENDING CHAPTER 5.54 "FIREWORKS," OF TITLE 5,
"BUSINESS TAXES, LICENSES, AND REGULATIONS" OF THE
ATWATER MUNICIPAL CODE**

RECOMMENDATION:

It is recommended that the City Council consider:

1. Opening the public hearing and receiving any testimony given regarding Ordinance No. 990; and
2. Waiving the first reading and introducing Ordinance No. 990 amending Chapter 5.54 "Fireworks," of Title 5, "Business Taxes, Licenses, and Regulations" of the Atwater Municipal Code.

BACKGROUND:

The possession, sale, and seizure of fireworks is regulated by the California fireworks laws as set forth in California Health and Safety Code Sections 12500, *et seq.* California law authorizes local municipalities to allow and regulate the sale and discharge of Fireworks via an ordinance. The existing City of Atwater ("City") Municipal Code provisions on Fireworks are set forth in Chapter 5.54 and were last amended in 2007 to regulate the sale and discharge of Fireworks within the City. There has been increased Firework use within the City, and the City Council now desires to amend the Fireworks ordinance to clarify the terms and conditions under which specified fireworks are allowed and the penalties for violation of the City's Fireworks ordinance. (See ATTACHMENT "A").

A Public Hearing Notice regarding Ordinance No. 990 amending Chapter 5.54 "Fireworks," of Title 5, "Business Taxes, Licenses, and Regulations" of the Atwater Municipal Code was published in the Merced Sun-Star on September 29, 2017.

FISCAL IMPACT:

Possible increase in enforcement costs, possible full cost recovery of enforcement costs, and possible increase in permitting fee income.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,



Jane Schmitz
CALFIRE Battalion Chief

ATTACHMENT “A”

CHAPTER 5.54 – FIREWORKS Sections 5.54.010 – 5.54.110 were amended to include:

- 5.54.010 - Definitions.
New definitions were added to clearly identify the parameters of the ordinance
- 5.54.020 - Limitations on Possession and Discharge of Fireworks.
Addition of State Fireworks Law to the regulations
Addition of the definition of “dangerous fireworks”
Addition of circumstances where “public display” fireworks are permitted
Identified the limitations on the discharge of “safe and sane” fireworks
Defined circumstances that constitute unlawful use of fireworks
Clarify that it is unlawful for a minor to be in possession of fireworks
- 5.54.040 - Sales Permit Required.
Adding regulations governing “safe and sane” firework sales
- 5.54.050 - Corporations Authorized to Perform Sales.
Reworded the regulation but generally retained the same content as in the existing ordinance
- 5.54.060 - Fireworks Storage Requirements.
Clarification and consolidation of storage requirements
- 5.54.070 - Sales Permit Approval.
Reworded the regulation but generally retained the same content as in the existing ordinance
- 5.54.080 - Sales Permit Limitations.
Clarification of the time frame for submitting sales permit applications
- 5.54.090 - Firework Sales and Site Requirements.
Clarification and consolidation of the requirements for sales and sale sites
- 5.54.100 - Period of Fireworks Stand Operation.
Clarification of the timeframe in which fireworks stands are permitted
- 5.54.110 - Period of Fireworks Stand Clean-Up.
Clarification of the deadline for cleaning up fireworks stands

|

ATTACHMENT “A”

CHAPTER 5.54 – FIREWORKS was amended to add the following sections:

- 5.54.030 - State Law.
Addition of the provisions of California State law on fireworks
- 5.54.120 – Violations
Addition of language to confirm that violations of this ordinance mirror California State law
- 5.54.130 - Seizure—Destruction.
Addition of language giving the City the ability to seize fireworks
- 5.54.140 - Enforcement of Violations.
Clarification of enforcer’s abilities and addition of enforcement personnel
- 5.54.150 – Cost Recovery.
Addition of language to clarify the ability of the City to obtain civil/criminal cost recovery as permitted by the Health and Safety Code.



CITY COUNCIL OF THE CITY OF ATWATER

ORDINANCE NO. 990

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER AMENDING CHAPTER 5.54 “FIREWORKS,” OF TITLE 5, “BUSINESS TAXES, LICENSES, AND REGULATIONS” OF THE ATWATER MUNICIPAL CODE

WHEREAS, the possession, sale, and seizure of fireworks is regulated by the California fireworks laws as set forth in California Health and Safety Code Section 12500, *et. seq.*; and

WHEREAS, California law authorizes local municipalities to allow and regulate the sale and discharge of ~~Safe and Sane~~ Fireworks via an ordinance; and

WHEREAS, the existing City of Atwater (“City”) Municipal Code provisions on ~~F~~fireworks are set forth in Chapter 5.54 and were last amended in 2007 to regulate the sale ~~and discharge~~ of ~~F~~fireworks within the City; and

WHEREAS, there has been increased ~~F~~firework use within the City, and the City Council now desires to amend the fireworks ordinance to clarify the terms and conditions under which specified ~~F~~fireworks are allowed and the penalties for violation of the City’s fireworks ordinance.

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

Section 1. Amendment of Code Chapter 5.54 “Fireworks,” of Title 5 “Business Taxes, Licenses, and Regulations,” (“Ordinance”) of the Atwater Municipal Code is hereby amended to read in full as follows:

CHAPTER 5.54 – FIREWORKS

5.54.010 - Definitions.

- A. “Fireworks” means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices or for entertainment, including fireworks classified by the Health and Safety Code both as “dangerous fireworks” and as “safe and sane fireworks” and shall include firecrackers, torpedoes, skyrockets, roman-candles, bombs, sparklers, chasers, snakes or other fireworks containing any explosive or flammable substance. This definition does not include ammunition used for target shooting or hunting, nor does it include what is ordinarily known as cap pistol caps, party poppers or snap caps.
- B. “Occupant” means the person or persons leasing, using, residing at or otherwise occupying real property, regardless of whether a lease or contract exists between said person and the Owner.
- C. “Owner” means the owner or owners of real property.
- D. “Person” means any individual or entity of any form, including, but not limited to corporation, limited liability company, partnership, association.
- E. “Permitted Public Display Fireworks” means a fireworks display intended to be viewed by the public at large or a designated segment thereof and specifically includes any special effects manufactured, assembled, designed, or discharged in connection with television, theater, or motion picture productions, which may or may not be presented before live audiences, and any other articles containing any pyrotechnic composition used for commercial, industrial, education, recreation, or entertainment purposes which are authorized and permitted by the City of Atwater’s Fire Marshal or other designee as set forth in Section 5.54.020(C).

5.54.020 - Limitations on Possession and Discharge of Fireworks.

- A. Subject to the provisions of the State Fireworks Law (Cal. Health and Safety Code §§12,500 *et. seq.*) as may be amended from time to time, and any regulations promulgated thereunder, Safe and Sane Fireworks, as defined in Health and Safety Code Section 12529, may only be discharged within the city limits of the City of Atwater during the period beginning at 12 noon on the 28th day of June and ending at 12 midnight on the 4th of July, each year.
- B. No fireworks classified as “dangerous fireworks” by Health and Safety Code Section 12505, as may be amended, may be sold or discharged within the City of Atwater at any time. Further, pursuant to Health and Safety Code Section 12677, as may be amended, it is unlawful for any person to possess dangerous fireworks without holding a valid permit.
- C. Permitted Public Display Fireworks may occur within the city limits of the City of Atwater on the terms and conditions authorized by City of Atwater’s

Fire Marshall or other designee pursuant to a validly issued Permit for Public Display Fireworks, which may be obtained by completing the City of Atwater's application process on the form and pursuant to the procedures established by the City and paying the associated fees.

- D. Safe and Sane fFireworks permitted by this Chapter shall not be discharged on public, semi-public or private open areas such as parking lots, vacant properties, or open commercial or industrial areas. Fireworks permitted by this Chapter shall only be discharged on private property and residential public streets or right of ways.
- E. It shall be unlawful for any person to ignite, explode, discharge, project, or otherwise fire or use any Fireworks, or to permit the ignition, explosion, projection, firing or usage thereof, upon or over or onto the property of another without his or her consent.
- F. Pursuant to Health and Safety Code Section 12680, as may be amended, no person shall place, throw, discharge, ignite, or fire dangerous Ffireworks at or near any person or group of persons where there is a likelihood of injury to that person or group of persons or when the person willfully places, throws, discharges, ignites, or fires the fireworks with the intent of creating chaos, fear, or panic.
- G. It shall be unlawful for any person having the care, custody or control of a minor under the age of eighteen (18) to permit such minor to ignite, explode, discharge, project, fire, or use any Fireworks, unless such minor does so under the direct supervision of the minor's parent or guardian, or such other person having care, custody or control of such minor.

5.54.030 - State Law.

The provisions of this Chapter are in addition to applicable state and federal law, including, but not limited to, the State Fireworks Law (Cal. Health and Safety Code §§ 12500, et seq.), as may be amended from time to time, the State Fireworks Regulations (Title 19, California Code of Regulations, Chapter 6), as may be amended from time to time, and any and all other state or federal laws or regulations pertaining to the sale or use of Fireworks.

5.54.040 - Sales Permit Rrequired.

It is unlawful for any person to sell safe and sane Ffireworks in the City of Atwater except from an approved booth for which a permit has been issued under the provisions of this chapter. No more than one permit per parcel site shall be issued.

5.54.050 - Authorized cCorporations Authorized to Perform Sales.

Fireworks sales pPermits shall be granted only to non-profit organizations with a specific community benefit to Atwater, which are and certified as exempt from taxation

under the laws of the State of California and the United States and which **organizations** have an established bona fide place of operation within Merced County.

5.54.0630 - **Fireworks Storage Requirements.**

Fireworks Storage is permitted in buildings classified as an explosives warehouse or approved temporary storage building **or** container(s). Storage is prohibited in all other buildings, ~~which including, but not limited to:~~ **all** dwellings, attached garages, educational facilities, assembly occupancies (churches, theaters, mall, etc.), **and** institutional or social care facilities. A field inspection of the storage site will be performed and if the site does not comply with the requirements of this section, a permit will not be issued. In addition, all storage areas must comply with the following:

- A. No parking is allowed within 25 feet of the storage container and applicants must show how the no parking area will be secured **against to preclude entry traffic.**
- B. Storage sites must be at least 50 feet from inhabited buildings, including those on adjacent properties.
- C. Storage sites must be at least 100 feet from locations where flammable liquids are used, stored or dispensed.
- D. Storage sites must be at least 25 feet from property lines.
- E. Smoking is prohibited within 50 feet of the all storage sites. "No Smoking" signs shall be posted on all sides of buildings ~~and/or~~ containers at storage site(s). ~~Smoking is prohibited within 50 feet of storage site.~~

~~F. If during the field inspection the location of storage site does not comply with the above distances, a permit will not be issued.~~

- ~~FG.~~ A minimum of one 2-A rated water type or one 2A 10BC dry chemical type fire extinguisher with a current State Fire Marshal service tag issued by the City of Atwater's Fire Marshall or other designee attached must be available at every storage site.
- ~~GH.~~ The use of enclosed trucks or trailers may be permitted for storage of safe and sane fireworks. The truck or trailer must be inspected by the Fire Department for approval. "Dangerous" placards in compliance with Department of Transportation specifications must be placed on all four sides of truck or trailer. The truck or trailer must comply with the distance requirements set forth in this chapter.
- ~~H.~~ ~~It is prohibited to~~ No person shall sleep inside or within 50 feet of any booth or storage site. This ~~The prohibition set forth in this section~~ includes sleeping in trailers, campers or other vehicles.
- ~~I.~~ Addresses of storage sites located outside City limits must be provided to the City, along with written approval of fire authority having jurisdiction at the storage site ~~prior to issuance of retail sales permits within the City.~~

5.54.0740 - Sales Permit Approval.

Application for the permit shall be accompanied by written documentation indicating confirming the organization has a current determination of exempt status by the Franchise Tax Board and the Internal Revenue Service, a State Fireworks Permit, a certificate of insurance complying with current City requirements, written approval of the property owner, the name and address and phone number of the responsible person, and a processing fee in the ~~sum of \$100.00~~ amount set forth in the City of Atwater's Miscellaneous Fee Schedule. The application shall be signed by an authorized officer of the corporation and shall be subject to approval of the City of Atwater's Fire Marshall or other designee ~~City Attorney~~.

5.54.0850 - Sales Permit Limitations.

The ~~initial~~ application period shall be from January 1 to June 1 of the year for which the permit is requested. No more than one application shall be accepted from any organization during the application period.

5.54.0960 - Firework Sales and Site Requirements.

- A. ~~[Site Requirements.]~~ Together with a fireworks stand application, a site (parcel) plan shall be submitted showing booth specifications, booth location, parking and access routes. The Planning and Fire Departments shall review the plan to ~~determine~~ ensure compliance with this chapter and other applicable regulations.
- B. Sales Requirements. If during the field inspection the sales stand location does not comply with the following requirements, a permit will not be issued. -
 1. A.—No parking is allowed within 25 feet of fireworks stand and the applicant must demonstrate how the no parking area will be secured ~~against traffic~~ to preclude entry.
 2. B.—Stands must be located at least 50 feet from any building, inhabited trailer, camper or other vehicle. Sleeping is prohibited in the stand and within 50 feet of the stand.
 3. C.—Stands must be at least 100 feet from locations where flammable liquids are used or stored.
 4. D.—Stands must be located at least 25 feet from any property line, public or private street or alley.
 5. Smoking is prohibited within 50 feet of stand. No smoking signs shall be posted on all exterior sides and inside stands, buildings or structures used for sales or storage of fireworks. The Fire Department may designate other no smoking locations. The sign shall read "NO SMOKING." The lettering shall be red in color on a

- white background, be at least three inches in height, with a stroke of not less than one-half-inch.
6. An inspection of all stock for sale shall be made by the Fire Department prior to any Ffireworks sales. Inspections are by appointment only and 24-hour advance notice is required.
 7. A minimum of one 2A-rated water type fire extinguisher or one 2A 10BC rated dry chemical type extinguisher with a current State Fire Marshall service tag ~~issued by the City of Atwater's Fire Marshall or other designee~~ attached must be properly mounted in accessible areas of the stand.
 8. A clearance of 50 feet must be maintained between all combustible materials (weeds, rubbish, etc.), stands and/or storage areas. This clearance requirement applies to empty boxes that fireworks were shipped in.
 9. The following items must be posted inside the stand:
 - i. A copy of City of Atwater Fireworks Sales and Storage Requirements, which must be initialed by all persons working in the booth.
~~A copy of the State Fire Marshal Retail Sales License issued by the City of Atwater's Fire Marshall or other designee.~~
 - ii. A copy of the City of Atwater Retail Sales Permit.
 - iii. A current, original Atwater Fire Department Permit.
 10. The permit and retail sales license must be posted at sales location and must be in plain view of the public.
 11. No one under 18 years of age may sell or transport Ffireworks, nor enter a temporary business or booth wherein Ffireworks are sold or stored.
 12. Sleeping is prohibited inside or within 50 feet of any portion of the booth or storage site. This prohibition applies to sleeping in trailers, campers or other vehicles.
 13. It is unlawful for any person to sell or transfer any safe and sane fireworks to a person who is under 16 years of age.
 14. Use of safe and sane fireworks within 50 feet of a fireworks stand is prohibited.
 15. All unsold stock of fireworks must be returned to the wholesaler prior to the 15th day of July the same calendar year.
 16. No person shall use or handle fireworks while under the influence of intoxicating liquids or narcotics.
 - 4.17. It is the responsibility of the organization authorized to sell Safe and Sane Fireworks to instruct his or her employees who handle

~~F~~ fireworks in any capacity, as to the hazards of ~~F~~ fireworks and explosives and all rules regarding fireworks of City of Atwater and State Fire Marshal's office ~~of the City of Atwater's Fire Marshall or other designee.~~

~~5. E. If during the field inspection the sales stand location does not comply with the above distances, a permit will not be issued.~~

C. ~~F.~~ Stand Construction. Stands shall be constructed in a manner approved by the Fire Chief and in compliance with all of the following requirements.

1. ~~1.~~ Each stand must have a minimum of two exits. Exit doors must swing in the direction of egress and shall be operable from the inside without use of a key or special knowledge.

2. ~~2.~~ Fireworks stands shall be secured and enclosed so that fireworks displays and storage ~~is~~ are out of the reach of customers.

3. ~~3.~~ No stand shall have a floor area in excess of 300 square feet.

4. ~~4.~~ No stand shall be constructed ~~which has~~ with a depth of more than 12 feet.

5. ~~5.~~ The ~~Atwater City Fire Department~~ City of Atwater's Fire Marshall or other designee must approve all temporary electrical wiring, including portable generators.

i. ~~(a)~~ Over-circuit devices at their rated capacity must protect all conductors.

ii. ~~(b)~~ Electrical receptacles for conductors must be grounded.

iii. ~~(c)~~ Disconnecting switches or plugs must be installed to permit disconnection of all ungrounded conductors (supplied by portable generators).

iv. ~~(d)~~ All electrical cords must be UL approved, heavy-duty grounded and protected from physical damage, including vehicular traffic. If supported overhead, the cords must be at least seven feet above grade in open areas.

~~6. G. Smoking is prohibited within 50 feet of stand. No smoking signs shall be posted on all exterior sides and inside stands, buildings or structures used for sales or storage of fireworks. The Fire Department may designate other no smoking locations. The sign shall read "NO SMOKING." The lettering shall be red in color on a white background, be at least three inches in height, with a stroke of not less than one-half inch.~~

- ~~7. H. An inspection of all stock for sale shall be made by the Fire Department prior to any fireworks sales. Inspections are by appointment only; 24-hour advance notice is required.~~
- ~~8. I. A minimum of one 2A-rated water type fire extinguisher or one 2A 10BC rated dry chemical type extinguisher with a current State Fire Marshall service tag attached must be properly mounted in accessible areas of the stand.~~
- ~~9. J. A clearance of 50 feet must be maintained between all combustible materials (weeds, rubbish, etc.) and stands or storage areas. This includes empty boxes that fireworks were shipped in.~~
- ~~10. K. The following items must be posted inside the stand:
 - ~~i. 1. A copy (general requirements) of City of Atwater Fireworks Sales and Storage Requirements, which must be initialed by all persons working in the booth.~~
 - ~~ii. 2. A copy of the State Fire Marshal Retail Sales License.~~
 - ~~iii. 3. A copy of the City of Atwater Retail Sales Permit.~~
 - ~~iv. 4. A current, original Atwater Fire Department Permit.~~~~
- ~~11. L. The permit and retail sales license must be posted at sales location and be in plain view of the public.~~
- ~~12. M. No one under 18 years of age may sell or transport fireworks, nor enter a temporary business or booth wherein fireworks are sold or stored.~~
- ~~13. N. It is prohibited to sleep inside or within 50 feet of any booth or storage site. This includes sleeping in trailers, campers or other vehicles.~~
- ~~14. O. It is unlawful for any person to sell or transfer any safe and sane fireworks to a person who is under 16 years of age.~~
- ~~15. P. Use of safe and sane fireworks within 50 feet of a fireworks stand is prohibited.~~
- ~~16. Q. All unsold stock of fireworks must be returned to the wholesaler prior to the 15th day of July the same calendar year.~~
- ~~17. R. No person shall use or handle fireworks while under the influence of intoxicating liquids or narcotics.~~
- ~~18.6. S. — It is the responsibility of the organization to instruct his/her employees who handle fireworks in any capacity, as to the hazards of fireworks and explosives and all rules of City of Atwater and State Fire Marshal's office.~~

5.54.1070 - Period of Fireworks Stand Operation.

The stand shall not be in place prior to June 20 and shall be disassembled no later than July 6 of each permit year. The booth may be operated only from 12:00 noon on June 28 to midnight on July 4, in the City of Atwater. ~~Use of fireworks in the City shall also be restricted to 12:00 noon on June 28 to midnight on July 4, in the City of Atwater, the dates of sale as allowed by State law (12:00 noon on June 28 through 12:00 noon on July 6).~~

5.54.11080 - Period of Fireworks Stand Clean-Up.

The applicant shall ~~be granted a seven-day time frame for removal~~ of the stand and all materials from the site after each event on or before July 12.

5.54.120 - Violations.

- A. It shall be unlawful for any Person to violate, or to permit the violation of, any provision of this Chapter. All Owners, Occupants and other Persons at or on the property or premises where Fireworks are possessed, sold, ignited, exploded, discharged, projected, fired or used may be cited for and convicted of violations of this Chapter as well as any other applicable laws.
- B. A violation of this Chapter shall constitute a misdemeanor, and shall be punishable as set forth in California Health and Safety Code Sections 12700 and 12702, as may be amended from time to time. In addition, conviction under this Chapter shall be punishable as follows: for the first conviction shall be punishable by a, the fine shall not to exceed the amount of five hundred dollars (\$500), for the second and any subsequent conviction within a twelve (12) month period, the shall be punishable by a fine shall not to exceed the amount of one thousand dollars (\$1,000) or by imprisonment in the county jail for not to exceeding one year, or by both the fine and imprisonment. In addition, these punishments may be increased in accordance with Section 12702 based on the amount of dangerous fireworks possessed.
- C. Violations shall be prosecuted by the City Attorney through the provisions of this Chapter, administrative code enforcement mechanisms, any other enforcement procedures provided in the Atwater Municipal Code, or any combination thereof.

5.54.130 - Seizure—Destruction.

Any condition caused or permitted to exist in violation of this Chapter constitutes a threat to public health, safety, and welfare, and is declared and deemed a public nuisance, which may be summarily abated or restored by the City at the violator's expense and the City may institute a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance.

5.54.140 - Enforcement of Violations.

The provisions of this Chapter shall be enforced by the Atwater Police Department, Cal Fire CAL FIRE Public Officers and Cal Fire CAL FIRE Peace Officers. All members of the Atwater Police Department as well as all Cal Fire CAL FIRE Public Officers, and Cal Fire CAL FIRE Peace Officers and the State Fire Marshal are authorized to enter upon, inspect, and examine any property or premises to determine whether a violation of this Chapter exists or has occurred. If the Owner or Occupant of the property or premises refuses to permit entrance, inspection or examination pursuant to this Chapter, the Atwater Police Department may seek an inspection warrant pursuant to California Code of Civil Procedure Section 1822.50, et. seq., as may be amended from time to time.

5.54.150 – Cost Recovery.

- A. If during the application of this Chapter or the use of Fireworks, any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property is liable for the following costs pursuant to the California Health and Safety Code sections 13009 and 13009.1, as may be amended from time to time:
1. the fire suppression costs incurred in fighting the fire;
 2. the cost of providing rescue or emergency medical service;
 3. the cost of investigating and making any reports with respect to the fire;
 4. the costs relating to accounting for that fire and the collection of any funds, including, but not limited to, the administrative costs of operating a fire suppression cost recovery program.
- B. In addition to the costs identified in subdivision A, to the maximum extent allowable by law, the costs of obtaining compliance with the provisions of this Chapter shall be charged to the responsible Person. These recoverable costs may also include, but not be limited to, administrative costs and staff time, inspection fees, attorneys fees, and remediation costs, and other costs as may be permitted by a court of competent jurisdiction.
- A-C. All recoverable costs shall be a charge against the person or people who violated this Chapter or negligently set a fire. All costs shall constitute a debt of that person or those people, and shall be collectible by the person or agency incurring those costs in the same manner as in the case of an obligation under an express or implied contract.

SECTION 2. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the

invalid provision or application, and to this end, the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 3. CEQA

The City Council hereby finds that the adoption of this Ordinance does not constitute the approval of a “project” under the California Environmental Quality Act (CEQA) pursuant to section 15060(c)(2) and (3) and 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or foreseeable indirect physical change in the environment as it does not authorize the construction of any new structures or other physical changes to the environment.

SECTION 4. Publication. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Merced Sun Star*, the official newspaper of the City of Atwater, setting forth the title of this Ordinance, the date of its introduction and the places where this Ordinance is posted.

The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause this Ordinance, or a summary thereof to be published once in the official newspaper within 15 days after its adoption.

SECTION 5. Effective Date. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Atwater held on the ___ day of _____, 2017, by Councilmember _____, who moved its introduction and passage to print, which motion being duly seconded by Councilmember _____, was upon roll call carried and ordered printed and published by the following vote:

Introduced by Council Member _____ seconded by Council Member _____ on the ___ day of _____, 2017.

Passed on the ___ day of _____, 2017, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

DON HYLER III, CITY CLERK



**CITY COUNCIL
OF THE
CITY OF ATWATER**

ORDINANCE NO. 990

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ATWATER AMENDING CHAPTER 5.54
“FIREWORKS,” OF TITLE 5, “BUSINESS TAXES,
LICENSES, AND REGULATIONS” OF THE
ATWATER MUNICIPAL CODE**

WHEREAS, the possession, sale, and seizure of fireworks is regulated by the California fireworks laws as set forth in California Health and Safety Code Section 12500, *et. seq.*; and

WHEREAS, California law authorizes local municipalities to allow and regulate the sale and discharge of Fireworks via an ordinance; and

WHEREAS, the existing City of Atwater (“City”) Municipal Code provisions on Fireworks are set forth in Chapter 5.54 and were last amended in 2007 to regulate the sale and discharge of Fireworks within the City; and

WHEREAS, there has been increased Firework use within the City, and the City Council now desires to amend the fireworks ordinance to clarify the terms and conditions under which specified Fireworks are allowed and the penalties for violation of the City’s fireworks ordinance.

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

Section 1. Amendment of Code Chapter 5.54 “Fireworks,” of Title 5 “Business Taxes, Licenses, and Regulations,” (“Ordinance”) of the Atwater Municipal Code is hereby amended to read in full as follows:

CHAPTER 5.54 – FIREWORKS

5.54.010 - Definitions.

- A. “Fireworks” means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects

which are useful as pyrotechnic devices or for entertainment, including fireworks classified by the Health and Safety Code both as “dangerous fireworks” and as “safe and sane fireworks” and shall include firecrackers, torpedoes, skyrockets, roman-candles, bombs, sparklers, chasers, snakes or other fireworks containing any explosive or flammable substance. This definition does not include ammunition used for target shooting or hunting, nor does it include what is ordinarily known as cap pistol caps, party poppers or snap caps.

- B. “Occupant” means the person or persons leasing, using, residing at or otherwise occupying real property, regardless of whether a lease or contract exists between said person and the Owner.
- C. “Owner” means the owner or owners of real property.
- D. “Person” means any individual or entity of any form, including, but not limited to corporation, limited liability company, partnership, association.
- E. “Permitted Public Display Fireworks” means a fireworks display intended to be viewed by the public at large or a designated segment thereof and specifically includes any special effects manufactured, assembled, designed, or discharged in connection with television, theater, or motion picture productions, which may or may not be presented before live audiences, and any other articles containing any pyrotechnic composition used for commercial, industrial, education, recreation, or entertainment purposes which are authorized and permitted by the City of Atwater’s Fire Marshal or other designee as set forth in Section 5.54.020(C).

5.54.020 - Limitations on Possession and Discharge of Fireworks.

- A. Subject to the provisions of the State Fireworks Law (Cal. Health and Safety Code §§12500 *et. seq.*) as may be amended from time to time, and any regulations promulgated thereunder, Safe and Sane Fireworks, as defined in Health and Safety Code Section 12529, may only be discharged within the city limits of the City of Atwater during the period beginning at 12 noon on the 28th day of June and ending at 12 midnight on the 4th of July, each year.
- B. No fireworks classified as “dangerous fireworks” by Health and Safety Code Section 12505, as may be amended, may be sold or discharged within the City of Atwater at any time. Further, pursuant to Health and Safety Code Section 12677, as may be amended, it is unlawful for any person to possess dangerous fireworks without holding a valid permit.
- C. Permitted Public Display Fireworks may occur within the city limits of the City of Atwater on the terms and conditions authorized by City of Atwater’s Fire Marshal or other designee pursuant to a validly issued Permit for Public Display Fireworks, which may be obtained by completing the City of Atwater’s application process on the form and pursuant to the procedures established by the City and paying the associated fees.

- D. Safe and Sane fireworks permitted by this Chapter shall not be discharged on public, semi-public or private open areas such as parking lots, vacant properties, or open commercial or industrial areas. Fireworks permitted by this Chapter shall only be discharged on private property and residential public streets or right of ways.
- E. It shall be unlawful for any person to ignite, explode, discharge, project, or otherwise fire or use any Fireworks, or to permit the ignition, explosion, projection, firing or usage thereof, upon or over or onto the property of another without his or her consent.
- F. Pursuant to Health and Safety Code Section 12680, as may be amended, no person shall place, throw, discharge, ignite, or fire dangerous Fireworks at or near any person or group of persons where there is a likelihood of injury to that person or group of persons or when the person willfully places, throws, discharges, ignites, or fires the fireworks with the intent of creating chaos, fear, or panic.
- G. It shall be unlawful for any person having the care, custody or control of a minor under the age of eighteen (18) to permit such minor to ignite, explode, discharge, project, fire, or use any Fireworks, unless such minor does so under the direct supervision of the minor's parent or guardian, or such other person having care, custody or control of such minor.

5.54.030 - State Law.

The provisions of this Chapter are in addition to applicable state and federal law, including, but not limited to, the State Fireworks Law (Cal. Health and Safety Code §§ 12500, *et seq.*), as may be amended from time to time, the State Fireworks Regulations (Title 19, California Code of Regulations, Chapter 6), as may be amended from time to time, and any and all other state or federal laws or regulations pertaining to the sale or use of Fireworks.

5.54.040 - Sales Permit Required.

It is unlawful for any person to sell safe and sane Fireworks in the City of Atwater except from an approved booth for which a permit has been issued under the provisions of this chapter. No more than one permit per parcel site shall be issued.

5.54.050 - Corporations Authorized to Perform Sales.

Fireworks sales permits shall be granted only to non-profit organizations with a specific community benefit to Atwater, which are certified as exempt from taxation under the laws of the State of California and the United States and which have an established bona fide place of operation within Merced County.

5.54.060 - Fireworks Storage Requirements.

Fireworks storage is permitted in buildings classified as an explosives warehouse or approved temporary storage building or container(s). Storage is prohibited in all other buildings, including, but not limited to: dwellings, attached garages, educational facilities, assembly occupancies (churches, theaters, mall, etc.), and institutional or social care facilities. A field inspection of the storage site will be performed and if the site does not comply with the requirements of this section, a permit will not be issued. In addition, all storage areas must comply with the following:

- A. No parking is allowed within 25 feet of the storage container and applicants must show how the no parking area will be secured to preclude entry.
- B. Storage sites must be at least 50 feet from inhabited buildings, including those on adjacent properties.
- C. Storage sites must be at least 100 feet from locations where flammable liquids are used, stored or dispensed.
- D. Storage sites must be at least 25 feet from property lines.
- E. Smoking is prohibited within 50 feet of all storage sites. "No Smoking" signs shall be posted on all sides of buildings and containers at storage site(s).
- F. A minimum of one 2-A rated water type or one 2A 10BC dry chemical type fire extinguisher with a current State Fire Marshal service tag attached must be available at every storage site.
- G. The use of enclosed trucks or trailers may be permitted for storage of safe and sane fireworks. The truck or trailer must be inspected by the Fire Department for approval. "Dangerous" placards in compliance with Department of Transportation specifications must be placed on all four sides of truck or trailer. The truck or trailer must comply with the distance requirements set forth in this chapter.
- H. No person shall sleep inside or within 50 feet of any booth or storage site. The prohibition set forth in this section includes sleeping in trailers, campers or other vehicles.
- I. Addresses of storage sites located outside City limits must be provided to the City, along with written approval of fire authority having jurisdiction at the storage site.

5.54.070 - Sales Permit Approval.

Application for the permit shall be accompanied by written documentation confirming the organization has a current determination of exempt status by the Franchise Tax Board and the Internal Revenue Service, a State Fireworks Permit, a certificate of insurance complying with current City requirements, written approval of the property owner, the name and address and phone number of the responsible person, and a processing fee in the amount set forth in the City of Atwater's Miscellaneous Fee Schedule. The application

shall be signed by an authorized officer of the corporation and shall be subject to approval of the City of Atwater's Fire Marshal or other designee.

5.54.080 - Sales Permit Limitations.

The application period shall be from January 1 to June 1 of the year for which the permit is requested. No more than one application shall be accepted from any organization during the application period.

5.54.090 - Firework Sales and Site Requirements.

- A. Site Requirements. Together with a fireworks stand application, a site (parcel) plan shall be submitted showing booth specifications, booth location, parking and access routes. The Planning and Fire Departments shall review the plan to ensure compliance with this chapter and other applicable regulations.
- B. Sales Requirements. If during the field inspection the sales stand location does not comply with the following requirements, a permit will not be issued.
 - 1. No parking is allowed within 25 feet of fireworks stand and the applicant must demonstrate how the no parking area will be secured to preclude entry.
 - 2. Stands must be located at least 50 feet from any building, inhabited trailer, camper or other vehicle. Sleeping is prohibited in the stand and within 50 feet of the stand.
 - 3. Stands must be at least 100 feet from locations where flammable liquids are used or stored.
 - 4. Stands must be located at least 25 feet from any property line, public or private street or alley.
 - 5. Smoking is prohibited within 50 feet of stand. No smoking signs shall be posted on all exterior sides and inside stands, buildings or structures used for sales or storage of fireworks. The Fire Department may designate other no smoking locations. The sign shall read "NO SMOKING." The lettering shall be red in color on a white background, be at least three inches in height, with a stroke of not less than one-half-inch.
 - 6. An inspection of all stock for sale shall be made by the Fire Department prior to any Fireworks sales. Inspections are by appointment only and 24-hour advance notice is required.
 - 7. A minimum of one 2A-rated water type fire extinguisher or one 2A 10BC rated dry chemical type extinguisher with a current State Fire Marshal service tag attached must be properly mounted in accessible areas of the stand.

8. A clearance of 50 feet must be maintained between all combustible materials (weeds, rubbish, etc.), stands and/or storage areas. This clearance requirement applies to empty boxes that fireworks were shipped in.
 9. The following items must be posted inside the stand:
 - i. A copy of City of Atwater Fireworks Sales and Storage Requirements, which must be initialed by all persons working in the booth.
 - ii. A copy of the State Fire Marshal Retail Sales License A copy of the City of Atwater Retail Sales Permit.
 - iii. A current, original Atwater Fire Department Permit.
 10. The permit and retail sales license must be posted at sales location and must be in plain view of the public.
 11. No one under 18 years of age may sell or transport Fireworks, nor enter a temporary business or booth wherein Fireworks are sold or stored.
 12. Sleeping is prohibited inside or within 50 feet of any portion of the booth or storage site. This prohibition applies to sleeping in trailers, campers or other vehicles.
 13. It is unlawful for any person to sell or transfer any safe and sane fireworks to a person who is under 16 years of age.
 14. Use of safe and sane fireworks within 50 feet of a fireworks stand is prohibited.
 15. All unsold stock of fireworks must be returned to the wholesaler prior to the 15th day of July the same calendar year.
 16. No person shall use or handle fireworks while under the influence of intoxicating liquids or narcotics.
 17. It is the responsibility of the organization authorized to sell Safe and Sane Fireworks to instruct his or her employees who handle Fireworks in any capacity, as to the hazards of Fireworks and explosives and all rules regarding Fireworks of City of Atwater and State Fire Marshal's office
- C. Stand Construction. Stands shall be constructed in a manner approved by the Fire Chief and in compliance with all of the following requirements.
1. Each stand must have a minimum of two exits. Exit doors must swing in the direction of egress and shall be operable from the inside without use of a key or special knowledge.
 2. Fireworks stands shall be secured and enclosed so that fireworks displays and storage are out of the reach of customers.
 3. No stand shall have a floor area in excess of 300 square feet.

4. No stand shall be constructed with a depth of more than 12 feet.
5. The City of Atwater's Fire Marshal or other designee must approve all temporary electrical wiring, including portable generators.
 - i. Over-circuit devices at their rated capacity must protect all conductors.
 - ii. Electrical receptacles for conductors must be grounded.
 - iii. Disconnecting switches or plugs must be installed to permit disconnection of all ungrounded conductors (supplied by portable generators).
 - iv. All electrical cords must be UL approved, heavy-duty grounded and protected from physical damage, including vehicular traffic. If supported overhead, the cords must be at least seven feet above grade in open areas.

5.54.100 - Period of Fireworks Stand Operation.

The stand shall not be in place prior to June 20 and shall be disassembled no later than July 6 of each permit year. The booth may be operated only from 12:00 noon on June 28 to midnight on July 4 in the City of Atwater.

5.54.110 - Period of Fireworks Stand Clean-Up.

The applicant shall remove the stand and all materials from the site on or before July 12.

5.54.120 - Violations.

- A. It shall be unlawful for any Person to violate, or to permit the violation of, any provision of this Chapter. All Owners, Occupants and other Persons at or on the property or premises where Fireworks are possessed, sold, ignited, exploded, discharged, projected, fired or used may be cited for and convicted of violations of this Chapter as well as any other applicable laws.
- B. A violation of this Chapter shall constitute a misdemeanor, and shall be punishable as set forth in California Health and Safety Code Sections 12700 and 12702, as may be amended from time to time. In addition, conviction under this Chapter shall be punishable as follows: the first conviction shall be punishable by a fine not to exceed the amount of five hundred dollars (\$500), the second and any subsequent conviction within a twelve (12) month period shall be punishable by a fine not to exceed the amount of one thousand dollars (\$1,000) or by imprisonment in the county jail for not to exceed one year, or by both the fine and imprisonment. These punishments may be increased in accordance with Section 12702 based on the amount of Fireworks possessed.
- C. Violations shall be prosecuted by the City Attorney through the provisions of this Chapter, administrative code enforcement mechanisms, any other

enforcement procedures provided in the Atwater Municipal Code, or any combination thereof.

5.54.130 - Seizure—Destruction.

Any condition caused or permitted to exist in violation of this Chapter constitutes a threat to public health, safety, and welfare, and is declared and deemed a public nuisance, which may be summarily abated or restored by the City at the violator’s expense and the City may institute a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance.

5.54.140 - Enforcement of Violations.

The provisions of this Chapter shall be enforced by the Atwater Police Department, *CAL FIRE* Public Officers and *CAL FIRE* Peace Officers. All members of the Atwater Police Department as well as all *CAL FIRE* Public Officers, *CAL FIRE* Peace Officers and the State Fire Marshal are authorized to enter upon, inspect, and examine any property or premises to determine whether a violation of this Chapter exists or has occurred. If the Owner or Occupant of the property or premises refuses to permit entrance, inspection or examination pursuant to this Chapter, the Atwater Police Department may seek an inspection warrant pursuant to California Code of Civil Procedure Section 1822.50, *et. seq.*, as may be amended from time to time.

5.54.150 – Cost Recovery.

- A. If during the application of this Chapter or the use of Fireworks, any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property is liable for the following costs pursuant to the California Health and Safety Code sections 13009 and 13009.1, as may be amended from time to time:
 - 1. the fire suppression costs incurred in fighting the fire;
 - 2. the cost of providing rescue or emergency medical service;
 - 3. the cost of investigating and making any reports with respect to the fire;
 - 4. the costs relating to accounting for that fire and the collection of any funds, including, but not limited to, the administrative costs of operating a fire suppression cost recovery program.
- B. In addition to the costs identified in subdivision A, to the maximum extent allowable by law, the costs of obtaining compliance with the provisions of this Chapter shall be charged to the responsible Person. These recoverable costs may also include, but not be limited to, administrative costs and staff time, inspection fees, attorneys fees, and remediation costs, and other costs as may be permitted by a court of competent jurisdiction.

- C. All recoverable costs shall be a charge against the person or people who violated this Chapter or negligently set a fire. All costs shall constitute a debt of that person or those people, and shall be collectible by the person or agency incurring those costs in the same manner as in the case of an obligation under an express or implied contract.

SECTION 2. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 3. CEQA

The City Council hereby finds that the adoption of this Ordinance does not constitute the approval of a “project” under the California Environmental Quality Act (CEQA) pursuant to section 15060(c)(2) and (3) and 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or foreseeable indirect physical change in the environment as it does not authorize the construction of any new structures or other physical changes to the environment.

SECTION 4 . Publication. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Merced Sun Star*, the official newspaper of the City of Atwater, setting forth the title of this Ordinance, the date of its introduction and the places where this Ordinance is posted.

The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause this Ordinance, or a summary thereof to be published once in the official newspaper within 15 days after its adoption.

SECTION 5. Effective Date. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Atwater held on the ___ day of _____2017, by Councilmember _____, who moved its introduction and passage to print, which motion being duly seconded by Councilmember _____, was upon roll call carried and ordered printed and published by the following vote:

Introduced by Council Member _____ seconded by Council Member _____ on the ___ day of _____, 2017.

Passed on the ___ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

DON HYLER III, CITY CLERK

October 5, 2017

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of October 9, 2017

**APPEALING THE DECISION OF THE COMMUNITY DEVELOPMENT AND
RESOURCES COMMISSION TO DENY ISSUANCE OF CUP NO. 549-17
(1485 BROADWAY AVENUE)**

RECOMMENDATION:

It is recommended that the City Council consider:

1. Opening the public hearing and taking any testimony given; and
2. Adopting Resolution No. 2986-17, granting the appeal and: (a) overturning the decision of the Community Development and Resources Commission ("CDRC") to deny the application for Conditional Use Permit No. 549-17 on behalf of 89 Cent Plus Store located at 1485 Broadway Avenue ("Store") to permit the sale of alcoholic beverages, and (b) making a determination that the public convenience or necessity would be met by issuance of a Type 20 license at the Store; or
3. Adopting Resolution No. 2987-17, denying the appeal and upholding the decision of the CDRC to deny the application for Conditional Use Permit No. 549-17 and to deny the Applicant's request for a determination by the City Council that the public convenience or necessity would be met by issuance of a Type 20 license at the Store.

BACKGROUND:

Staff received a Conditional Use Permit Application from Rajeshwar Randhawa ("Applicant"), on behalf of the Store. The subject property is zoned C-C (Central Commercial District). Since the Applicant is now requesting the right to sell alcoholic beverages on the premises, Staff has determined that approval of a Conditional Use Permit ("CUP") is required. The Applicant is also requesting that the City Council make a determination that the public convenience or necessity would be met by issuance of a Type 20 license at the Store, and forward its recommendation to the State of California Department of Alcoholic Beverage Control.

At the regularly scheduled CDRC meeting held September 20, 2017, the CDRC reviewed the request to adopt Resolution No. CDRC 041-17 approving Conditional Use Permit No. 549-17 and finding that the public convenience or necessity would be served by issuance of said license (EXHIBIT "A"). The CDRC voted against approval of the application.

The Applicant submitted a written appeal on September 27, 2017, which was amended on October 3, 2017 to outline the specific grounds for the appeal as required by the Atwater Municipal Code Section 1.12.010. Both appeal letters are attached as (Exhibit "B").

ANALYSIS:

Applicant currently operates the Store. The Store is not currently permitted to sell alcoholic beverages. Staff has determined that Applicant must obtain a CUP in order to sell alcoholic beverages at the Store. In addition to the CUP, the Applicant must obtain a "Type 20" license from the ABC to permit the Applicant to sell beer and wine at the Store, for consumption off

premises.

Business and Professions Code section 23958 requires ABC to deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses. However, ABC can still issue the license if, among others, the City Council or its designated subordinate officer or body (i.e. the CDRC) makes a determination that public convenience or necessity would be served by issuance of the license. See Business and Professions Code section 23958.4(b)(2). Accordingly, in addition to requesting that the City approve submittal of its application for a CUP, the Applicant also requested that the CDRC determine that the public convenience or necessity would be served by issuance of the Type 20 license at the Store.

The CDRC denied the application for Conditional Use Permit No. 549-17 in total, which encompassed the request that the CDRC make a determination that the public convenience or necessity would be served by issuance of said license. The CDRC did not identify the specific reasons for its decision, nor articulate which, if any, of the required findings the CDRC was unable to make.

The Applicant's October 3, 2017 appeal letter describes the Applicant's understanding of the current status of the liquor licenses in the areas surrounding the Store and the Applicant's forecast of the negative impact denial of Conditional Use Permit No. 549-17 will have on its business. See (EXHIBIT "C").

Staff recommends that the City Council review the decision by the CDRC, grant the appeal, overturn the CDRC's decision to deny the application for Conditional Use Permit No. 549-17, and approve issuance of Conditional Use Permit No. 549-17 on the terms and conditions set forth in Resolution No. 2986-17.

FISCAL IMPACT:

None

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,

/s/ Justin Hendrix

Justin D. Hendrix
Senior Planner

Chairperson and Members
the Community Development
and Resources Commission

CD&R Commission meeting of
of September 20, 2017

**RECOMMENDATION TO OPEN THE HEARING, OBTAIN
TESTIMONY FROM THE PUBLIC, AND ADOPT COMMUNITY
DEVELOPMENT RESOURCES COMMISSION RESOLUTION NO.
041-17 APPROVING CONDITIONAL USE PERMIT NO. 549-17
(TYPE 20 ALCOHOL LICENSE @ 1485 BROADWAY AVENUE)**

RECOMMENDATION:

It is recommended that the Community Development and Resources Commission take the following actions:

1. Open the Hearing to obtain testimony from the public; and,
2. Adopt Resolution No. 041-17 approving Conditional Use Permit No. 549-17.

BACKGROUND:

Staff has received a Conditional Use Permit application from Rajeshwar Randhawa, on behalf of the 89 Cent Plus Store, requesting approval to submit an application to The State of California Department of Alcoholic Beverage Control for a Type 20 license.

ANALYSIS:

The proposed location is within an existing building located at 1485 Broadway Avenue. This site is located in a small commercial center in between the Atwater Post Office and the Atwater Elementary School District offices.

The site is located within a Central Commercial (C-C) Zone District and has a General Plan land use designation of Downtown Transition. City ordinance requires that the applicant obtain a Conditional Use Permit for the sale alcoholic beverages. The applicant is requesting approval to submit an application to The State of California Department of Alcoholic Beverage Control (ABC) for a Type 20 (Off Sale Beer) license. A Type 20 alcohol license is described as follows:

Type 20- Off Sale Beer & Wine (Package Store)- Authorizes the sale of beer and wine for consumption off premises where sold. Minors are allowed on the premises.

The applicant is also requesting that the Community Development and Resources Commission make the determination that the Public Convenience or Necessity (PCorN) would be met by issuance of this license. A PCorN is required

for liquor license applicants that may be denied by ABC pursuant to section 23958 of the Business and Professions Code. Section 23958 requires ABC to deny an application for a liquor license if "issuance of that license would tend to create a law enforcement problem or if the issuance would result in or add to an undue concentration of liquor licenses". Undue concentration is denied as follows:

The premises of the proposed license is located in a census tract where the ratio of existing retail on-sale/off-sale licenses to population in the census tract exceeds the ratio of retail on-sale/off-sale licenses to the population in the County of the proposed premise.

The proposed site is located within Census Tract No. 7.01. Census Tract 7.01 is bounded by Highway 99 to the south, Winton Way to the west, Juniper Avenue to the north and Shaffer Road to the east. The current population for Census Tract 7.01 is 3,187.

Currently ABC allows 1,267 On Sale licenses and 1,114 Off Sale licenses for the entire County. When calculated the following number of On Sale and Off Sale licenses are allowed within Censes Tract 7.01.

$3,187/1,267 = 2.5$ (2 On Sale allowed by the State) (5 current On Sale approved)
 $3,187/1,114 = 2.8$ (2 Off Sale allowed by the State) (5 current Off Sale approved)

Currently the State allows a total of 4 On Sale and Off Sale licenses within Census Tract 7.01. Currently the State has issued 10 On Sale and Off Sale licenses within Census Tract 7.01 which is an undue concentration. This is why Staff is requesting that the Commission also find that the Public Convenience or Necessity would be met by approval and issuance of this license.

ENVIRONMENTAL:

The Site Plan for this project has been found to be exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guideline Section 15031(b)(3)

CONCLUSION:

This report is submitted for Community Development and Resources Commission review and possible action.

Respectfully submitted,

Justin D. Hendrix

Justin D. Hendrix
Senior Planner
City of Atwater

City of Atwater
Community Development Department
750 Bellevue Road
Atwater, CA 95301

To the Committee,

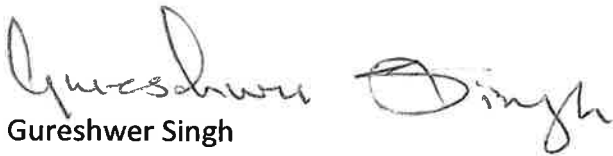
Thank you for taking the time to consider our application for the addition of Off Sale 20 license at the 89 Cent Plus Store located at 1485 Broadway Ave, Atwater, CA 95301. We have owned the store since November of 2000 and as of the last few years, with new competition, the profits have been on a steady decline. We purchased the strip mall, that the 89 Cent Plus Store is a part of, last year so we can make property improvements to enhance the curb appeal of Broadway Avenue. To assist in our effort to enhance the property we cannot have a declining business. We would like to add the Off Sale 20 license so we can increase revenue. With the addition of this license we are hoping that our business revenue will go up and we will be able to pursue our vision of the strip mall. We have been a resident of Atwater for a few decades and own a few businesses and homes in town as well. We have Atwater's best interest in mind since it is home to our family and our business'.

We need your help to help us make the corner of Broadway Ave and N. Winton Way a more prosperous and active center.

Thank you for your consideration and time.



Rajeshwar Randhawa



Gureshwer Singh



**COMMUNITY DEVELOPMENT
AND RESOURCES COMMISSION
OF THE CITY OF ATWATER**

RESOLUTION NO. CDRC 041-17

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RESOURCES COMMISSION OF THE CITY OF ATWATER APPROVING CONDITIONAL USE PERMIT NO. 549-17 ALLOWING FOR A TYPE 20 ALCOHOL LICENSE AND FINDING THAT THE PUBLIC CONVENIENCE OR NECESSITY WOULD BE SERVED BY ISSUANCE OF SAID LICENSE (1485 BROADWAY AVENUE)

WHEREAS, the Community Development and Resources Commission of the City of Atwater reviewed Conditional Use Permit No. 549-17, as submitted by Rajeshwar Randhawa, requesting approval to submit to The Department of Alcoholic Beverage Control for a Type 20 alcohol license and finding that the Public Convenience and Necessity would be served by the issuance of the Type 20 license; and,

WHEREAS, said application was reviewed by the Community Development and Resources Commission of the City of Atwater on Wednesday, September 20, 2017; and,

WHEREAS the Community Development and Resources Commission held a duly noticed public hearing as required by laws to consider all of the information presented by staff, information from the project proponent, and public testimony presented in writing and at the meeting; and,

WHEREAS, ___ person(s) spoke in favor of the project, ___ person(s) spoke in opposition of the project and ___ written comment(s) have been submitted either in opposition or in favor of the project; and,

WHEREAS, the site can accommodate the aforesaid use and proposed structure and not have a detrimental effect on the health, safety, and welfare of the neighborhood nor have an adverse effect on the community; and,

WHEREAS, this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) Section 15061(b)(3); and,

WHEREAS, the Community Development and Resources Commission finds that the following findings can be made for this Conditional Use Permit Amendment:

1. That the site is located within a Central Commercial (C-C) Zone District.
2. That the site is designated as Downtown Residential Transition by the Atwater General Plan.
3. That this use is considered a Conditional Use and with the conditions set forth by this resolution will meet the intent of the Central Commercial Zone District.
4. That this project is consistent with all elements of the Atwater General Plan.
5. That all the mandatory findings set forth in Section 17.71.010 of the Atwater Zoning Ordinance can be made.
6. That this project qualifies for a categorical exemption from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guideline Section 15061(b)(3).

WHEREAS, subject to the conditions identified below, the use is in conformance with the codes and standards of the City of Atwater; and,

NOW, THEREFORE, BE IT RESOLVED, that the Community Development and Resources Commission of the City of Atwater does hereby approve Conditional Use Permit No. 549-17 subject to the following conditions:

1. That the applicant is approved to submit to The Department of Alcoholic Beverage Control (ABC) for a Type 20 alcohol license.
2. That the Community Development and Resources Commission of the City of Atwater made the finding that the Public Convenience or Necessity would be served by the issuance of a Type 20 alcohol license at said location.
3. That the applicant shall comply with all requirements of The Department of Alcoholic Beverage Control.
4. That the Community Development and Resources Commission shall retain the right to reconsider Conditional Use Permit No. 549-17 at anytime.
5. That this CUP shall expire in six (6) months from the day of approval if the business has not started. A six month extension may be granted by the Community Development and Resources Commission.
6. The applicant or applicant's successor in interest shall indemnify and defend and hold harmless the City of Atwater, its agents, officers and employees from any and all claims, actions or proceedings against the City of Atwater, its agents, officers and employees to attack, set aside, void or annul any approval by the City of Atwater and its advisory agency appeal board or legislative body concerning this advisory agency appeal board or legislative body concerning this application, which action is brought within applicable statutes of limitation. The City of Atwater shall promptly notify the applicant or applicant's successor in interest of any claim or proceedings and shall cooperate fully in the defense. If the City fails to do so, the applicant or applicant's successor in interest shall not thereafter be responsible to defend, indemnify or hold the City harmless. This

condition may be placed on any plans or other documents pertaining to this application.

The foregoing resolution is hereby adopted this 20th day of September, 2017.

**AYES:
NOES:
ABSTAIN:
ABSENT:**

APPROVED:

GARY BRICE, CHAIRMAN

ATTEST:

JUSTIN D. HENDRIX, SECRETARY

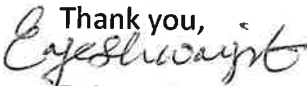
To:

The Planning and Development Department
City of Atwater

Subject:

APPEAL FOR CDRC RESOLUTION NO. 041-17

We, Raj Randhawa and Gary Singh, owners of 89 Cent Plus Store located at 1485 Broadway Ave, Atwater, CA 95301 would like to appeal against the decision taken against our conditional use permit application during the September 20, 2017 meeting.

Thank you,

Raj Randhawa (209) 606-7172


Gary Singh (209) 676-0453

From:

Dated: October 3, 2017

Raj and Gary Randhawa
89 Cent Plus Store
Atwater, CA

To:

Community Development Department
City of Atwater, CA

Sub: Appeal for denial of Conditional Use permit No. 549-17

Dear Members,

We would like to appeal the denial decision of the CUP mentioned above on Sept. 20, 2017. Please see below the reasons for our appeal:

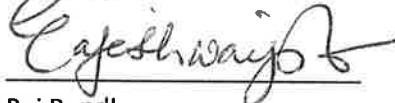
1. For the concentration of liquor licenses in the surrounding areas –
 - a. We would like to state that per ABC records, there are only 3 type 20 licenses in our zone. Out of these 3 type 20 licenses, 2 are gas stations and 1 is a big supermarket (R N Market). Thus our request for type 20 does not compete with any of these existing type 20 licenses.
 - b. There is one surrendered license of type 21 that was situated at 1120 1st st, Atwater.
 - c. There are two active type 21 licenses in our zone. Just to clarify these licenses sell hard liquor, which has no competition with type 20 license that we are seeking approval for. Type 20 would only sell beer and wine.
 - d. There is one active type 52 license that is for a banquet hall which people can rent and do parties and serve liquor. This has no competition with type 20
 - e. There is one type 48 which is for on-premise sale and drinking, not for take-out sale. This again has no competition with our type 20.
 - f. There is one type 47 which is restaurant and has no competition with type 20.
 - g. There are two type 41 which are also restaurants and have no competition with type 20.
2. Clarification for sale of alcohol –
 - a. Our request for CUP for type 20 permits us to sell beer and wine only, not hard liquor
3. Business impact –
 - a. Our business model is of a 89 cent plus store and we have been running this business since year 2000. Now the competitive landscape has changed and we are hit with big chain stores opening in the area. To mention a few; 2 Dollar tree stores (direct competition to us), 1 big chain 99 Cents Only store (another big competition to us),

Walmart (low pricing store and has impact on our sales), Target (Similar impact like Walmart).

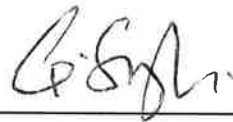
- b. With the competition mentioned above the sales of our store have gone down considerably and we need to have some additional avenue to attract customers and survive in this competitive market around us. Thus the request to get a CUP for type 20 license.
- c. If the trend continues with sales number decreasing with passage of time, we would soon be in a situation to shut the doors. Having empty shell buildings in downtown would also negatively impact the economy of our city.
- d. I would cite and example here for a business Bertelli drug store that was operational in the same plaza as our store for a long period of time. They had to close down the business and since its closure it took 1 and a half year to rent it again at a very low rent (4600 sq ft building at only \$2000 per month). This is to give an idea that empty buildings in the downtown could impact negatively to the economy and surroundings.

Our appeal and request is to help the mom and pop store like ours to survive in the growing competitive marketplace.

Sincerely,



Raj Randhawa



Gary Singh

From:

Dated: October 3, 2017

Raj and Gary Randhawa
89 Cent Plus Store
Atwater, CA

To:

Community Development Department
City of Atwater, CA

Sub: Appeal for denial of Conditional Use permit No. 549-17

Dear Members,

We would like to appeal the denial decision of the CUP mentioned above on Sept. 20, 2017. Please see below the reasons for our appeal:

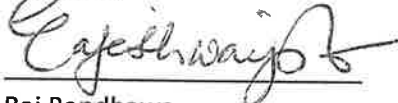
1. For the concentration of liquor licenses in the surrounding areas –
 - a. We would like to state that per ABC records, there are only 3 type 20 licenses in our zone. Out of these 3 type 20 licenses, 2 are gas stations and 1 is a big supermarket (R N Market). Thus our request for type 20 does not compete with any of these existing type 20 licenses.
 - b. There is one surrendered license of type 21 that was situated at 1120 1st st, Atwater.
 - c. There are two active type 21 licenses in our zone. Just to clarify these licenses sell hard liquor, which has no competition with type 20 license that we are seeking approval for. Type 20 would only sell beer and wine.
 - d. There is one active type 52 license that is for a banquet hall which people can rent and do parties and serve liquor. This has no competition with type 20
 - e. There is one type 48 which is for on-premise sale and drinking, not for take-out sale. This again has no competition with our type 20.
 - f. There is one type 47 which is restaurant and has no competition with type 20.
 - g. There are two type 41 which are also restaurants and have no competition with type 20.
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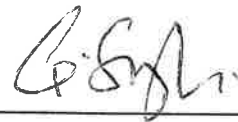
- b. With the competition mentioned above the sales of our store have gone down considerably and we need to have some additional avenue to attract customers and survive in this competitive market around us. Thus the request to get a CUP for type 20 license.
- c. If the trend continues with sales number decreasing with passage of time, we would soon be in a situation to shut the doors. Having empty shell buildings in downtown would also negatively impact the economy of our city.
- d. I would cite an example here for a business Bertelli drug store that was operational in the same plaza as our store for a long period of time. They had to close down the business and since its closure it took 1 and a half year to rent it again at a very low rent (4600 sq ft building at only \$2000 per month). This is to give an idea that empty buildings in the downtown could impact negatively to the economy and surroundings.

Our appeal and request is to help the mom and pop store like ours to survive in the growing competitive marketplace.

Sincerely,



Raj Randhawa



Gary Singh



CITY COUNCIL OF THE CITY OF ATWATER

RESOLUTION NO. 2986-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATWATER GRANTING THE APPEAL AND OVERTURNING THE DECISION OF THE COMMUNITY DEVELOPMENT AND RESOURCES COMMISSION REGARDING CONDITIONAL USE PERMIT NO. 549-17

WHEREAS, Rajeshwar Randhawa (“Applicant”) submitted an application for (1) Conditional Use Permit No. 549-17 on behalf of 89 Cent Plus Store located at 1485 Broadway (the “Store”) to permit the sale of alcoholic beverages, and (2) that the Community Development and Resources Commission of the City of Atwater (“CDRC”) make a determination that the Public Convenience or Necessity would be met by issuance of a Type 20 license at the Store; and

WHEREAS, the application was considered and denied during a public hearing before the CDRC on September 20, 2017; and

WHEREAS, the Applicant submitted a written appeal on September 27, 2017, which was amended on October 3, 2017; and

WHEREAS, the Applicant and all interested parties were notified of the appeal hearing on September 30, 2017 pursuant to Section 1.12.010 of the Atwater Municipal Code; and

WHEREAS, the City Council conducted an appeal hearing during the City Council meeting held October 9, 2017 and considered all of the information presented by staff, the Applicant and public testimony; and

WHEREAS, the City Council makes the following findings:

1. The Store is located within a Central Commercial (C-C) Zone District.
2. The Store is designated as Downtown Residential Transition by the Atwater General Plan.
3. The approval of a Conditional Use Permit subject to the conditions set forth in this Resolution will meet the intent of the C-C Zone District.
4. The public convenience or necessity would be served by the issuance of a Type 20 license at the Store.
5. The project is consistent with all the elements of the Atwater General Plan.

6. All mandatory findings set forth in Chapter 17.71 of the Atwater Municipal Code can be made.

7. The Store can accommodate the sale of beer and wine pursuant to a Type 20 license issued by the ABC without having a detrimental effect on the health, safety or welfare of the neighborhood and without having an adverse effect on the Community.

8. This project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guideline Section 15601(b)(3).

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Atwater hereby grants the appeal, overturns the CDRC's denial of the application for Conditional Use Permit No. 549-17 filed on behalf of 89 Cent Plus Store, approves issuance of Conditional Use Permit No. 549-17, and finds that the Applicant is approved to submit an application to the ABC for a Type 20 license based upon the following conditions:

1. The Applicant shall comply with all applicable requirements of the ABC and the Atwater Municipal Code.

2. The CDRC shall retain the right to reconsider Conditional Use Permit 549-17 and all terms and conditions thereof where non-compliance with state law, the Atwater Municipal Code and/or any condition of approval is demonstrated.

3. Conditional Use Permit 549-17 shall expire 6 months from the date of approval if a Type 20 license is not issued by the ABC, provided that a 6 month extension may be granted by the CDRC based upon a showing of good cause by Applicant.

4. The Applicant or the Applicant's successor in interest shall indemnify, defend and hold the City of Atwater, its agents, officers, employees and Council Members harmless of and from any and all claims, actions, proceedings, damages and/or judgments arising out of or relating to issuance of Conditional Use Permit 549-17, including, but not limited to, any claims, actions, proceedings, damages and/or judgments which attack, set aside, void or annul any approval by the City of Atwater, the CDRC, and/or any other board or body related to Conditional Use Permit 549-17. The City of Atwater will promptly notify Applicant or Applicant's successor in interest of any such claim, action or proceeding and will cooperate in the defense of the City.

The foregoing resolution is hereby adopted this 9th day of October, 2017.

AYES:

NOES:

ABSENT:

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

DON HYLER III
CITY CLERK



**CITY COUNCIL
OF THE
CITY OF ATWATER**

RESOLUTION NO. 2987-17

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ATWATER DENYING THE APPEAL AND UPHOLDING THE
DECISION OF THE COMMUNITY DEVELOPMENT AND
RESOURCES COMMISSION REGARDING CONDITIONAL
USE PERMIT NO. 549-17**

WHEREAS, Rajeshwar Randhawa (“Applicant”) submitted an application for (1) Conditional Use Permit No. 549-17 on behalf of 89 Cent Plus Store located at 1485 Broadway (the “Store”) to permit the sale of alcoholic beverages, and (2) that the Community Development and Resources Commission of the City of Atwater (“CDRC”) make a determination that the Public Convenience or Necessity would be met by issuance of a Type 20 license at the Store; and

WHEREAS, the application was considered and denied during a public hearing before the CDRC on September 20, 2017; and

WHEREAS, the Applicant submitted a written appeal on September 27, 2017, which was amended on October 3, 2017; and

WHEREAS, the Applicant and all interested parties were notified of the appeal hearing on September 30, 2017 pursuant to Section 1.12.010 of the Atwater Municipal Code; and

WHEREAS, the City Council conducted an appeal hearing during the City Council meeting held October 9, 2017 and considered all of the information presented by staff, the Applicant and public testimony.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Atwater hereby denies the appeal and upholds the CDRC’s denial of the application for Conditional Use Permit No. 549-17 filed on behalf of 89 Cent Plus Store, based upon the following findings:

- 1.
- 2.
- 3.

The foregoing resolution is hereby adopted this 9th day of October, 2017.

AYES:

NOES:

ABSENT:

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

DON HYLER III
CITY CLERK