

**HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HOUSING AUTHORITY
COMMUNITY DEVELOPMENT COMMISSION
WATER DISTRICT
HESPERIA PUBLIC FINANCING AUTHORITY- ANNUAL MEETING
HESPERIA PUBLIC FACILITIES CORPORATION- ANNUAL MEETING
HESPERIA JOINT PUBLIC FINANCE AUTHORITY- SPECIAL MEETING
AGENDA**

*Regular Joint Meetings
1st and 3rd Tuesday*

**Date: August 20, 2019
REGULAR MEETING**

Time: 5:30 P.M. (Closed Session)
6:30 P.M. (Regular Meeting)



CITY COUNCIL MEMBERS

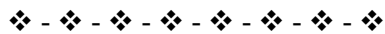
Larry Bird, Mayor

William J. Holland, Mayor Pro Tem

Jeremiah Brosowske, Council Member

Cameron Gregg, Council Member

Rebekah Swanson, Council Member



Nils Bentsen, City Manager

Eric L. Dunn, City Attorney

City of Hesperia

Council Chambers
9700 Seventh Avenue
Hesperia, CA 92345

City Clerk's Office: (760) 947-1007

**Agendas and Staff Reports are
available on the City Website**

www.cityofhesperia.us

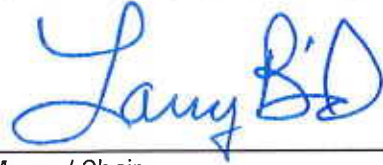
Documents produced by the City and distributed less than 72 hours prior to the meeting, regarding items on the agendas, will be made available in the City Clerk's Office located at 9700 Seventh Avenue during normal business hours.



NOTE: In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (760) 947-1007 or (760) 947-1056. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

**NOTICE AND CALL OF SPECIAL MEETING
HESPERIA JOINT PUBLIC FINANCE AUTHORITY**

NOTICE IS HEREBY GIVEN that a special meeting of the Hesperia Joint Public Finance Authority will be held on Tuesday, August 20, 2019, at 6:30 p.m. in the City Council Chambers, at 9700 Seventh Avenue, Hesperia, CA 92345.



Larry Bird, Mayor / Chair

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**REGULAR MEETING AGENDA
HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HESPERIA HOUSING AUTHORITY
HESPERIA COMMUNITY DEVELOPMENT COMMISSION
HESPERIA WATER DISTRICT
HESPERIA PUBLIC FACILITIES CORPORATION - ANNUAL MEETING
HESPERIA PUBLIC FINANCING AUTHORITY - ANNUAL MEETING
HESPERIA JOINT PUBLIC FINANCE AUTHORITY - SPECIAL MEETING**

As a courtesy, please silence your cell phones and other electronic devices while the meeting is in session. Thank you.

Prior to action of the Council, any member of the audience will have the opportunity to address the legislative body on any item listed on the agenda, including those on the Consent Calendar.

Individuals wishing to speak during General Public Comments or on a particular numbered item must submit a speaker slip to the City Clerk with the agenda item noted. Speaker slips should be turned in prior to the public comment portion of the agenda or before an agenda item is discussed. Comments will be limited to three minutes for General Public Comments, Consent Calendar items and New Business items. Comments are limited to five minutes for Public Hearing items.

In compliance with the Brown Act, the City Council may not discuss or take action on non-agenda items or engage in question and answer sessions with the public. The City Council may ask brief questions for clarification; provide a reference to staff or other resources for factual information and direct staff to add an item to a subsequent meeting.

CLOSED SESSION - 5:30 PM

Roll Call

*Mayor Larry Bird
Mayor Pro Tem William J. Holland
Council Member Jeremiah Brosowske
Council Member Cameron Gregg
Council Member Rebekah Swanson*

Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9(d)1

1. City of Barstow, et al. v. City of Adelanto, et al., Case No. 208568

2. City of Hesperia v. Lake Arrowhead Community Service District, et al., Court of Appeal Case No. E067679 (Superior Court Case No. CIVDS1602017)

CALL TO ORDER - 6:30 PM

- A. Invocation

- B. Pledge of Allegiance to the Flag

C. Roll Call

*Mayor Larry Bird
Mayor Pro Tem William J. Holland
Council Member Jeremiah Brosowske
Council Member Cameron Gregg
Council Member Rebekah Swanson*

D. Agenda Revisions and Announcements by City Clerk**E. Closed Session Reports by City Attorney****ANNOUNCEMENTS/PRESENTATIONS**

1. Public Works Employee of the Quarter to Hugo Enriquez, Maintenance Worker by Gabe Dobos, Maintenance Crew Supervisor
2. City Hall Employee of the Quarter to Jessica Nunez, Animal Care Technician by Don Riser, Animal Services Manager
3. Community Events Calendar

JOINT CONSENT CALENDAR

1. Page 7 Consideration of the Draft Minutes from the Special Meeting held Tuesday, August 6, 2019

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Special Meeting held Tuesday, August 6, 2019.

Staff Person: City Clerk Melinda Sayre

Attachments: [Draft CC Min 2019-08-06](#)

2. Page 11 **HESPERIA PUBLIC FACILITIES CORPORATION AND HESPERIA PUBLIC FINANCING AUTHORITY ANNUAL MEETING ITEM AND HESPERIA JOINT PUBLIC FINANCE AUTHORITY SPECIAL MEETING ITEM**
Consideration of the Draft Minutes from the Corporation and Authority Annual Meetings held August 21, 2018

Recommended Action:

It is recommended that the Board of Directors approve the Draft Minutes of the Corporation and Authority Annual Meetings held August 21, 2018.

Staff Person: City Clerk Melinda Sayre

Attachments: [Draft Minutes 2018-08-21](#)

3. Page 17 Warrant Run Report (City - Successor Agency - Housing Authority - Community Development Commission - Water)

Recommended Action:

It is recommended that the Council/Board ratify the warrant run and payroll

report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Water District.

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Warrant Run 8-20-2019](#)

[Attachment 1 - Warrant Run](#)

4. Page 19 Treasurer's Cash Report for the unaudited period ended June 30, 2019

Recommended Action:

It is recommended that the Council/Board accept the Treasurer's Cash Report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Hesperia Water District.

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Treasurer's Report 8-20-2019](#)

[Attachment 1- Investment Reports](#)

5. Page 27 Accept FY 2018-19 Street Improvement Project (CO 7149)

Recommended Action:

It is recommended that the City Council accept the FY 2018-19 Street Improvement Project completed by Match Corporation (Construction Order No. 7149); authorize staff to record a "Notice of Completion," and release all withheld retention after 35 days from the date of recordation.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Street Improvement Project CO 7149 8-20-2019](#)

[Attachment 1 - Notice of Completion](#)

6. Page 31 License and Maintenance Agreement between the City of Hesperia and Hesperia Apartments, LLC

Recommended Action:

It is recommended that the City Council approve a license and maintenance agreement between the City of Hesperia and Hesperia Apartments, LLC.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Hesperia Apartments Agreement 8-20-2019](#)

[Attachment 1 - License and Maintenance Agreement](#)

CONSENT ORDINANCES

WAIVE READING OF ORDINANCES

Approve the reading by title of all ordinances and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

7. Page 45 Amendments to Title 5 of Hesperia Municipal Code

Recommended Action:

Place on second reading and adopt by title waiving the text of Ordinance No. 2019-10 amending Title 5 of the Hesperia Municipal Code modifying the regulations for business licensing.

Staff Person: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

Attachments: [SR Title 5 Amendment 7-16-2019](#)

[Ordinance 2019-10](#)

[Attachment 2 - Exhibit A](#)

[Attachment 3 - Exhibit B](#)

[Attachment 4 - Exhibit C](#)

PUBLIC HEARING

Individuals wishing to comment on public hearing items must submit a speaker slip to the City Clerk with the numbered agenda item noted. Speaker slips should be turned in prior to an agenda item being taken up. Comments will be limited to five minutes for Public Hearing items.

WAIVE READING OF ORDINANCES

Approve the reading by title of all ordinances and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

8. Page 101 Adoption of Ordinance No. 2019-09 related to the formation of a local and housing appeals board

Recommended Action:

It is recommended that the City Council introduce and place on first reading Ordinance No. 2019-09 repealing Ordinance 2018-05 and modifying Title 1 of the Hesperia Municipal Code related to the Local Appeals Board and Housing Appeals Board.

Staff Person: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

Attachments: [SR Administrative Hearings 8-20-2019](#)

[Ordinance 2019-09](#)

[Attachment 2 - Exhibit A Chapter 1.12 - Track Changes](#)

[Attachment 3 - Exhibit B Chapter 1.12 - Clean Copy](#)

9. Page 109 Substantial Amendment to the Community Development Block Grant (CDBG) 2018-2019 Action Plan

Recommended Action:

It is recommended that the City Council: 1) Conduct a public hearing and upon accepting public testimony, adopt Resolution No. 2019-038 including any modifications or amendments thereto 2) Approve a Substantial Amendment to the Community Development Block Grant ("CDBG") 2018-2019 Annual Action

Plan ("Action Plan") by programming \$150,000 in unprogrammed dollars to the 2018-2019 Street Improvement Project ("Street Project"); and 3) Authorize the City Manager and/or Economic Development Manager to execute and transmit all necessary documents, including the Substantial Amendment to the Action Plan, and any additional amendments, to assure the City's timely expenditure of CDBG funds.

Staff Person: Economic Development Manager Rod Yahnke

Attachments: [SR CDBG Substantial Amendment 8-20-2019](#)
[Attachment 1 - Substantial Amendment](#)
[Resolution 2019-38](#)

NEW BUSINESS

10. Page 115 Hesperia Golf Course Operations

Recommended Action:

It is requested that the City Council provide staff guidance pertaining to the operations of the Hesperia Golf Course & Country Club (Golf Course) by considering and providing direction on the following options, as the current Golf Course operations contract is set to expire during September 2019:

1. Enter into a professional service agreement (PSA) with Donovan Bros. Golf, LLC (Donovan Bros.) for the Golf Course operations and conduct a Community Facilities District (CFD) feasibility study for homes that benefit from the Golf Course;
2. Repurpose the Golf Course;
3. Provide alternative direction.

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Golf Course Operations 8-20-2019](#)

11. Page 123 Advance Disposal Rate Structure

Recommended Action:

It is recommended that the City Council provide direction to staff on whether to conduct a Proposition 218 Public Hearing related to new maximum rates for solid waste and recycling services in the City of Hesperia and allow for rate adjustments pertaining to equipment purchased by City's waste hauler in response to State of California mandates.

Staff Person: Assistant to the City Manager Rachel Molina

Attachments: [SR Advance Disposal Rates 8-20-2019](#)
[Attachment 1 - Rate Structure](#)

GENERAL PUBLIC COMMENTS (For items and matters not listed on the agenda)

Individuals wishing to speak during General Public Comments or on a particular numbered item are requested to submit a speaker slip to the City Clerk with the agenda item noted. Speaker slips should be turned in prior to the public comment portion of the joint agenda or before an agenda item is discussed. Comments will be limited to three minutes for General Public Comments, Consent Calendar items and New Business items. Comments are limited to five minutes for Public Hearing items.

In compliance with the Brown Act, the City Council may not discuss or take action on non-agenda items or engage in question and answer sessions with the public. The City Council may ask brief questions for clarification; provide a reference to staff or other resources for factual information and direct staff to add an item to a subsequent meeting.

COUNCIL COMMITTEE REPORTS AND COMMENTS

The Council may report on their activities as appointed representatives of the City on various Boards and Committees and/or may make comments of general interest or report on their activities as a representative of the City.

CITY MANAGER/CITY ATTORNEY/STAFF REPORTS

The City Manager, City Attorney or staff may make announcements or reports concerning items of interest to the Council and the public.

ADJOURNMENT

I, Melinda Sayre, City Clerk of the City of Hesperia, California do hereby certify that I caused to be posted the foregoing agenda on Wednesday, August 14, 2019 at 5:30 p.m. pursuant to California Government Code §54954.2.

*Melinda Sayre,
City Clerk*

Documents produced by the City and distributed less than 72 hours prior to the meeting regarding items on the agenda will be made available in the City Clerk's Office during normal business hours.



City of Hesperia

Meeting Minutes - Draft

City Council

City Council Chambers
9700 Seventh Ave.
Hesperia CA, 92345

Tuesday, August 6, 2019

3:00 PM

**SPECIAL MEETING AGENDA
HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HESPERIA HOUSING AUTHORITY
HESPERIA COMMUNITY DEVELOPMENT COMMISSION
HESPERIA WATER DISTRICT**

NO CLOSED SESSION

CALL TO ORDER - 3:00 PM

- A. Invocation by Johnny Lewis of Grace Community Church
- B. Pledge of Allegiance to the Flag
- C. Roll Call

Present: 4 - Mayor Bird, Council Member Brosowske, Council Member Gregg and Council Member Swanson
Excused: 1 - Mayor Pro Tem William J. Holland

Council Member Brosowske arrived at 3:10 PM

- D. Agenda Revisions and Announcements by City Clerk - None

ANNOUNCEMENTS/PRESENTATIONS

1. Presentation by Joe Brady of the Bradco Companies on the Mojave River Valley Survey
2. Community Events Calendar - *National Night Out in Civic Plaza Park at 5 pm; Hesperia Parks District is coordinating their Summer Concert Series in the Civic Plaza Park beginning at 6pm; City of Hesperia earned the Government Finance Officers of America Excellence in Financial Reporting Award for the June 30, 2018 Comprehensive Annual Financial Report.*

JOINT CONSENT CALENDAR

A motion was made by Brosowske, seconded by Swanson, that the Consent Calendar items 2-8 be approved. The motion carried by the following vote:

Aye: 4 - Bird, Brosowske, Gregg and Swanson

Nay: 0

Absent: 1 - Holland

1. Consideration of the Draft Minutes from the Regular Meeting held Tuesday, July 16, 2019

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Regular Meeting held Tuesday, July 16, 2019.

Sponsors: City Clerk Melinda Sayre

Item 1 was Pulled by Council Member Brosowske to abstain from the vote.

A motion was made by Swanson, seconded by Gregg, that this item be approved. The motion carried by the following vote:

Aye: 3 - Bird, Gregg and Swanson

Nay: 0

Absent: 1 - Holland

Abstain: 1 - Brosowske

2. Warrant Run Report (City - Successor Agency - Housing Authority - Community Development Commission - Water)

Recommended Action:

It is recommended that the Council/Board ratify the warrant run and payroll report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Hesperia Water District.

Sponsors: Director of Finance Casey Brooksher

3. Covenant Agreement for Reimbursement of Sewer Connection Operating Costs between the City of Hesperia and Rich Development Enterprises, LLC.

Recommended Action:

It is recommended that the City Council approve the Covenant Agreement for Reimbursement of Sewer Connection Operating Costs between the City of Hesperia (City) and Rich Development Enterprises, LLC (Developer) to facilitate the financial reimbursement arrangement for sewer fees charged to the City for sewer invoices incurred by the Developer pursuant to the agreement between the City and San Bernardino County Service Area (CSA 64).

Sponsors: Assistant City Manager Michael Blay

4. Local Transportation Fund - Article 8a Claim

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-038, authorizing the City Manager to file the FY 2019-20 Local Transportation Fund - Article 8a claim in the amount of \$807,864 with San Bernardino County Transportation Authority (SBCTA).

Sponsors: Director of Finance Casey Brooksher

5. Execute Agreements with California Department of Transportation

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-041 authorizing the City Manager to execute all Master Agreements, Program Supplement Agreements, Fund Exchange Agreements, Fund Transfer Agreements, and any amendments thereto with the California Department of Transportation (Caltrans) as necessary in order to allow the City to receive Federal and/or State funding for certain transportation projects.

Sponsors: Assistant City Manager Michael Blay

6. Fiscal Year 2019/20 - 2023/24 Five Year Measure I Capital Improvement Plan

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-042 approving the Measure I Five Year Capital Improvement Plan and Expense Strategy for Fiscal Years 2019/20 - 2023/24.

Sponsors: Assistant City Manager Michael Blay

7. Award Contract for Re-Paint City Hall Decorative Tube Steel

Recommended Action:

It is recommended that the City Council award a contract for the Re-Paint City Hall Decorative Tube Steel project to the lowest responsive/responsible bidder, Harbor Coating and Restoration, for the bid amount of \$86,500; approve an additional 10% contingency in the amount of \$8,650 for a total construction budget of \$95,150; approve the design of the project represented by the plans and specifications; and authorize the City Manager to execute the contract.

Sponsors: Assistant City Manager Michael Blay

8. Allocate Funds for Bear Valley Road Bus Stop Relocation Project, C.O. No. 7148

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-045 appropriating \$158,000 of unused project funds from Fiscal Year 2018-2019 to Fund 504 for Fiscal Year 2019-2020.

Sponsors: Assistant City Manager Michael Blay

NEW BUSINESS

9. Designation of Voting Delegate and Alternates for League of CA Cities Conference

Recommended Action:

It is recommended that the City Council designate a primary voting delegate and up to two alternate delegates to represent the City of Hesperia at the General Business meeting to be held during the League of California Cities annual conference October 16 through October 18, 2019 in Long Beach.

Sponsors: City Clerk Melinda Sayre

A motion was made by Bird, seconded by Gregg, that Council Member Gregg serve as the Primary Representative and Mayor Pro Tem Holland and Council Member Swanson serve as Alternate Representatives. The motion carried by the following vote:

Aye: 4 - Bird, Brosowske, Gregg and Swanson

Nay: 0

Absent: 1 - Holland

GENERAL PUBLIC COMMENTS (For items and matters not listed on the agenda)

Christopher Dustin commented on public meetings. Bob Nelson commented on the public comment period of the meeting. Shelbie Chapman commented on public meetings. Joseph Tyndall commented on council member conduct.

COUNCIL COMMITTEE REPORTS AND COMMENTS

Council Member Brosowske commented on Hesperia's future.

Council Member Swanson commented on National Night Out event in Civic Plaza Park and City Council Member teamwork.

Council Member Gregg commented on teamwork on the City Council,

Mayor Bird commented on Victor Valley Christian Church's 50th anniversary event 8/4, attendance at VVWRA meeting, and National Night event in Civic Plaza Park.

CITY MANAGER/CITY ATTORNEY/STAFF REPORTS

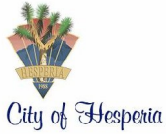
None

ADJOURNMENT

3:45 p.m.

*Melinda Sayre,
City Clerk*

Minutes adopted by the City Council on September 4, 2018. Approval of these Minutes is for items 9 and 10 only for the Hesperia Public Financing Authority and Hesperia Public Facilities Corporation annual meetings and the Hesperia Joint Public Finance Authority special meeting



City of Hesperia Meeting Minutes - Draft City Council

City Council Chambers
9700 Seventh Ave.
Hesperia CA, 92345

Tuesday, August 21, 2018

6:30 PM

**REGULAR MEETING AGENDA
HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HESPERIA HOUSING AUTHORITY
HESPERIA COMMUNITY DEVELOPMENT COMMISSION
HESPERIA FIRE PROTECTION DISTRICT
HESPERIA WATER DISTRICT
HESPERIA PUBLIC FINANCING AUTHORITY - ANNUAL MEETING
HESPERIA PUBLIC FACILITIES CORPORATION - ANNUAL MEETING
HESPERIA JOINT PUBLIC FINANCE AUTHORITY - SPECIAL MEETING**

CLOSED SESSION - 4:30 PM

Roll Call

Present: 5 - Mayor William J. Holland, Mayor Pro Tem Swanson, Council Member Bird, Council Member Brosowske and Council Member Russ

Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9(d)1

1. Priester vs City of Hesperia - SMCBS1800745
2. Latimer vs City of Hesperia - SMCBS1800743

Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9(d)(2)

1. Victor Valley Wastewater Reclamation Authority v. City of Hesperia (Claim for Damages)

Conference with Real Property Negotiators – Property Negotiations
Government Code Section – 54956.8

1. Negotiating Parties: Lewis Acquisition Company and City of Hesperia
Location: APN: 3039- 441-20
Under Negotiation: Exclusive Negotiating Agreement ENA - Third Amendment

2. Negotiating Parties: City of Hesperia and Bill Jensen
Location: Golf Course APNs 0398-242-11, 0398-251-28, 0398-251-31, 0398-262-30, and 0398-281-18
Under Negotiation: Price and Terms

CALL TO ORDER - 6:42 PM

Minutes adopted by the City Council on September 4, 2018. Approval of these Minutes is for items 9 and 10 only for the Hesperia Public Financing Authority and Hesperia Public Facilities Corporation annual meetings and the Hesperia Joint Public Finance Authority special meeting

- A. **Invocation Brian Graley of Hesperia Church of the Nazarene**
- B. **Pledge of Allegiance to the Flag**
- C. **Roll Call**

Present: 5 - Mayor William J. Holland, Mayor Pro Tem Swanson, Council Member Bird, Council Member Brosowske and Council Member Russ

- D. **Agenda Revisions and Announcements by City Clerk - None**
- E. **Closed Session Reports by City Attorney – Council gave direction for legal counsel to seek appellate review of the existing litigation items discussed.**

ANNOUNCEMENTS/PRESENTATIONS

- 1. Presentation to resident Maria Torres, winner of the Quarterly Pride Enhancement Program
- 2. Community Events Calendar - *The Animal Shelter will be closed to the public every Monday for the next few months for construction; follow the City of Hesperia on Facebook and Twitter for information about City programs and projects as well as emergency alerts and updates; City offices will be closed 9/3 in observance of Labor Day.*

GENERAL PUBLIC COMMENTS (For items and matters not listed on the agenda)

*Bob Nelson commented on public speech.
 Daniel Krist commented on various community issues.
 Scott Priester commented on CalPERS retirement.
 Dino Defazio commented on counter plan checks.
 Al Vogler commented on the recent City Council appointment.*

JOINT CONSENT CALENDAR

A motion was made by Russ, seconded by Bird, that the Consent Calendar be approved. The motion carried by the following vote:

Aye: 5 - Holland, Swanson, Bird, Brosowske and Russ
Nay: 0

- 1. Consideration of the Draft Minutes from the Special Meeting held Tuesday, August 7, 2018

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Special Meeting held Tuesday, August 7, 2018.

Sponsors: City Clerk Melinda Sayre

- 2. Warrant Run Report (City - Successor Agency - Housing Authority - Community Development Commission - Fire - Water)

Recommended Action:

It is recommended that the Council/Board ratify the warrant run and payroll report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, Fire District, and Water District.

Minutes adopted by the City Council on September 4, 2018. Approval of these Minutes is for items 9 and 10 only for the Hesperia Public Financing Authority and Hesperia Public Facilities Corporation annual meetings and the Hesperia Joint Public Finance Authority special meeting

Sponsors: Director of Finance Casey Brooksher

3. Treasurer's Cash Report for the unaudited period ended June 30, 2018

Recommended Action:

It is recommended that the Council/Board accept the Treasurer's Cash Report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, Fire District, and Water District.

Sponsors: Director of Finance Casey Brooksher

4. Non-Represented Employees' Compensation and Benefit Plan

Recommended Action:

It is recommended that the City Council the Hesperia Water District Board, the Community Development Commission, the Hesperia Housing Authority Board, and the Hesperia Fire Protection District Board adopt Joint Resolution No. 2018-053, HHA 2018-12, CDC 2018-12, and HWD 2018-18, establishing the Non-Represented Employees' Compensation and Benefit Plan.

Sponsors: Assistant City Manager Michael Blay, Director of Finance Casey Brooksher, Assistant to the City Manager Rachel Molina and Human Resources Manager Rita Perez

5. San Bernardino Local Agency Formation Commission Application for Extension of Service By Contract - Agreement with San Bernardino County Special Districts for Bear Valley and Fish Hatchery Area Sewer Service Contract ID: 2018-FHLAFCO

Recommended Action:

It is recommended that the City Council approve the agreement between City of Hesperia and San Bernardino County Special Districts (SBCSD) to provide for sewer service to be extended by SBCSD south to serve property within the City of Hesperia south of Bear Valley Road near Fish Hatchery Road, and authorize the Mayor to execute said agreement. This agreement will then be forwarded to San Bernardino Local Agency Formation Commission (LAFCO) as part of the request to allow SBCSD to extend sewer service for the benefit of the 11.72-acre holding within the City of Hesperia.

Sponsors: Assistant City Manager Michael Blay and Principal Planner Jeff Codega

6. Memorandum of Understanding with San Bernardino County Service Area 70

Recommended Action:

It is recommended that the Hesperia Water District Board Members adopt Resolution No. HWD 2018-019 approving the Memorandum of Understanding (MOU) between the Hesperia Water District (District) and San Bernardino County Service Area 70 (CSA 70 J) in order to continue to provide water service to current and future customers within annexed areas.

Sponsors: Public Works Manager Mark Faherty and Public Works Supervisor/Water Jeremy McDonald

7. Accept FY 2017-18 Annual Street Improvement Project (CO 7145)

Recommended Action:

Minutes adopted by the City Council on September 4, 2018. Approval of these Minutes is for items 9 and 10 only for the Hesperia Public Financing Authority and Hesperia Public Facilities Corporation annual meetings and the Hesperia Joint Public Finance Authority special meeting

It is recommended that the City Council accept FY 2017-18 Annual Street Improvement Project completed by Sully-Miller Contracting, Co. (Construction Order No. 7145); authorize staff to record a "Notice of Completion;" and release all withheld retention after 35 days from the date of recordation.

Sponsors: Assistant City Manager Michael Blay

8. Senate Bill 1, Local Partnership Program Grant

Recommended Action:

It is recommended that the City Council adopt Resolution 2018-56, accepting \$3.9 million in Senate Bill 1, Local Partnership Program grant funds from the California Transportation Commission; and authorizing the City Manager or his designee to execute agreements and any and all other documents related to the grant as may be necessary for completion of the Rancho Road Widening Project.

Sponsors: Assistant City Manager Michael Blay

9. **HESPERIA JOINT PUBLIC FINANCE AUTHORITY SPECIAL MEETING AND HESPERIA PUBLIC FINANCING AUTHORITY ANNUAL MEETING ITEM WITH REGULAR JOINT MEETINGS.**

Debt Management Policy

Recommended Action:

It is recommended that the City Council/Board/Commission adopt Joint Resolution No. 2018-49, SA 2018-03, HPFA 2018-02, HJPFA 2018-01, CDC 2018-10, HHA 2018-10, HFPD 2018-17, and HWD 2018-16, approving a Debt Management Policy in conformance with Senate Bill 1029.

Sponsors: Director of Finance Casey Brooksher

10. **HESPERIA JOINT PUBLIC FINANCE AUTHORITY SPECIAL MEETING AND HESPERIA PUBLIC FINANCING AUTHORITY ANNUAL MEETING ITEM WITH REGULAR JOINT MEETINGS.**

Disclosure Policies and Procedures

Recommended Action:

It is recommended that the City Council/Board/Commission adopt Joint Resolution No. 2018-50, SA 2018-04, HPFA 2018-03, HJPFA 2018-02, CDC 2018-11, HHA 2018-11, HFPD 2018-18, and HWD 2018-17, approving Disclosure Policies and Procedures to ensure compliance with applicable federal and state securities laws.

Sponsors: Director of Finance Casey Brooksher

PUBLIC HEARING

11. Joint Resolution Amending the City-Wide Fee Schedule

Recommended Action:

It is recommended that the Council and respective Boards hold a public hearing and adopt Joint Resolution No. 2018-47, Resolution No. HWD 2018-15, Resolution No. HFPD 2018-16, Resolution No. HHA 2018-09, Resolution No. HCDC 2018-09, amending Joint Resolution No. 2018-21, Resolution No. HWD 2018-07, Resolution No. HFPD 2018-06, Resolution No. HHA 2018-04, Resolution No. HCDC 2018-04, amending the City-Wide fee schedule.

Sponsors: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

The public hearing was opened. Daniel Krist commented on item 11. There being no further public comment the hearing was closed.

Minutes adopted by the City Council on September 4, 2018. Approval of these Minutes is for items 9 and 10 only for the Hesperia Public Financing Authority and Hesperia Public Facilities Corporation annual meetings and the Hesperia Joint Public Finance Authority special meeting

A motion was made by Russ, seconded by Bird, that this item be approved. The motion carried by the following vote:

Aye: 5 - Holland, Swanson, Bird, Brosowske and Russ

Nay: 0

NEW BUSINESS

12. Award Contract for Recycled Water System - Phase 1B, C.O. No. 8087 and Amend the Existing Professional Services Agreement with Geocon West, Inc.

Recommended Action:

It is recommended that the Board of Directors of the Hesperia Water District:

(1) Consider the bid protest by RSH Construction Services; and

(2) Deny the request by RSH Construction Services to reject the bid of the low bidder and award a contract for Recycled Water System - Phase 1B (C.O. No. 8087) to the lowest responsive and responsible bidder, R.I.C. Construction Company, Inc. in the amount of \$4,677,391.37; approve an additional 10% contingency in the amount of \$467,740 for a total construction budget of \$5,145,131.37; approve the design of the project represented by the plans and specifications; and authorize the City Manager to execute the contract; and

(3) Amend the existing Professional Services Agreement (PSA) with Geocon West, Inc. for on-call geotechnical and specialty engineering inspection services by increasing the PSA \$250,000 in order to have adequate funding to continue providing quality assurance and quality control on the City's capital improvement projects.

Sponsors: Assistant City Manager Michael Blay

A motion was made by Russ, seconded by Brosowske, that this item be approved. The motion carried by the following vote:

Aye: 5 - Holland, Swanson, Bird, Brosowske and Russ

Nay: 0

13. Resolution confirming the issuance of refunding bonds pursuant to an Indenture of Trust, approving Preliminary and Final Official Statements and providing other matters relating thereto

Recommended Action:

It is recommended that the City Council as the Successor Agency to the Hesperia Community Redevelopment Agency adopt the following resolution:

Resolution No. SA 2018-05 - A Resolution of the Successor Agency to the Hesperia Community Redevelopment Agency confirming the issuance of refunding bonds pursuant to an indenture of trust, approving preliminary and final official statements and providing other matters relating thereto.

Sponsors: Director of Finance Casey Brooksher

A motion was made by Brosowske, seconded by Swanson, that this item be approved. The motion carried by the following vote:

Aye: 5 - Holland, Swanson, Bird, Brosowske and Russ

Minutes adopted by the City Council on September 4, 2018. Approval of these Minutes is for items 9 and 10 only for the Hesperia Public Financing Authority and Hesperia Public Facilities Corporation annual meetings and the Hesperia Joint Public Finance Authority special meeting

Nay: 0

COUNCIL COMMITTEE REPORTS AND COMMENTS

Council Member Brosowske commented on appointment to Victor Valley College committee to select a new superintendent, requested that Prop 5 & Prop 6 Gas Tax repeal resolution to be added to the next agenda, that the Council bring the County Wide Vision plan adopted in 2012 for review.

Council Member Bird commented on work done by public safety in the community, VVTA campaign to increase ridership, and attendance at a VVWRA meeting.

Council Member Russ commented on City financials and alternatives to League of California Cities.

Mayor Pro Tem Swanson commented on attendance at National Night Out and school field trip to Animal Shelter.

Mayor Holland commented on the bond refunding item, commented on attendance at the Chamber Luncheon, Prop 6 Gas Tax repeal, and League of California Cities Mountain/Desert Division.

CITY MANAGER/CITY ATTORNEY/STAFF REPORTS

None

ADJOURNMENT

8:10 p.m.

*Melinda Sayre,
City Clerk*

City of Hesperia STAFF REPORT



DATE: August 20, 2019

TO: Mayor and Council Members
City Council, as Successor Agency to the Hesperia Community Redevelopment Agency
Chair and Commissioners, Hesperia Housing Authority
Chair and Commissioners, Community Development Commission
Chair and Board Members, Hesperia Water District

FROM: Nils Bentsen, City Manager

BY: Casey Brooksher, Director of Finance
Anne Duke, Deputy Finance Director
Keith Cheong, Financial Analyst

SUBJECT: Warrant Run Report (City – Successor Agency – Housing Authority – Community Development Commission – Water)

RECOMMENDED ACTION

It is recommended that the Council/Board ratify the warrant run and payroll report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Water District.

BACKGROUND

The Warrant Run totals represented below are for the period July 13, 2019 through July 26, 2019.

<u>Agency/District</u>	<u>Accounts Payable</u>	<u>Payroll</u>	<u>Wires</u>	<u>Totals</u>
City of Hesperia	\$2,902,362.82	\$255,880.76	\$0.00	\$3,158,243.58
Successor Agency	0.00	0.00	0.00	0.00
Housing Authority	2,175.71	269.60	0.00	2,445.31
Community Development Commission	3,547.03	6,834.45	0.00	10,381.48
Water	606,610.91	103,228.06	0.00	709,838.97
Totals	\$3,514,696.47	\$366,212.87	\$0.00	\$3,880,909.34

ATTACHMENT(S)

1. Warrant Runs

City of Hesperia
WARRANT RUNS
07/13/2019 - 07/26/2019

FUND #	FUND NAME	W/E		WARRANT TOTALS	Wires	YEAR-TO	PRIOR FY YTD
		7/19/2019	7/26/2019			DATE	DATE
						TOTALS *	TOTALS
Accounts Payable							
100	GENERAL	\$ 41,669.26	\$ 1,525,055.27	\$ 1,566,724.53	\$ -	\$ 1,971,705.37	\$ 2,302,975.07
200	HESPERIA FIRE DISTRICT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 911,102.29
204	MEASURE I - RENEWAL	\$ 3,417.50	\$ -	\$ 3,417.50	\$ -	\$ 6,330.00	\$ 27,935.00
205	GAS TAX	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
207	LOCAL TRANSPORT-SB 325	\$ 15,381.99	\$ -	\$ 15,381.99	\$ -	\$ 22,011.99	\$ 77,219.18
209	GAS TAX-RMRA	\$ -	\$ 765,219.62	\$ 765,219.62	\$ -	\$ 765,219.62	\$ -
251	CDBG	\$ 49,494.99	\$ 3,202.70	\$ 52,697.69	\$ -	\$ 57,152.84	\$ 32,662.00
254	AB2766 - TRANSIT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
256	ENVIRONMENTAL PROGRAMS GRANT	\$ 279.47	\$ 1,499.00	\$ 1,778.47	\$ -	\$ 3,393.33	\$ 8,261.90
257	NEIGHBORHOOD STABILIZATION PROG	\$ -	\$ 35,385.45	\$ 35,385.45	\$ -	\$ 35,565.45	\$ 127.09
260	DISASTER PREPARED GRANT	\$ -	\$ 1,014.00	\$ 1,014.00	\$ -	\$ 1,090.02	\$ 76.02
263	STREETS MAINTENANCE	\$ 74,297.07	\$ 68,829.04	\$ 143,126.11	\$ -	\$ 272,344.10	\$ 260,408.14
300	DEV. IMPACT FEES - STREET	\$ -	\$ 14,391.44	\$ 14,391.44	\$ -	\$ 14,391.44	\$ 101,369.74
301	DEV. IMPACT FEES - STORM DRAIN	\$ 2,062.50	\$ -	\$ 2,062.50	\$ -	\$ 15,505.00	\$ 17,560.00
402	WATER RIGHTS ACQUISITION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
403	2013 REFUNDING LEASE REV BONDS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
501	CFD 91-3 BELGATE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
502	FIRE STATION BUILDING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,766.87
504	CITY WIDE STREETS - CIP	\$ 2,432.50	\$ -	\$ 2,432.50	\$ -	\$ 5,612.50	\$ 16,889.00
509	CITY FACILITIES CIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
800	EMPLOYEE BENEFITS	\$ 147,406.54	\$ 41,026.40	\$ 188,432.94	\$ -	\$ 515,289.58	\$ 465,585.19
801	TRUST/AGENCY	\$ 99,853.19	\$ 10,444.89	\$ 110,298.08	\$ -	\$ 136,495.43	\$ 25,543.69
802	AD 91-1 AGENCY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
804	TRUST-INTEREST BEARING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 67.50
807	CFD 2005-1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
808	HFPD (TRANSITION)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	CITY	\$ 436,295.01	\$ 2,466,067.81	\$ 2,902,362.82	\$ -	\$ 3,822,106.67	\$ 4,250,548.68
160	REDEVELOP OBLIG RETIREMENT - PA1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,318.27
161	REDEVELOP OBLIG RETIREMENT - PA2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 256.73
162	REDEVELOP OBLIG RETIREMENT-HOUSING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
163	REDEVELOP OBLIG RETIREMENT-2018	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
173	SUCCESSOR AGENCY ADMINISTRATION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,005.00
	SUCCESSOR AGENCY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,580.00
370	HOUSING AUTHORITY	\$ 93.67	\$ 2,082.04	\$ 2,175.71	\$ -	\$ 12,867.80	\$ 40,372.38
	HOUSING AUTHORITY	\$ 93.67	\$ 2,082.04	\$ 2,175.71	\$ -	\$ 12,867.80	\$ 40,372.38
170	COMMUNITY DEVELOPMENT COMMISSION	\$ 304.02	\$ 3,243.01	\$ 3,547.03	\$ -	\$ 9,752.80	\$ 16,715.14
	COMMUNITY DEVELOPMENT COMMISSION	\$ 304.02	\$ 3,243.01	\$ 3,547.03	\$ -	\$ 9,752.80	\$ 16,715.14
700	WATER OPERATING	\$ 108,940.94	\$ 106,399.20	\$ 215,340.14	\$ -	\$ 617,275.85	\$ 482,474.47
701	WATER CAPITAL	\$ 359,767.71	\$ 4,946.50	\$ 364,714.21	\$ -	\$ 365,646.71	\$ 122,000.06
710	SEWER OPERATING	\$ 4,471.68	\$ 5,661.88	\$ 10,133.56	\$ -	\$ 258,414.66	\$ 39,053.50
711	SEWER CAPITAL	\$ 16,423.00	\$ -	\$ 16,423.00	\$ -	\$ 18,353.00	\$ 25,352.50
	WATER	\$ 489,603.33	\$ 117,007.58	\$ 606,610.91	\$ -	\$ 1,259,690.22	\$ 668,880.53
	ACCOUNTS PAYABLE TOTAL	\$ 926,296.03	\$ 2,588,400.44	\$ 3,514,696.47	\$ -	\$ 5,104,417.49	\$ 4,983,096.73
REG. PAYROLL							
	City	\$ -	\$ 255,880.76	\$ 255,880.76	\$ -	\$ 484,554.13	\$ 472,766.82
	Housing Authority	\$ -	\$ 269.60	\$ 269.60	\$ -	\$ 529.48	\$ 5,716.80
	Community Development Commission	\$ -	\$ 6,834.45	\$ 6,834.45	\$ -	\$ 13,423.88	\$ 7,653.96
	Water	\$ -	\$ 103,228.06	\$ 103,228.06	\$ -	\$ 206,240.79	\$ 196,805.76
	PAYROLL TOTAL	\$ -	\$ 366,212.87	\$ 366,212.87	\$ -	\$ 704,748.28	\$ 682,943.34

* The year to date totals for this Warrant Report are for the 2019-20 fiscal year starting July 1, 2019.

City of Hesperia STAFF REPORT



DATE: August 20, 2019

TO: Mayor and Council Members
City Council, as Successor Agency to the Hesperia Community Redevelopment Agency
Chair and Commissioners, Hesperia Housing Authority
Chair and Commissioners, Community Development Commission
Chair and Board Members, Hesperia Water District

FROM: Nils Bentsen, City Manager

BY: Casey Brooksher, Director of Finance
Anne Duke, Deputy Finance Director
Robert Worby, Financial Analyst

SUBJECT: Treasurer's Cash Report for the unaudited period ended June 30, 2019

RECOMMENDED ACTION

It is recommended that the Council/Board accept the Treasurer's Cash Report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Hesperia Water District.

BACKGROUND

This report is presented to the City Council pursuant to Government Code Section 53646 (b) setting forth the City's investment portfolio.

ISSUES/ANALYSIS

The Treasurer's Cash Reports are presented on the following pages for each agency.

FISCAL IMPACT

These reports reflect unaudited cash balances as of June 30, 2019.

ALTERNATIVE(S)

Provide alternative direction to staff.

ATTACHMENT(S)

1. City of Hesperia Investment Report
2. Successor Agency to the Hesperia Community Redevelopment Agency Investment Report
3. Hesperia Housing Authority Investment Report
4. Community Development Commission Investment Report
5. Hesperia Water District Investment Report

CITY OF HESPERIA

<u>FUND</u>	<u>VALUE</u>
General Fund (100 & 800)	\$ 8,586,946.87
Fire District Fund (200)	125,833.53
HFPD (PERS) (210)	1,914,681.80
AB27666 - Transit (254)	23,426.05
AB3229 Supplemental Law (255)	150,315.92
AD No. 91-1 (802)	362,120.41
Beverage Recycling Grant (256)	138,185.25
CFD 2005-1 (807)	1,696,248.33
HFPD Transition (808)	622,620.78
City Wide-Capital Projects (504)	(15,952.65)
City Facilities CIP (509)	39,189.17
Community Dev Block Grant (251, 252, & 253)	557,027.53
Development Impact Fund (300-304)	9,846,189.60
Development Impact Fund 2018 (306-312)	976,526.29
Disaster (260)	44,025.72
Gas Tax Fund (205)	975.99
Gas Tax - RMRA (209)	1,491,320.05
Gas Tax Swap (206)	145,115.13
Local Transportation SB325 (207)	1,209,097.91
Measure I - Renewal (204)	4,551,174.87
Neighborhood Stabilization Prog (257)	2,310,247.86
Public Works Street Maint (263)	1,031,719.72
Trust Fund (801, 803-806, & 815)	1,645,288.20
2012 Water Rights Acquisition (402)	12,427.42
2013 Refunding Lease Rev Bonds (403)	12,094.60
TOTAL CITY FUNDS	<u>\$ 37,476,846.35</u>

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

<u>FUND</u>	<u>VALUE</u>
RORF Retention - (163)	<u>\$ 9,041,610.79</u>

HESPERIA HOUSING AUTHORITY

<u>FUND</u>	<u>VALUE</u>
Hesperia Housing Authority Fund (370)	\$ 3,457,216.11
VVEDA Housing Authority (371)	1,769,264.83
TOTAL HOUSING AUTHORITY FUNDS	<u>\$ 5,226,480.94</u>

COMMUNITY DEVELOPMENT COMMISSION

<u>FUND</u>	<u>VALUE</u>
Community Development Commission Fund (170)	<u>\$ (867,157.73)</u>

WATER

<u>FUND</u>	<u>VALUE</u>
Water Operating (700)	\$ 5,095,853.29
Water Capital (701)	(14,273,016.52)
Sewer Operating (710)	11,139,103.74
Sewer Capital (711)	4,307,785.12
TOTAL WATER FUNDS	<u>\$ 6,269,725.63</u>

City of Hesperia
Investment Report
Unaudited
June 30, 2019

ATTACHMENT 1

<u>Type of Investment</u>	<u>Institution/ Fiscal Agent</u>	<u>Interest Rate</u>	<u>Date of Purchase</u>	<u>Date of Maturity</u>	<u>Par Value at Maturity</u>	<u>Book Value</u>	<u>Market Value</u>	<u>Account Description</u>
Investments under the direction of the City:								
Local Agency Investment Funds	State of Calif.	2.428%	30-Jun-19	Demand	\$ 31,432,477.19	31,432,477.19	31,432,477.19	
Money Market	Bank of the West	1.610%	30-Jun-19	Demand	4,982,408.07	4,982,408.07	4,982,408.07	
Citizens Business Bank Checking	Citizens Bus Bank	n/a	30-Jun-19	Demand	1,061,961.09	1,061,961.09	1,061,961.09	
Total Unaudited Investments under the direction of the City					\$ 37,476,846.35	\$ 37,476,846.35	\$ 37,476,846.35	
Investments under the direction of fiscal agents:								
2012 Lease Revenue Bonds	Union	1.950%	30-Jun-19	Demand	185.13	185.13	185.13	2012 - Water Rights Revenue Fund
2012 Lease Revenue Bonds	Union	1.950%	30-Jun-19	Demand	1,478,320.28	1,478,320.28	1,478,320.28	2012 - Water Rights Reserve Fund
2012 Lease Revenue Bonds	Union	3.230%	30-Jun-19	Demand	0.31	0.31	0.31	2012 - Water Rights Surplus Revenue Fund
2013 Refunding Lease Revenue Bonds	Union	1.940%	30-Jun-19	Demand	277.32	277.32	277.32	2005 Civic Plaza - Revenue Fund
2013 Refunding Lease Revenue Bonds	Union	1.950%	30-Jun-19	Demand	1,170,485.55	1,170,485.55	1,170,485.55	2005 Civic Plaza - Reserve Fund
2013 Refunding Lease Revenue Bonds	Union	3.230%	30-Jun-19	Demand	0.31	0.31	0.31	2005 Civic Plaza - Surplus Rev Fund
2014 CFD 2005-1 Refunding	Union	1.950%	30-Jun-19	Demand	69.22	69.22	69.22	2014 CFD 05-1 - Special Tax Fund
2014 CFD 2005-1 Refunding	Union	1.950%	30-Jun-19	Demand	96.93	96.93	96.93	2014 CFD 05-1 - Bond Fund
2014 CFD 2005-1 Refunding	Union	1.950%	30-Jun-19	Demand	1,441,835.22	1,441,835.22	1,441,835.22	2014 CFD 05-1 - Reserve Fund
2014 CFD 2005-1 Refunding	Union	1.950%	30-Jun-19	Demand	23,537.39	23,537.39	23,537.39	2014 CFD 05-1 Administrative Expense Bonds
Deposits - Workers' Comp	PERMA	n/a	30-Jun-19	n/a	1,009,986.43	1,009,986.43	1,009,986.43	GL 1352
Total Unaudited Investments under the direction of fiscal agents					\$ 5,124,794.09	5,124,794.09	5,124,794.09	

Please Note: All market value data is provided courtesy of the City's fiscal agents,
Union Bank of California & Bank of New York (BNY) Trust Company.

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.

* Note: 2005 Certificates of Participation began in May 2005 for the financing of the Civic Plaza.



George Pirsko, Senior Financial Analyst

Investment Report

Unaudited

June 30, 2019

Type of Investment	Issuer/ Institution	Interest Rate	Date of Purchase	Date of Maturity	Par Value at Maturity	Book Value	Market Value	Account Description
Investments under the direction of the City:								
Local Agency Investment Funds	State of Calif.	2.428%	30-Jun-19	Demand	\$ 7,583,354.86	\$ 7,583,354.86	7,583,354.86	
Money Market	Bank of the West	1.610%	30-Jun-19	Demand	1,202,048.70	1,202,048.70	1,202,048.70	
Citizens Business Bank Checking	Citizens Bus Bank	n/a	30-Jun-19	Demand	256,207.23	256,207.23	256,207.23	
Total Unaudited Investments under the direction of the City					\$ 9,041,610.79	\$ 9,041,610.79	\$ 9,041,610.79	

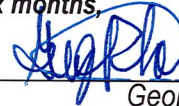
Investments under the direction of fiscal agents:

2018 Refunding Bonds	Union	0.000%	30-Jun-19	Demand	1.00	1.00	1.00	2018A & 2018B - Debt Service Account
2018 Refunding Bonds	Union	2.260%	30-Jun-19	Demand	15,970.67	15,970.67	15,970.67	2018A & 2018B - Interest Account
2018 Refunding Bonds	Union	0.000%	30-Jun-19	Demand	1.00	1.00	1.00	2018A & 2018B - Reserve Account
Total Unaudited Investments under the direction of fiscal agents					\$ 15,972.67	\$ 15,972.67	\$ 15,972.67	

Please Note: All market value data is provided courtesy of the City's fiscal agent Union Bank of California.

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.

* Note: The 2005 and 2007 Series Bonds were refinanced to 2018 Series Bonds in November 2018.



George Pirsko, Senior Financial Analyst

Hesperia Housing Authority

Investment Report

Unaudited

June 30, 2019

<u>Type of Investment</u>	<u>Issuer/ Institution</u>	<u>Interest Rate</u>	<u>Date of Purchase</u>	<u>Date of Maturity</u>	<u>Par Value at Maturity</u>	<u>Book Value</u>	<u>Market Value</u>
Investments under the direction of the City:							
Local Agency Investment Funds	State of California	2.428%	30-Jun-19	Demand	\$ 4,383,539.68	4,383,539.68	4,383,539.68
Money Market	Bank of the West	1.610%	30-Jun-19	Demand	694,841.31	694,841.31	694,841.31
Citizens Business Bank Checking	Citizens Business Bank	n/a	30-Jun-19	Demand	148,099.95	148,099.95	148,099.95
Total Unaudited Investments under the direction of the City					\$ 5,226,480.94	\$ 5,226,480.94	\$ 5,226,480.94

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.

George Pirsko, Senior Financial Analyst

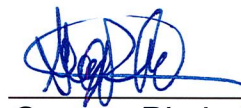
Investment Report

Unaudited

June 30, 2019

<u>Type of Investment</u>	<u>Issuer/ Institution</u>	<u>Interest Rate</u>	<u>Date of Purchase</u>	<u>Date of Maturity</u>	<u>Par Value at Maturity</u>	<u>Book Value</u>	<u>Market Value</u>
Investments under the direction of the City:							
Local Agency Investment Funds	State of California	2.428%	30-Jun-19	Demand	\$ (727,300.14)	(727,300.14)	(727,300.14)
Money Market	Bank of the West	1.610%	30-Jun-19	Demand	(115,285.41)	(115,285.41)	(115,285.41)
Citizens Business Bank Checking	Citizens Business Bank	n/a	30-Jun-19	Demand	(24,572.18)	(24,572.18)	(24,572.18)
Total Unaudited Investments under the direction of the City					\$ (867,157.73)	\$ (867,157.73)	\$ (867,157.73)

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.



George Pirsko, Senior Financial Analyst

Hesperia Water District
Investment Report
Unaudited
June 30, 2019

<u>Type of Investment</u>	<u>Issuer/ Institution</u>	<u>Interest Rate</u>	<u>Date of Purchase</u>	<u>Date of Maturity</u>	<u>Par Value at Maturity</u>	<u>Book Value</u>	<u>Market Value</u>	<u>Account Description</u>
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Investments under the direction of the City:

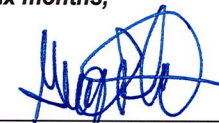
Local Agency Investment Funds	State of California	2.428%	30-Jun-19	Demand	\$ 5,258,526.98	5,258,526.98	5,258,526.98	
Money Market	Bank of the West	1.610%	30-Jun-19	Demand	833,536.83	833,536.83	833,536.83	
Citizens Business Bank Checking	Citizens Business Bank	n/a	30-Jun-19	Demand	177,661.82	177,661.82	177,661.82	
Total Unaudited Investments under the direction of the City					\$ 6,269,725.63	\$ 6,269,725.63	\$ 6,269,725.63	

Investments under the direction of fiscal agents:

First American Treas - Money Market	US Bank	0.000%	30-Jun-19	Demand	9,076.16	9,076.16	9,076.16	98 A - 95453340
First American Treas - Money Market	US Bank	0.000%	30-Jun-19	Demand	31.81	32.81	31.81	98 A - 95453341
98 A Dep w/Trustee - Collateral	Bank of America	2.400%	30-Jun-19	Demand	1,880,000.00	1,880,000.00	1,880,000.00	GL 1319
Deposits - Workers' Comp	PERMA	n/a	30-Jun-19	n/a	531,769.34	531,769.34	531,769.34	GL 1352
Deposits w/Other Agencies	Various	n/a	30-Jun-19	n/a	0.00	0.00	0.00	GL 1350
Total Unaudited Investments under the direction of fiscal agents					\$ 2,420,877.31	\$ 2,420,878.31	\$ 2,420,877.31	

**Please Note: All market value data is provided courtesy of the City's fiscal agents
Bank of New York (BNY) Trust Company and US Bank.**

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.



George Pirsko, Senior Financial Analyst



DATE: August 20, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Michael Blay, Assistant City Manager
Jamie Carone, Administrative Analyst
SUBJECT: Accept FY 2018-19 Street Improvement Project (CO 7149)

RECOMMENDED ACTION

It is recommended that the City Council accept the FY 2018-19 Street Improvement Project completed by Match Corporation (Construction Order No. 7149); authorize staff to record a "Notice of Completion," and release all withheld retention after 35 days from the date of recordation.

BACKGROUND

In June of 2018, the City Council approved the Fiscal Year 2018-19 Capital Improvement Program (CIP), which included programming for the FY 2018-19 Street Improvement Project (Construction Order No. 7149). On February 19, 2019, the City Council awarded the contract to the lowest responsive/responsible bidder, Match Corporation, in the amount of \$1,359,850 with a 10% contingency in the amount of \$135,985 for a total authorized contract amount of \$1,495,835.

ISSUES/ANALYSIS

Construction was complete on July 31, 2019. During construction, seven change orders for additional work were requested by the City which included the following: Modifying the original scope of work to change the phasing plan from two to four phases in order to improve the flow of traffic and avoid lengthy delays for the public; constructing an overlay to improve the appearance of the section of roadway not included in the original scope of work; repairing a trench that was not included in the project limits; installing traffic detector loops at the intersection of Main Street and Topaz Avenue; fog sealing an area of roadway not in the original project limits to improve appearances; providing two additional message boards in order to better inform the public of the construction; and, lastly, the balance sheet providing both credits and charges for actual versus proposed quantities. The final contract total of \$1,495,086.16 is within the Council authorized contract amount of \$1,495,835. Upon approval, retention funds in the amount of \$74,754.3 will be released to Match Corporation.

Construction of all the work was completed within budget and within the contract time. Staff approved the contractor's "Notice of Completion" indicating all work was complete and ready for final inspection in July of 2019. Staff recommends Council accept all of the work constructed under this contract and authorize staff to record a formal "Notice of Completion" with the County of San Bernardino clerk's office and release all withheld retention funds 35 days after recordation.

FISCAL IMPACT

Costs for the project are noted below:

CO 7149 FY 2018-19 Annual Street Improvement	<u>Actual: \$ 1,495,086.16</u>
	Total: \$ 1,495,086.16

Total Project:

Budget: \$ 1,495,835.00

Actual: \$ 1,495,086.16

Balance: \$ 748.84

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Notice of Completion



City of Hesperia

Gateway to the High Desert

CONTRACTOR'S NOTICE OF COMPLETION

RETURN TO:

Engineering Department

9700 Seventh Avenue

Hesperia, CA 92345

Attn: Jamie Carone

DATE:	July 31, 2019
PROJECT:	FY 2018-19 Street Improvement Project
C.O. No. #:	7149
OWNER:	City of Hesperia

CONTRACTOR'S NAME:	Matich Corporation
---------------------------	---------------------------

This is to certify that I, Jake Reade am an authorized official of Matich Corporation working in the capacity of Project Manager and have been properly authorized by said firm or corporation to sign the following statements pertaining to the subject contract:

I know of my own personal knowledge, and do hereby certify, that the work of the contract described above has been performed and materials used and installed in every particular, in accordance with, and in conformity to, the contract drawings and specifications.

The contract work is now complete in all parts and requirements, and ready for your final inspection.

I understand that neither the determination by the engineer/architect that the work is complete, nor the acceptance thereof by the Owner, shall operate as a bar to claim against the contractor under the terms of the guarantee provisions of the contract documents.

By: *Curtis Cook*
 Title: FIELD INSPECTOR
 Acceptance Date: 7-5-19
 City

By: *Jake Reade*
 Title: Project Manager
 Completion Date: July 31, 2019
 Matich Corporation

c:\users\jreade\appdata\local\microsoft\windows\inetcache\content.outlook\vv4i7szc\contractor's notice of completion.docx

Bill Holland, Mayor
 Rebekah Swanson, Mayor Pro Tem
 Paul Russ, Council Member
 Larry Bird, Council Member

9700 Seventh Ave
 Hesperia, CA 92345
 760-947-1000
 760-947-1113

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DATE: August 20, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Michael Blay, Assistant City Manager

SUBJECT: License and Maintenance Agreement between the City of Hesperia and Hesperia Apartments, LLC

RECOMMENDED ACTION

It is recommended that the City Council approve a license and maintenance agreement between the City of Hesperia and Hesperia Apartments, LLC.

BACKGROUND

The Hesperia Apartments are to be located in the 13000 block of Live Oak Street, just east of Mariposa Road. With 160 total units, the project is being built in several phases. Construction of the first phase began in July 2019. The Right-of-Way landscaping area designated in this agreement is relatively small and will be contiguous to the planned complex landscaping. As such, the developer has requested to maintain the landscaping in front of the complex in a manner consistent with the property itself. The developer will continue to own the property after completion and has asked for the license and maintenance agreement in order to maintain the landscaping in the public right of way, at his own expense. Should the developer sell the property at some time in the future, the duly recorded agreement would be transferred with the property to the new owner.

ISSUES/ANALYSIS

The license and maintenance agreement requires the developer, at his own expense, to plant, maintain, and replace when necessary the landscaping in the public right of way in front of the Hesperia Apartments' Live Oak Street frontage. The agreement provides sufficient recourse for the City in the event the developer fails to maintain the landscaping in a manner satisfactory to the City. In addition, the agreement will indemnify the City from any liability associated with the developer's use and maintenance of the right of way. The non-exclusive license will continue to allow public access to the right of way.

FISCAL IMPACT

There is no fiscal impact as a result of this agreement.

ALTERNATIVE(S)

1. Provide alternate direction to staff.

ATTACHMENT(S)

1. License and Maintenance Agreement

ATTACHMENT 1

RECORDING REQUESTED BY:

CITY OF HESPERIA

**WHEN RECORDED, RETURN
TO:**

CITY OF HESPERIA
9700 SEVENTH AVE.
HESPERIA, CA 92345
ATTENTION: CITY CLERK

(Space above this line for Recorder's use only)

APN: 0405-072-72, No fee for recording per Gov. Code§ 27383

This Landscaping Maintenance and License Agreement ("**Agreement**") is made and entered into by and between the CITY OF HESPERIA ("**City**"), a California municipal corporation, and Hesperia Apartments, LLC, a California limited liability company ("**Licensee**") as of this 20th day of August, 2019. The City and Licensee shall collectively be referred to as the "**Parties**" and individually as the "**Party**".

RECITALS

WHEREAS, Licensee is the owner of one (1) legal parcel of real property located in the City of Hesperia, California, which is currently being developed by Licensee as a 160-unit apartment complex (the "**Project**"), with said parcel more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference (the "**Property**");

WHEREAS, located upon the southern portion of the Property and adjacent to Live Oak Street exists a public right of way within which contains a linear strip of raw land where Licensee intends to install and maintain landscaping improvements (the "**Improvements**"), with the approximate location of said Improvements being depicted on Exhibit 'B' hereto and incorporated herein by this reference (the "**Landscape Area**");

WHEREAS, as a Condition of Approval for the Project identified as "Light and Landscape District Annexation" (the "**COA**"), Licensee is required to annex the Landscape Area into the lighting and landscape district administered by the Hesperia Recreation and Parks District (the "**Parks District**") to fund the installation and maintenance of the Improvements in the Landscape Area;

WHEREAS, the Parties have agreed that in full satisfaction of the COA, in lieu of annexing the Landscape Area into the Parks District, and to avoid any controversy over which

Party retains responsibility for the Landscape Area, Licensee has agreed to accept full responsibility for the installation and the ongoing maintenance of the Landscape Area and the costs associated therewith in accordance with the requirements of the City's Landscape Regulations, as defined in Section 1 below, during the term of this Agreement; and

WHEREAS, by this Agreement, City desires to provide a license to Licensee to enter onto the Landscape Area to carry out and maintain on an ongoing basis the Improvements and to specify the essential terms of the license.

NOW THEREFORE, in consideration of the promises and agreements hereinafter made and exchanged, City and Licensee covenant and agree as follows:

TERMS

1. **GRANT OF LICENSE.** Subject to the terms of this Agreement, City hereby grants to Licensee, its employees, contractors, representatives, and/or its agents a revocable license ("*License*") to enter the Landscape Area to conduct the Improvements, which include the installation and maintenance of certain irrigation features and planting, which Improvements have been approved by the City and are deemed by the City to be in accordance with the City's landscape regulations, currently contained in Article XII of Title 16 of the Hesperia Municipal Code ("*Landscape Regulations*") The purpose of this right to enter, install, and maintain the Improvements shall be limited to activities related to said Improvements and the City-approved landscaping. By entering into this Agreement, Licensee shall be deemed to have a City-issued landscaping permit and an approved landscape design and irrigation design plan under the Landscape Regulations with respect to the Improvements. Licensee shall, at Licensee's cost, maintain the Landscape Area using its landscaping crew for the Project, which may, but need not, include a licensed landscape contractor.

2. **TERM.** The term of the License (the "*Term*") granted herein shall be perpetual, provided that City may terminate the License and this Agreement upon thirty (30) days written notice to Licensee.

3. **TERMINATION.** In the event of any such termination, in addition to the remedies provided for Licensee's default in Section 14 below, City may, at its option, either:

(a) disconnect existing water and electrical supply sources to the Landscape Area from the Property (leaving the water and electrical systems serving the Property fully functional and in compliance with law), and construct and reconnect City water and electrical supply sources to the Landscape Area, or

(b) continue to use water and electricity from the Property for the Landscape Area.

5. **DESCRIPTION OF LANDSCAPE AREA.** The Improvements installed within the Landscape Area shall be located as approved by the City on date of this Agreement, and any changes the location of the Improvements within the Landscape Area shall be provided to the City for the City to confirm that the changes do not interfere with any other City facilities located within

the Landscape Area or adjacent right of way. Licensee shall repair, maintain, and/or replace the Improvements within the Landscape Area at Licensee's sole cost during the term of this Agreement, except in the case of damage caused to the Improvements or Landscape Area by the City.

6. **MAINTENANCE RESPONSIBILITIES.** Licensee shall maintain the Landscape Area in accordance with the standards set forth in the Landscape Regulations ("*Maintenance Responsibilities*"), except to the extent said standards are modified by the terms of this Agreement.

7. **CITY RIGHT TO INSPECT.** City shall have the right to inspect the Landscape Area at any time to ensure that Licensee is performing its obligations hereunder. City shall provide 24-hour advance notice to Licensee of any such inspection so that Licensee may arrange to have its representative present during the noticed inspection.

8. **DAMAGE TO LANDSCAPE AREA.** In the event any damage is caused to the Landscape Area or Improvements by Licensee or its agents as a result of Licensee's maintenance activities related to the same, Licensee agrees to repair the same at its sole cost and expense. Except as otherwise provided for in this License, in the event any damage is caused to any part of the Landscape Area or Improvements as a result of the maintenance and/or repair work performed by the City or its contractors, agents or employees within the Landscape Area or adjacent right of way, City shall promptly repair the same at the City's sole cost and expense. In the event both Licensee and City are required to repair damage to the Landscape Area or Improvements the Parties shall cooperate with each other so as to minimize the costs incurred by each of them.

9. **MECHANICS' LIENS.** Licensee agrees not to suffer any mechanics' lien(s) to be filed against the Landscape Area by reason of any work, labor, services or material performed at or furnished within the Landscape Area, by or through Licensee. Licensee shall, at its sole cost and expense, cause any mechanics' lien(s) which may be filed against the Landscape Area to be released, bonded, or affirmatively insured within sixty (60) days after the date of filing of such mechanics' lien(s). Nothing in this Agreement shall be construed as consent on the part of City to subject the Landscape Area to any mechanics' lien(s) or liability under the mechanics' lien laws of the State of California.

10. **ASSIGNMENT.** The License herein granted is personal to Licensee. Notwithstanding the foregoing, assignment of the License to a Licensee affiliated entity shall not require prior approval of City. Other than the License granted hereunder, Licensee hereby expressly waives any claim to or interest or estate of any kind or extent whatsoever in the Landscape Area arising out of the License or out of Licensee's use or maintenance of the Landscape Area, whether now existing or arising at any future time. This License is appurtenant to the Property and may not be separately assigned apart from the Property or the interests therein. Licensee shall give notice in writing to City of any such assignment and delegation, such notice shall include the mailing address of the delegee, and will become the delegee's address for service of notices. Licensee hereby covenants for itself and its successors and assigns, that conveyance of any interest in the Property shall constitute an assumption by any successors, assigns or transferees of Licensee, of the obligations to maintain that portion of the Landscape Area pursuant to this Agreement along that portion of the Property conveyed under this License, and upon such

conveyance, the predecessor in interest of such assuming party shall be deemed relieved from any further obligations or responsibilities under this License.

11. INSURANCE AND INDEMNIFICATION:

11.1 Insurance. Licensee shall cause its current comprehensive general liability and worker's compensation insurance coverage for the Property to include the Landscape Area, shall maintain the insurance, and shall provide to the City Certificates of Insurance or appropriate insurance binders evidencing the insurance coverage throughout the term of this Agreement.

The insurance policies shall name the City, its officers, employees and agents ("*City Parties*") as additional insureds with respect to the Landscape Area and shall waive all rights of subrogation and contribution against the City, City Parties and their respective insurers with respect to the Landscape Area.

The Licensee agrees that the provisions of this Section 11 shall not be construed as limiting in any way the extent to which the Licensee may be held responsible for the payment of damages to any persons or property resulting from the Licensee's activities under this Agreement.

11.2 Indemnification. Licensee agrees to indemnify the City and City Parties against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys' fees, or paying any judgment that may be asserted or claimed by any person, firm or entity arising out of or in connection with the Licensee's use of the Landscape Area.

11.3 Assumption of All Risks and Liabilities. Licensee assumes all risks and liabilities arising out of any and all use of the Landscape Area during the term of this Agreement, except with respect to City gross negligence, willful misconduct, or City intentional tortious actions, including City creation or allowance of a dangerous condition within the Landscape area or along the adjacent right of way.

12. INDEPENDENT CONTRACTOR. Licensee agrees that all work done or undertaken by Licensee related to the Improvements within, and maintenance of, the Landscape Area shall be for its sole account and not as an agent, servant or contractor for City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Licensee's agents, volunteers or employees perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision, or control of Licensee's employees, servants, representatives, volunteers or agents, or in fixing their number, compensation, or hours of service. Licensee shall perform all services required herein as an independent contractor with only such obligations as are consistent with that role. Licensee shall not at any time or in any manner represent that it or any of its agents, volunteers, or employee are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Licensee in its business or otherwise, a joint venturer, or a member of any joint enterprise with Licensee.

13. **RULES AND REGULATIONS.** Licensee agrees to obey and observe (and cause its officers, employees, contractors, invitees and all others doing business with Licensee to obey and observe) all rules and regulations of general applicability regarding the Landscape Area as may be reasonably established by City not already addressed in this Agreement at any time and from time to time during the Term of this Agreement.

14. **DEFAULT.** In the event Licensee does not perform, or cause to be performed, any of the Maintenance Responsibilities as set forth in Section 6 of this Agreement, City shall first provide written notice to Licensee in the manner and at the address for notices provided in Section 16 below, with said notice describing in detail the alleged default by Licensee. If Licensee fails to cure said default within thirty (30) calendar days following the date of delivery of such notice of default, City may at its discretion cause such maintenance to be performed, and all actual costs incurred by City in performing the maintenance shall be assessed to and billed directly to the Licensee or Licensee's successors or assigns. City shall provide Licensee with copies of invoices evidencing the costs incurred. Payment from Licensee, or Licensee's successors or assigns, shall be due within thirty (30) calendar days following the date of receipt of invoice. In addition, one and a half (1-1/2%) interest per month shall be added for each month payment hereunder is due but unpaid. Any unpaid costs shall be secured by a lien on the Property.

In the event City assumes maintenance of the Landscape Area pursuant to this Section 14 following a default of Licensee, City shall install, replace and repair said Improvements within the Landscape Area to the same standards as currently in place at the time of this Agreement. Licensee shall have the right to re-assume maintenance of the Landscape Area at any time thereafter.

15. **APPLICABLE LAW.** Except as already addressed or otherwise set forth herein with respect to the Landscape Regulations, Licensee shall, at its sole cost and expense, faithfully observe in the use and occupation of the Landscape Area all municipal ordinances, and all state and federal statutes now in force and which may hereafter be in force, and shall fully comply, at its sole expense, with all regulations, orders, and other requirements issued or made pursuant to any such ordinances and statutes. All applicable permits and licenses not already addressed herein shall be secured and paid for by Licensee.

16. **NOTICES.** Unless expressly otherwise provided elsewhere in this Agreement, notice or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged) or the fourth (4th) day after mailing (by certified mail return receipt requested) with proper postage prepaid, by facsimile transmission with evidence confirming transmission, or when delivered by a national commercial courier service (such as Federal Express) for expedited delivery, to be confirmed in writing by such courier.

To CITY: City of Hesperia
 9700 Seventh Ave.
 Hesperia, CA 92345
 Attn: _____
 Fax: (760) 947-2881

To LICENSEE: Hesperia Apartments, LLC
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attn: Andrew Wennerstrom
Phone: (909) 354-8010
E-Mail: awennerstrom@frontier-enterprises.com

17. **CAPTIONS AND TERMS.** The captions and section numbers appearing in the Agreement are for convenience only and are not a part of the Agreement and do not in any way limit, amplify, define, construe or describe the scope of intent of the terms and provisions of this Agreement, or in any way affect this Agreement.

18. **RECORDATION.** Licensee shall record this Agreement in the Official Records of the County of San Bernardino, State of California.

19. **NON-EXCLUSIVITY.** This License is non-exclusive, and the Landscape Area shall at all times be open to use by the general public.

20. **COVENANT AGAINST DISCRIMINATION.** Licensee covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement and Licensee shall take affirmative action to insure that applicants are employed and that employees and volunteers are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

21. **COOPERATION.** The Parties shall in good faith cooperate in connection with its respective rights and obligations under this Agreement, including, but not limited to, performing any acts and executing any further documents that may be reasonably necessary to effectuate the purposes of or rights conferred under this Agreement.

22. **ATTORNEY'S FEES.** In any action between the parties hereto seeking enforcement of any of the terms and provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to reasonable attorney's fees.

23. **ENTIRE AGREEMENT.** This Agreement, together with any attachments hereto or inclusions by reference, constitutes the entire agreement between the parties hereto relating to the rights herein granted and the obligations herein assumed, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties hereto with respect to the rights and obligations contained herein. Any oral representations or modifications concerning this instrument shall be of no force or effect except a subsequent modification in writing, approved by the City and signed by the parties to be charged.

24. **COVENANTS.** Each of the covenants set forth in this Agreement (i) shall run with the land; (ii) shall be binding upon, and shall inure to the benefit of, any person or entity having or acquiring any interest in any portion of any property benefited or burdened thereby, during the

period of such person's or entity's ownership, and all of their respective successive owners and assigns; and (iii) shall be binding upon, and shall inure to the benefit of, the property benefited or burdened thereby and every portion thereof and interest therein. The License granted by this Agreement is subject to all matters of record as of the effective date of this Agreement.

25. **GOVERNING LAW.** This Agreement shall be governed, construed, interpreted, and enforced under and in accordance with and governed by the laws of the State of California.

26. **AMENDMENTS.** This Agreement may be amended, modified, and/or supplemented only by the written agreement of the Parties, or the successors and assigns of each.

27. **DELEGATION OF AUTHORITY.** City hereby delegates to its City Manager or his or her designee the authority to implement all provisions of this Agreement.

28. **EXCLUSIVE BENEFIT OF PARTIES.** The provisions of this Agreement are for the exclusive benefit of the Parties and their successors and assigns, subject to the provisions hereof, and neither for the benefit of nor give rise to any claim or cause of action by any other person.

29. **AUTHORITY TO SIGN.** Licensee hereby represents that the individual executing this Agreement on behalf of Licensee has full authority to do so and to bind Licensee to perform pursuant to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

Dated: _ _ _ _ _

City: CITY OF HESPERIA, a municipal corporation

By: Larry Bird, Mayor

ATTEST:

By: _____
Melinda Sayre, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, City Attorney

LICENSEE: Hesperia Apartments, LLC, a
California limited liability
company

By: _____
Richard Munkvold, Chief Financial Officer

[End of Signatures]

EXHIBIT "A"

Legal Description

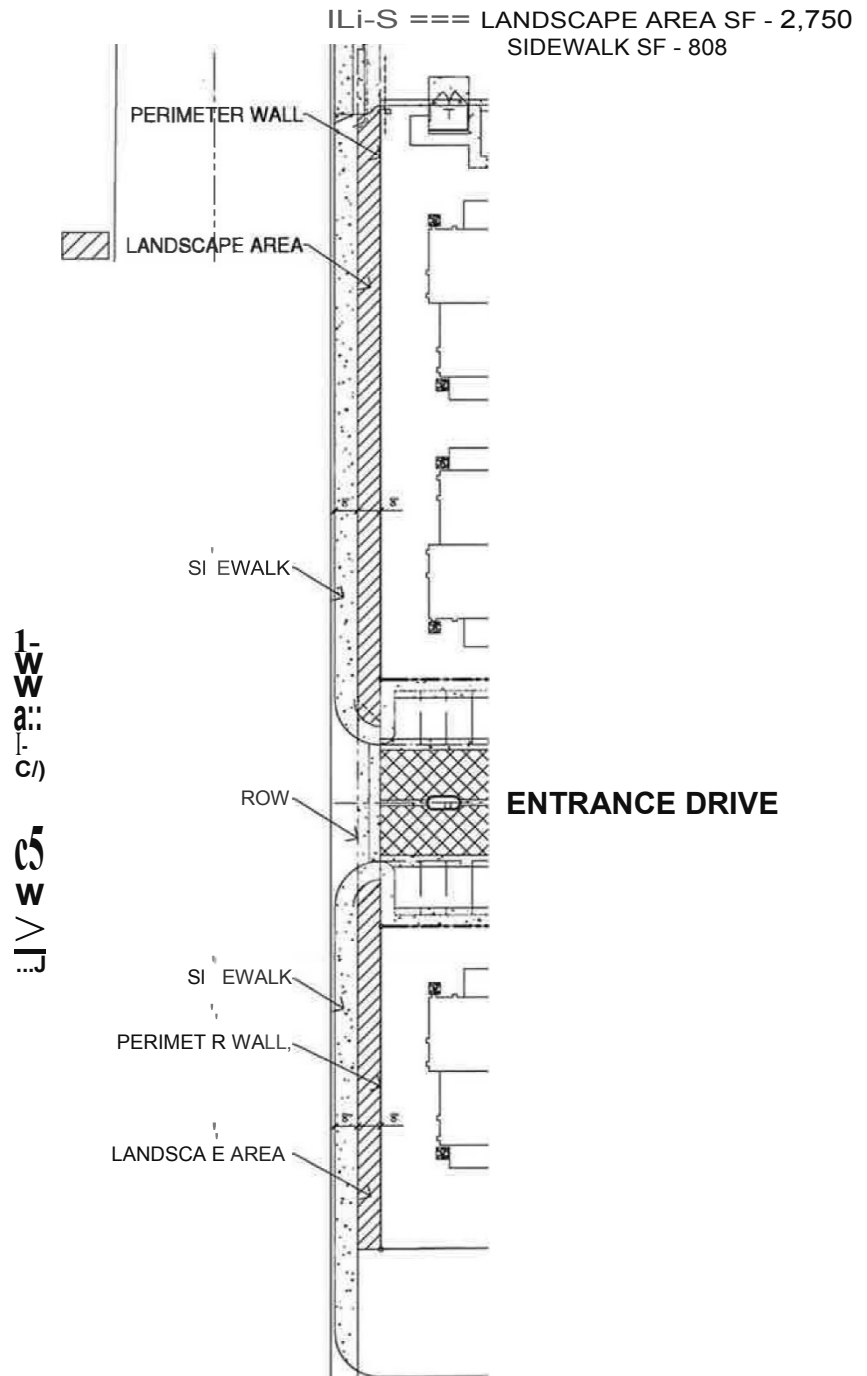
LEGAL DESCRIPTION OF PROPERTY

APN 0405-072-72

Parcel 2 of Parcel Map No. 19719, in the City of Hesperia, County of San Bernardino, State of California, as per plat recorded in Book 248 of Parcel Maps, Page(s) 16 and 17, in the office of the County Recorder of said county.

EXHIBIT 'B'

LANDSCAPE AREA



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DATE: July 16, 2019
TO: Mayor and City Council members
FROM: Nils Bentsen, City Manager **SECOND READING AND ADOPTION**
BY: Mike Blay, Assistant City Manager
Tina Bulgarelli, Administrative Analyst
SUBJECT: Amendments to Title 5 of Hesperia Municipal Code

RECOMMENDED ACTION

It is recommended that the City Council adopt Ordinance No. 2019-10 amending Title 5 of the Hesperia Municipal Code modifying the regulations for business licensing.

BACKGROUND

The City of Hesperia began issuing business licenses in 1993. To begin the program, staff adopted an ordinance regulating licensing that was borrowed from the County of San Bernardino. Since that time many new business types have opened in the City. Additionally, many businesses are regulated by other agencies, such as state, federal or county. Over the years, updates to specific sections have been made to continue to comply with state law, however, a major review has not occurred since adoption.

Staff is tasked with issuing business licenses and reviewing those licenses that require additional outside agency approval or certification prior to issuance.

The Title regulating licensing, Title 5, requires changes to update it to include the most recent state laws. Also, the system of license issuance is antiquated and does not represent the way the City issues a business license today. For instance, when the licensing program was initiated, the business license anniversary was based upon the name of the business, beginning alphabetically in January and the alphabetical system set the renewal date for the license. Today a business license is good for one year from issuance, regardless of the name of the business.

ISSUES/ANALYSIS

Staff has prepared revisions to Title 5 for the Council's review. The Title presented is a completely (in most chapters) re-written version. Staff worked with the City Attorney's during the nearly three year revision process to ensure that any new or updated sections represent current state law and the way the City does business today.

Below is a short summary of the changes to each chapter:

5.04 – Business Licenses Generally

This section received the most extensive changes. It contains the business practices related to issuing and maintaining a business license. The previous version was adopted from the County

Code when the business license program was created and has not received an update since that time. The changes reflect the way the City conducts business today.

This chapter contains updates to the revocation, denial, and appeals procedures to comply with due process. Also included is a comprehensive list of the reasons a license may be revoked or denied. The changes made also reflect the process the City uses for DOJ compliance.

The entire Title was reorganized to move all revocation, denial, and appeal procedures to this chapter.

5.08- Bingo

Several minor changes were made to make the laws concerning Bingo games more clear and to define the regulations related to charitable organizations holding Bingo games using updated definitions of charitable organizations.

5.16 – Junk Dealers, Pawnbrokers, Secondhand Dealers and Salvage Collectors

This section was revised to follow state law regarding the requirement to report through the CA Pawn and Secondhand Dealer System (CAPPS).

5.20 – Massage Facilities

The massage facility regulations were updated to reflect current state law regarding the licensing of facilities and massage technicians. The regulations for non-CAMTC certified massage technicians were removed as the City no longer allows non-CAMTC certified massage technicians to practice in the City. The list of revocable offenses was also updated and the applicable penal code section added for reference.

5.22 – Body Art Facilities

This section was revised to comply with state law.

5.24 – Peddling, Soliciting, and Hawking

The main revision to this chapter was the movement of the Mobile Food Truck regulations to a newly created chapter, Chapter 5.26, which also contains the regulations for ice cream trucks and sidewalk vending.

5.26 - Mobile Food Vending, Ice Cream Trucks, Sidewalk Vending

This new chapter contains the regulations for mobile food trucks, ice cream vendors and sidewalk vending. The regulations are safety related. The sidewalk vending regulations comply with current state law and were presented to the City Council in January 2019.

5.28 – Pool and Billiard Halls

The regulations were shortened to create a more succinct section related to preventing illegal pool and gambling halls.

5.32 – Private Patrol Services and Private Patrolpersons

No changes.

5.36 – Taxicabs

This section was revised to follow newly adopted state law related to how cities must regulate taxicabs.

5.40 – Adult Theaters

This section was deleted as it is no longer applicable. This referred to “peep show” houses that are not relevant today. It is recommended that Adult Theaters are prohibited in the City.

5.44 – Home Occupations

Minor changes were made, including a limit on the percentage of the garage that can be used as the home office to prevent garage conversions to business space.

5.48 – Adult Businesses

Updates to the definitions were made to Title 16 to comply with current state law. Additional language regarding the appeal process and denial of a license were added. Adult theaters, adult motels, and adult motion picture houses are recommended to be prohibited within the City.

5.50 – Dispensing and Delivery of Medical Cannabis

Update the vehicle insurance requirements at the direction of PERMA to allow for scheduled, hired, and non-owned autos, instead of any auto.

5.52 – Blinder Racks

No changes.

5.56 – Garage Sales

Updated prohibited conduct to include a general description of acceptable items for sale, and exclude new or bulk new items for sale.

5.60 – Non-Profit Car Washes

Minor changes made that do not affect policy and make the regulations easier to understand.

5.64 – Telecommunications Regulations

Deleted as the City no longer has any franchise telecommunications agreements and will not have any in the future.

5.68 – Service Animals

No changes.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Ordinance No. 2019-10
2. Exhibit “A” (Title 5, Business Licensing)
3. Exhibit “B” Updates to Chapter 16.08 – Definitions
4. Exhibit “C” Updates to Chapter 1.04 - Definitions

ORDINANCE NO. 2019-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, AMENDING TITLE 5 OF THE HESPERIA MUNICIPAL CODE, RELATED TO BUSINESS LICENSE REGULATIONS

WHEREAS, the City of Hesperia has the authority and responsibility to regulate businesses to protect the public health, safety, and welfare; and

WHEREAS, Title 5 of the Hesperia Municipal Code contains regulations related to business license issuance, revocation, denial, appeals, and general business practices; and

WHEREAS, Title 5 also contains regulations pertaining to specific business types and activities and includes regulations mandated by the state for those business types and activities; and

WHEREAS, the City began issuing business licenses in 1993 and since that time the program has grown and updates to the regulations are required to continue to efficiently manage the business license program; and

WHEREAS, the business license regulations have not received a substantial update since adoption in 1993; and

WHEREAS, the updates attached hereto as Exhibit "A" contain all updated state and local regulations for specific business types and updates to the general business practices in order to continue to manage the business license program; and

WHEREAS, as a function of the changes to the license regulations, several definitions related to business regulations in Title 16 and Title 1 are also updated and attached hereto as Exhibit "B" and Exhibit "C"; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE HESPERIA CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1. All of the facts set forth in the forgoing recitals are true, correct and are adopted as findings.

Section 3. Title 5 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "A", attached hereto.

Section 4. Chapter 16.08 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "B", attached hereto

Section 5. Chapter 1.04 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "C", attached hereto

Section 6. Ordinance No. 2017-16 and Ordinance No. 2018-01, containing the regulations related to Cannabis activity shall remain in full force and effect, excepting any changes noted in Exhibit "A" attached hereto.

Section 6. This Ordinance shall take effect on September 6, 2019.

Section 7. The City Council of the City of Hesperia hereby declares that should any provision, section, paragraph, sentence, or word of this Ordinance hereby adopted be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by any reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, and words shall remain in full force and effect.

Section 8. The City Clerk shall certify to the adoption of the Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution 93-78.

ADOPTED AND APPROVED this 16th day of July 2019

Larry Bird, Mayor

ATTEST _____
Melinda Sayre, City Clerk

Attachment 2
Exhibit A

Title 5 - BUSINESS LICENSES AND REGULATIONS

Chapter 5.04 - BUSINESS LICENSES GENERALLY

5.04.010 - Purpose and authority.

The purpose of this chapter is to establish regulations that will protect the general public health, safety and welfare under the authority granted to governments by the Constitution of the State of California.

5.04.020 - License required.

- A. Issuance of License Not Permission to Operate. The issuance of a license does not provide permission to operate unlawful business.
- B. License Issued in Error. Any license issued in error is invalid.
- C. License Fees Required. It is unlawful for any person to commence, transact, or operate any business within the City without first having procured a business license from the City and paying all fees as required by this title. It is unlawful for any person to operate with an expired, suspended, or revoked license at any time, or to violate or fail to comply with any provisions of this title.
- D. Use of License. The person named within the business license is hereby granted a license pursuant to the provisions of this chapter to engage in, carry on, or conduct within the City, the business, trade, calling, profession, exhibition, or occupation described by the issued license during the time period indicated on the license.
- E. Licenses issued pursuant to Chapter 5.20 or 5.48 of this code shall also be subject to all void, denial, or revocation procedures within those specified chapters.
- F. No license shall be issued until such time that all other entitlements, permits, and all other local, state, and federal requirements have been met. The City shall give notice of denial or revocation of a license application by first class mail, return receipt requested, to the applicant at the applicant's address listed in the application.
- G. Verification may be required as requested by City that the licensee is subject to or exempt from licensing by the State of California (except as provided for by this chapter or other regulatory agency). Issuance of a City business license shall not be deemed to waive any other applicable state, local, or federal licensing requirements.

5.04.030 - Exemptions.

A. All persons who apply for a business license pursuant to this title for the sole purpose of conducting, managing, or carrying on a charitable activity from which profit is neither directly nor indirectly derived are exempt from the business license fee. Verification of registration as a nonprofit entity may be required by the City.

B. Any public utility operating in the City that is required to make payments under a franchise agreement with the City is exempt from the business license fees.

5.04.040 – Application.

Every person desiring to obtain a business license shall submit a complete business license application to the City, together with all required fees and supporting documentation.

- A. An application for a license under this title shall require the following information:

1. Business start date.
2. Business name.
3. Business address;
4. Business mailing address.
5. Business telephone number.
6. Federal employer identification number (if business is a partnership or corporation), or owner's name and social security number (for all others).
7. Type of business activity.
8. Ownership Type. Sole proprietorship, partnership, or corporation. If sole proprietorship, owners full name shall be included.
9. A declaration under penalty of perjury that the foregoing is, to the best of applicant's knowledge and belief, true and correct, and that applicant has read the application and understands all the conditions stated therein.
10. Any other supplemental information requested by City.

- B. Information provided in the application will become a matter of public record and will be subject to disclosure, with the exception of Social Security or federal employer identification numbers.

5.04.050 - Contents of License Application.

The City shall issue to any person having met the requirements of this title a license that shall contain the following:

- A. The name of the person to whom the license is issued.
- B. The name and address of the business.
- C. The expiration date of the license.
- D. The type of business for which the license is issued.
- E. The name of the business.

5.04.060 - Investigation fee, license fee, renewal fee, and late fee.

A. The investigation fees, license fees, renewal fees, and late fees for this title shall be as adopted by city council resolution and contained within the adopted City Fee Schedule:

- B. Late Fees.
 1. Any business license not secured within thirty (30) days of notification by the City shall be assessed a late payment penalty as adopted within the City Fee Schedule.
 2. Any business license not secured within forty-five (45) days of notification by the City shall be assessed a second late payment penalty, as adopted within the City Fee Schedule.

5.04.070 –Lapse of License.

- A. Businesses Located Within City Limits. Should a license lapse during any time period after issuance, the licensee shall be responsible, before issuance of a renewal or new license, for payment of all late fees, fines, and any administrative or civil penalties.
- B. Businesses Located Outside City Limits That Conduct Business Intermittently for Any Period of Time. Should the license be issued to a business that is not located within the City and that conducts business within the City intermittently, and that license lapses, the licensee shall be subject to the following:

1. If less than one year has passed since the license expiration, the licensee shall be subject to all late fees and the renewal license fee in order to renew the license.
2. If more than one year has passed since the license expiration, and there is no evidence that the licensee has been operating within the City without a valid license, the licensee shall receive a new license and pay the new license fee, the license number shall not change.
3. If there is evidence that the licensee has operated within the City without a valid license at any time, all fees and any fines or penalties shall apply.

C. Conducting of any business whatsoever within the City requires a City business license.

5.04.080 - License fee debt to the City

The amount of any license fee imposed by this title and of any late penalty shall be deemed a debt to the City. Any person commencing or operating any business without having a license to do so shall be liable in an action by the City in any court of competent jurisdiction for the amount of the license fee imposed by this chapter with respect to such business.

5.04.090 - Errors in issuance of licenses and license fees.

- A. Any license issued in error shall be invalid. No license issued in error entitles any person to conduct a prohibited business at the location for which the business license was issued.
- B. Any error in the amount of any license fee may be corrected by the City at any time. Failure to submit any additional due amounts on any license may result in the revocation of the license.
- C. No license fee paid under provisions of this title shall be refundable unless it is determined by the City that the fee was collected in error.
- D. The business license issued pursuant to the provisions of this title constitutes a receipt for the license fee paid and is a requirement, not a permit, to transact or carry on any business activity within the City. Payment of fees or possession of a license shall not exempt the holder from conforming with all other codes and ordinances adopted by the City and any other applicable state or federal laws.

5.04.100 – License Not Transferable

No license issued to a business, owner, or location may be transferred to another business, owner, or location, except that a valid license holder operating within the City may move his/her place of business following the submission of a revised application showing the new address. A license issued for a new location is subject to the same review criteria as the original license, and may include additional zoning or operating requirements, including, but not limited to, a Certificate of Occupancy for the new location. Any license requiring a site investigation shall be subject to a site investigation fee. For businesses located outside of the City, but operating within the City, the operator shall notify the City of any change of mailing address in writing within 15 days of such change.

5.04.110 - License renewal.

All business licenses must be renewed annually, subject to renewal fees. Applicants for a renewal license shall update the information on the renewal license form if any of the information has changed.

5.04.120 - Posting of valid license.

All businesses shall display business licenses in the following manner:

- A. License holders conducting business at a fixed place of business in the City shall post the license in a conspicuous place on the business premises.
- B. License holders without a fixed place of business in the City shall keep the original license in his/her immediate possession while conducting business within the City.

- C. License holders with one or more vehicles operating in the City shall keep a copy of the original license in each vehicle.

5.04.130 - Two or more businesses; branch or franchise establishments.

- A. Any person conducting two or more businesses shall be required to provide licenses for each business. Separate fees shall be charged for each business at the regular fee rate.
- B. Any business conducted with separate branches or franchise locations shall be licensed as if each branch or franchise were a separate business. The fee shall be computed for each branch or franchise establishment as a separate and independent business. Warehouses and distributing plants used in conjunction with and incidental to a business shall not be considered a separate place of business.

5.04.140 –Revocation, Denial or Voiding of license.

- A. All businesses issued a license under the provisions of this title shall at all times be in compliance with all applicable laws of the City of Hesperia, the State of California, and the United States of America. Any business license may be revoked or denied by the City if it is determined that the license holder or applicant for a license:
 - 1. Violated any provision of any state or federal statute relating to the permitted activity; or
 - 2. Does not have all current and valid applicable local, state, and federal permits, or
 - 3. Within the last 36 months violated any provisions of Title 16 of the Hesperia Municipal Code related to illegal land use; or
 - 4. Committed any unlawful, false, fraudulent, deceptive, or dangerous act while conducting business that caused injury, or the licensee benefited from the unlawful act; or
 - 5. Conducts business in a manner that is detrimental to the peace, health, safety, and general welfare of the public; or
 - 6. Does not possess a valid driver's license issued by the state of California in the applicable class, if required for the operation of the business; or
 - 7. Has been convicted of more than two violations of any state laws pertaining to the operation of a motor vehicle in any calendar year, if the licensee operates a motor vehicle as a function of the licensed business;
 - 8. Employs a driver who does not have a valid taxicab driver's license if required.
 - 9. The failure to complete, file, and retain the records required by the Business & Professions Code related to pawnbrokers, and secondhand dealers.
 - 10. Committed or caused to be committed, any violation of, or failure to comply with, the mandatory conditions of the home occupation permit, if applicable;
- B. Licenses issued pursuant to Chapters 5.20. and 5.48 of this code shall be subject to this Section in addition to the revocation procedures within those specified chapters.
- C. No license shall be issued until such time that all other entitlements, permits, and all other local, state, and federal requirements have been met. The City shall give notice of denial or revocation of a license application by first class mail, return receipt requested, to the applicant at the applicant's address listed in the application.
- D. Any person denied a license, or whose license is revoked, may appeal the denial under the provisions specified in 5.04.150, below.
- E. The following businesses require a California Department of Justice clearance prior to the issuance or renewal of a business license. The City shall receive the results of the clearance.
 - 1. Massage facility owners who do not have CAMTC license

2. Ice cream vendors
 3. Taxi cab, shuttle, and limo operators
 4. Commercial cannabis owners, applicants, and shareholders
 5. Solicitors
 6. Peddlers
 7. Adult business operators
- F. In addition to Section A above, any license requiring a U.S. Department of Justice clearance is revoked effective upon notification to the licensee should the clearance reveal any of the following:
1. The applicant has been convicted of, or entered a plea of guilty or no contest to, a felony or any crime involving theft, embezzlement, or moral turpitude during the preceding 36 months, or is currently on probation, parole, or subject to incarceration as a result of such conviction; if the licensee is not an individual, the above information shall apply to any officer, director, manager, or member of the business, or any other person exercising control or management of the business.
 2. The person is required to register pursuant to Section 290 of the California Penal Code; and the license type applied for does not allow for any person required to register to receive a license.
 3. The person has been convicted of a crime involving soliciting for prostitution or narcotics, unless a period of not less than three years has elapsed since the date of conviction or the date of release from confinement for such offense, whichever is later;
 4. The person has a conviction or guilty/no contest plea of driving a motor vehicle recklessly or under the influence of a controlled substance or alcohol within the preceding three years, if a valid driver's license is required;
 5. The person has a conviction or guilty/no contest plea of more than two violations of any state law pertaining to the operation of a motor vehicle in any calendar year, if a valid driver's license is required;
 6. Conviction of any violation of state law pertaining to motor vehicles that led to property damage, great bodily harm, or injury, if a valid driver's license is required;
 7. The person has a conviction or a guilty/no contest plea of a felony charge within the last seven years which the City believes could be detrimental to the health, safety or welfare of the public, based on the type of license being applied for. In the event of a denial of a license the City will provide the applicant with a written explanation of the denial, sent by first class mail.
- G. Any application that is found to contain inaccurate, false, misleading, or fraudulent statements, or that omits material facts regarding the operation of the business, or the application was not accompanied by all required supporting documentation, shall void the license.
- H. Should a license become void, the City shall, within 10 business days, notify the licensee of such action in writing, first class postage pre-paid at the business mailing address listed on the application.
1. Any applicant who receives notification of a voided license may appeal such action following the appeal process in Section 5.04.150.
- I. Any person whose license is revoked may not reapply to operate any business within the City for one year from the date of revocation. Any person whose license is revoked based on failure to pass a background check pursuant to subsection B, above, may not reapply to operate any business within the City for three years from the date of revocation.

5.04.150 – Appeals

Should any license be revoked, denied, or voided by the City, the licensee shall have the right to appeal the decision. The procedure to appeal shall be as follows:

- A. Prior to any revocation, denial or voiding of license, the City shall, by first class mail postage prepaid to the address given on the business license application as the mailing address, give the license holder ten days' notice of the City's intent to revoke such license and shall state the reasons for such revocation.
- B. Should the license holder desire to appear before the city council and appeal the revocation, the license holder shall submit the following, in writing, to the City Clerk within 15 days of the date on the notice of revocation
 1. The reason for the appeal, detailing why the license holder believes they are not in violation of law, or were not in violation of law at the time of notice by City of violation.
 2. The name of the business.
 3. The business license number.
 4. The name of the business owner(s).
 5. Contact information including mailing address and phone number.
 6. The non-refundable appeal fee as adopted by resolution of the city council.
- C. Upon receipt of a timely written appeal, the item shall be prepared for the city council, to be heard at a duly noticed public hearing not more than 60 days from the date of the appeal being filed.
- D. The City shall notify the license holder of the date, time, and location of the hearing, within 10 days of the hearing date.
- E. The filing of an appeal stays the action by the City until the city council makes a final decision.
- F. The license holder shall have the opportunity to present evidence to the city council at the public hearing regarding why the license should not be revoked. The council shall consider all relevant evidence. If the council finds good and sufficient cause for revocation, denial or voiding, the license shall be revoked. No refund of any license shall be made following revocation, denial or voiding. Revocation, denial or voiding of a license shall be effective upon action of the city council as herein described. The council's decision shall be in writing and shall articulate the council's findings and the factual basis thereof.
- G. Within 10 days of the hearing, the City shall, by first class, postage prepaid to the mailing address given on the business license application, notify the license holder of the council's decision. The decision shall make reference to Sections 1094.5 and 1094.6 of the Code of Civil Procedure.

5.04.160 - Penalty for Violation

- A. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued, and shall be subject to all remedies and enforcement measures authorized by the Hesperia Municipal Code, Title 1.
- B. To the fullest extent allowed under state law, any person, whether as principal, employee, agent, partner, director, officer, stockholder, or trustee or otherwise, violating or causing the violation of any of the provisions of this chapter shall be guilty of a misdemeanor, and any conviction thereof shall be punishable of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.
- C. The violation of any of the provisions of this title is deemed a public nuisance and may be abated by the City through civil process by means of restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisance. Violations of this title may be also be punishable in accordance with the provisions of Title 1 of this Code. Remedies are not exclusive of each other.

Chapter 5.06 - RESERVED

Chapter 5.08 - BINGO

5.08.020 - License required.

No person other than an eligible organization may conduct bingo games. Eligible organizations shall not conduct bingo games without first having secured a license to do so from the City.

5.08.030 - License application.

- A. Applicants for a bingo license shall file a signed business license application with the City including all information required by Section 5.04.040. In addition to the information required by Section 5.04.040 the following information shall be provided:
 - 1. The dates, hours, and location where the bingo games will be operated. Each location requires a separate license.
 - 2. The name or names of any person having the management or supervision of the games.
- B. The application shall be accompanied by a copy of the tax-exempt status determination issued by the State Franchise Tax Board to the applicant organization showing the applicant organization is exempt under the provisions of Sections 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g), and 23701(l) of the California Revenue and Taxation Code.
- C. The applicant shall submit with the application a declaration under penalty of perjury of a duly authorized officer or representative of the organization, which states that the applicant organization owns or leases, or has an agreement for use, the property on which the bingo games are to be held and that such property is used by the organization for an office or for purposes for which the organization is organized. The declaration shall also indicate that the proceeds of such games will only be used for charitable purposes, except as provided in this chapter.

5.08.040 - Investigation.

After receiving the application, the City shall refer the application to all relevant departments for investigation. The departments shall make reports of their findings, together with a recommendation as to whether or not the applicant should be granted a license.

5.08.050 - Operation of bingo games.

A bingo game shall be conducted only on property owned, leased, or has an agreement for use, by the eligible organization and used by it for an office or for performance of the purposes for which the organization is organized. The property owned or leased by the organization need not be used or leased exclusively by such organization. The bingo game shall be operated and staffed only by members of the licensed organization, who shall not receive a profit, wage, or salary from any bingo game. Only the organization licensed to conduct a bingo game shall operate the game or participate in the promotion, supervision, or any other phase of the game. Bingo games shall not be held on more than 10 days in each calendar month nor for more than 5 hours in any 24-hour period. No bingo shall be permitted between the hours of 2:00 a.m. and 6:00 a.m.

5.08.060 - Financial interest.

No person except the eligible organization licensed to conduct a bingo game shall hold a financial interest in the game.

5.08.070 - Profits.

- A. Nonprofit Organizations Under Revenue and Taxation Code Section 23701(d). All profits derived from a bingo game by organizations exempt from payment of the bank and corporation tax by Section 23701(d) of the California Revenue and Taxation Code shall be kept in a special fund or account and shall not be commingled with any other fund or account. Profits shall be used only for charitable purposes.

B. Other Licensed Organizations. With respect to other licensed organizations authorized to conduct bingo games, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Proceeds shall be used only for charitable purposes, except as follows:

1. Such proceeds may be used for prizes;
2. A portion of such proceeds, not to exceed 20% of the proceeds after the deduction for prizes, or two thousand dollars (\$2,000.00) per month, whichever is less, may be used for rental of property, overhead, and administrative expenses.

C. Records. Records required by this chapter shall be retained by the licensee for a period of three years. Licensee's records shall be available for inspection by the chief of police or City officials upon demand.

5.08.080 - Participation limited to those present.

No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place where the bingo game is being conducted.

5.08.090 - Bingo game open to public.

All bingo games shall be open to the public, not just to the members of the licensed organization.

5.08.100 - Value of prizes.

The total value of prizes awarded during the conduct of any bingo game shall not exceed two hundred fifty dollars (\$250.00) in cash or kind, or both, for each separate game.

5.08.110 - Minors prohibited from participation.

No minor shall be allowed to participate in any bingo game.

5.08.120 - Display of license.

Every licensee shall display the license issued by the City in a conspicuous place on the premises where the bingo games are conducted.

5.08.130 - License not transferable.

Each license issued hereunder shall be issued to an eligible organization and for a specific location and is not transferable from one organization or location to another.

Chapter 5.16 - JUNK DEALERS, PAWNBROKERS, SECONDHAND DEALERS AND SALVAGE COLLECTORS

5.16.010 –Secondhand Dealer and Pawnbroker Permit Required.

- A. Each applicant for a junk dealer, second hand dealer, or salvage collector business license, along with a completed business license application and required fees, shall furnish to the City an unexpired, valid copy of their state-issued Secondhand Dealers Permit. This permit shall be furnished to the City upon original application for a business license, and at each renewal thereafter. Salvage collectors which sell only items eligible for California Redemption Value (CRV) items shall be exempt from the requirement to furnish a Secondhand Dealers Permit, but must still obtain a business license.
- B. Each applicant for a pawnbroker license, along with a completed business license application and required fees, shall furnish to the City an unexpired, valid copy of their state-issued Pawn Brokers Permit. This Permit shall be furnished to the City upon original application for a business license, and at each renewal thereafter.

5.16.020 - Inspection.

Every junk dealer, pawnbroker, secondhand dealer, and salvage collector (except CRV only) shall hold and keep exposed any property acquired by them in the course of their business for inspection on their business premises during business hours.

5.16.030 - Property.

Junk dealers shall hold all personal property received except automobile bodies until the expiration of three days after the submission of the daily report required by this chapter.

5.16.040 - Daily reports and purchase forms.

- A. Junk dealers, pawnbrokers, and secondhand dealers issued a business license under this chapter shall report to the California Pawn and Secondhand Dealer System (CAPPS), in a manner pursuant to Business and Professions Code Section 21628, as may be amended from time to time

Chapter 5.20 - Massage Facilities and Massage Therapists.

5.20.010 Applicability; Exemptions.

- A. No person shall provide massage in the City of Hesperia unless he or she holds a valid massage therapist license issued by the California Massage Therapy Council pursuant to Section 4600 et seq. of the Business and Professions Code. Persons who are independently contracted by a massage facility to provide massage shall also obtain a business license.
- B. No person or entity shall operate a massage facility without first obtaining a massage facility business license hereunder.
- C. This chapter shall not apply to the following classes of individuals, and no license, other than a business license, shall be required of such persons while engaged in the performance of the duties of their respective professions:
 - 1. Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the state of California, and persons working at the place of, business of, or under the supervision of, a licensed physician, surgeon, chiropractor, osteopath or physical therapist.
 - 2. Acupuncturists or acupressurists, who hold a valid license to practice their profession in the state of California.
 - 3. Trainers of scholastic, amateur, and semi-professional or professional athletes or teams, while providing training services for the school or team.

5.20.020 License Requirements – Massage Facility

- A. Every person operating a facility where massage services for compensation are provided shall obtain and maintain a valid City business license required by this chapter.
- B. An owner or operator of a massage facility shall notify the City of any rename, management change, or transfer of more than 5% of the business to another person.
- C. The City shall promptly reject as incomplete any application that does not meet all the requirements of this chapter, and shall notify the applicant in writing, by first class mail, postage prepaid, to the address supplied to the City by the applicant, of the deficiencies in the application.
- D. No application for renewal of a massage facility license shall be accepted earlier than 90 days prior to the expiration of an existing license.
- E. The owner and/or operator of a massage facility shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. This provision also applies to owners and operators who lease or sublease space to independent contractors or to separate massage businesses.
- F. All massage facility licenses are nontransferable, both as to location and as to the person or entity holding a license.

5.20.030– Massage Facility License Application

- A. Any person desiring to obtain a permit to operate a massage facility shall file a complete application for a massage facility license with all required documentation under penalty of perjury.
- B. All applications for a massage facility license shall include:

1. A nonrefundable fee, as adopted in the City Fee Schedule.
2. All documents, including a site plan and floor plan, demonstrating compliance with Section 5.20.070, massage facilities operational requirements.
3. The following information:
 - a. The full name, any current or past aliases, for each individual, partner, corporate officer, director, or stockholder of applicant;
 - b. A copy of the unexpired driver's license or state issued identification for each individual, partner, corporate officer, director, or stockholder of applicant.
 - c. A valid LiveScan clearance issued by the Department of Justice (DOJ) prepared within the last 30 days for individual, partner, corporate officer, director, or stockholder of applicant.
 1. A massage facility where the owner is the only person employed by that business and certified by the CAMTC is not required to undergo criminal background checks. A massage practitioner or massage therapist shall maintain on the premises at all times evidence of their certification for review by local municipal officials.
 - d. The street address where the licensed activities will be conducted.
 - e. Copies of CAMTC certifications for all employees or independent contractors who will be operating at the location, including if they are operating as separate business entities.

5.20.040- Massage Facility or Practitioner License Revocation

- A. The City shall revoke a license or permit issued to a massage facility or a massage practitioner if any of the following occur:
 1. Violations of California Business and Professions Code Sections 4600 thru 4620, or violations of the provisions of this chapter, occur on the business premises. Violations shall be demonstrated by a preponderance of the evidence.
 2. The massage facility applicant or permit holder has provided materially false information, including but not limited to any inaccurate statement, or misrepresentation, or omission, of a material fact made in the application or in any document or statement submitted in support thereof.
 3. The applicant or permit holder has not met the requirements of this chapter and applicable laws.
 4. The applicant or permit holder employs massage technicians who do not hold a valid certification from the CAMTC.
 5. The applicant or permit holder has, within the 10 years immediately preceding the date of the application, been convicted of any of the offenses set forth in this chapter or has, within the same time frame, been convicted of any offense in another state which, if committed, or attempted in this state, would have been punishable as one or more of the offenses enumerated in this Title.
 6. The applicant or permit holder is required to register under Section 290 of the Penal Code, or the equivalent statute under federal law or the law of another state,
 7. The massage facility license or similar license or permit held by the applicant, permit holder, or any massage therapist who will work at the proposed business or location has been revoked or suspended for cause within the 5 years preceding the application,
 8. The facilities and operations of the massage facility are not maintained in compliance with the provisions of this chapter at all times;
 9. The license was issued in error.
 10. An applicant has, within the preceding five years, been convicted of, or is under indictment or is currently awaiting trial for a crime involving or constituting any violation of the following (including lesser offenses, and equivalent offenses under federal law or the laws of other states) :
 1. Prostitution or solicitation of prostitution, (Penal Code 653.22)

2. Pandering or pimping, (Penal Code 266)
 3. Obscenity as defined under California law,
 4. Sale, distribution or display of harmful material to minors, (Penal Code 313.1)
 5. Sexual assault, (Penal Code 243.4)
 6. Running a house of prostitution;(Penal Code 315)
 7. Any offense that requires registration as a Sex Offender (Penal Code 290)
 8. Child Pornography (Penal Code 311.11)
- B. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.
- C. Any location occupied by a massage facility, which has had its massage facility license revoked, shall be ineligible for a massage facility to occupy the location for a period of no less than three years.
- D. Any applicant whose massage facility license has been revoked shall be ineligible to apply for a facility license for a period of no less than three years.

Section 5.20.050 Distance Limitation Requirements

No massage facility may be located within 3,000 feet of another massage establishment or within 2,000 feet of an elementary, secondary, or high school.

5.20.060 - Investigation by City.

- A. Upon receipt of a complete application, the City shall refer the application to all appropriate City departments and County agencies to determine if all applicable requirements are met. The departments shall review the application and the structure shall be inspected. The departments may request additional information reasonably related to the licensing requirements of this chapter. The departments shall determine whether the massage facility and massage therapists comply with the applicable laws, including appropriate zoning, land use district designations, and CAMTC certification.
- B. If the City, following investigation of the applicant and facility, determines that the applicant does not fulfill the requirements set forth in this chapter, the City shall deny the application in writing. The decision shall be delivered by certified U.S. mail with return receipt. The City's decision shall be effective irrespective of delivery or acceptance by the applicant. Within 60 days following the denial of the application, if the applicant provides evidence to the City that the applicant or facility can be brought into compliance, the City shall consider the evidence presented and render a decision as to whether the facility or applicant complies and may continue the licensing process.
- C. Any application may be denied for noncompliance with any of the requirements of this chapter, including the grounds upon which a license can be revoked. Following the denial of a massage facility license, no application for a massage facility license may be filed by the same applicant, at the same or substantially same location, for a period of no less than three years following the date of the denial. The applicant may appeal the denial, as set forth in Section 5.04.150.

5.20.070 - Massage facilities operational requirements.

All massage facilities must comply with the operational provisions of this section. Noncompliance with these provisions may result in suspension or revocation of an existing massage facility license, or the denial of a new or renewed license.

- A. A readable sign shall be posted at the main entrance identifying the establishment as a massage facility; provided, however, that all such signs shall otherwise comply with the sign requirements of the Municipal Code.
- B. Minimum lighting shall be provided in accordance with the California Building Code. In addition, at least one unobstructed artificial light of not less than 450 lumens shall be provided and used at all times in each enclosed room or booth while massage services are being rendered.
- C. Minimum ventilation shall be provided in accordance with the California Building Code.
- D. Instruments used for massage shall be disinfected prior to each use by a method approved by the San Bernardino County Department of Environmental Health Services. Where such instruments for massage are employed, adequate quantities of supplies for disinfection shall be available during all hours of operation.
- E. Hot and cold running water shall be provided at all times.
- F. Closed cabinets shall be utilized for the storage of clean towels and linen. After use, towels and linen shall be removed from the room or booth and stored in a clean container until laundered.
- G. Dressing and toilet facilities shall be provided for patrons. If male and female patrons are to be treated simultaneously, then separate dressing and toilet facilities shall be provided.
- H. All walls, ceilings, floors, steam, and vapor rooms, and all other physical facilities for the massage facility shall be kept in good repair, maintained in a clean and sanitary condition.
- I. Clean and sanitary towels and linens shall be provided for patrons receiving massage services. No common use of towels or linens shall be permitted.
- J. Standard or portable massage tables and chairs with durable, washable plastic or other waterproof material as covering shall be used for massage. Foam pads more than four inches thick or with a width of more than four feet may not be used. Beds, mattresses, and water beds may not be used in the administration of a massage.
- K. The premises shall not operate as a school of massage, or use the same facilities of a school of massage.
- L. A valid and current massage facility license shall be posted in a conspicuous place on the premises.
- M. No massage facility shall place, publish, or distribute any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers or clients that any service is available other than massage services.
- N. No massage facility shall be open for business without at least one massage technician, massage practitioner, or massage therapist on the premises in possession of a valid, current CAMTC license.

5.20.080 - Hours of operation.

No massage facility shall be open between the hours of 10:00 p.m. and 7:00 a.m. Massage facilities shall not sell food or beverages, or serve food or beverages, to patrons on the premises of the massage facility; except from licensed vending machines.

5.20.090 License Requirements for Massage Therapists

- A. Every person performing massage services for compensation shall obtain and maintain a valid state massage certification from CAMTC.

- B. A massage practitioner or massage therapist certified by the CAMTC is not subject to the criminal background required by this chapter.
- C. A massage therapist shall file a copy of the certificate by the CAMTC with the City.
- D. A massage therapist shall maintain their certification while performing massage in the City.

5.20.100 - Prohibited conduct.

- A. No massage therapist or massage facility owner, manager, or employee shall engage in unprofessional conduct, as such is defined by Section 4609(a)(1) of the Business & Professions Code, or any of its successor provisions.
- B. No massage therapist or massage facility owner, manager, or employee may expose his or her genitals, buttocks, or in the case of a female, her breast(s), to any individual or patron, or in the course of administering a massage.
- C. No person shall enter, be or remain in any part of a massage facility while in the possession of, consuming, under the influence of, or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, or therapist shall not permit any such person to enter or remain upon such premises.
- D. No audio or video recording may be made of the performance of a massage.

5.20.110 - Abatement.

Any massage facility operated, conducted or maintained contrary to the provisions of this chapter is deemed a public nuisance and the City attorney or City prosecutor may, in addition to, or in lieu of prosecuting a criminal action, commence an action for the abatement and enjoinder thereof in any court of competent jurisdiction.

5.20.120 - Inspection and enforcement.

Officers of the police department, the San Bernardino County Environmental Health Department, the building and safety division, the planning division, code enforcement, and the fire department shall have the right to enter any massage facility during regular business hours to make reasonable inspection to ensure compliance with the provisions of this chapter.

Chapter 5.22 - BODY ART FACILITIES

Sections:

5.22.010 -License Required

Any person desiring to operate a body art facility must obtain a body art facility business license prior to operating.

5.22.020 –Application.

- A. Each applicant, along with a completed business license application and required fees, shall furnish to the City an unexpired, valid copy of a Health Permit for the facility, and a copy of the valid Body Art Practitioner Registration for each body art practitioner, issued by the San Bernardino County Office of Environmental Health. This permit(s) shall be furnished to the City upon original application for a business license, and at each renewal thereafter.
- B. No application for renewal of a license shall be accepted earlier than ninety (90) days prior to expiration of the license.
- C. The City shall promptly reject as incomplete any application which does not meet all the requirements of this chapter, and shall notify the applicant in writing, by first class mail, postage prepaid, to the address supplied to the City by the applicant, of the deficiencies in the application.
- D. Upon receipt of a complete application, all supplemental required information, and payment of all required fees, the City shall refer the application to all appropriate City departments and County agencies. The departments shall review the application and the structure shall be inspected. The departments may request any further information, which is reasonably related to the licensing requirements of this chapter. The departments shall determine whether the premises and practitioners comply with all applicable laws, including appropriate zoning and land use designations.
- E. If the City determines that the applicant does not fulfill the requirements of this chapter, the City shall deny the application in writing, which shall be delivered to the applicant by first class mail, postage prepaid..

5.22.030 - Body art facilities operational requirements.

All body art facilities must comply with the operational provisions of this section. Noncompliance with these provisions may result in suspension or revocation of an existing body art facility license, or the denial of a new or renewed license:

- A. Floors, walls, and ceilings must be smooth, free of open holes, and washable.
- B. Procedure areas in a body art facility must be:
 1. Equipped with a light source that provides adequate light at the procedure area.
 2. Separated by a wall or ceiling-to-floor partition from nail and hair activities.
 3. Equipped with a sink with hot and cold running water, containerized liquid soap, and single-use paper towels that are dispensed from a wall-mounted, touchless dispenser that are accessible to the practitioner.
- C. Decontamination and sanitation areas within a body art facility must be
 1. Separated from procedure areas by a space of at least 5 feet or by a cleanable barrier.
 2. Equipped with a sink with hot and cold running water, liquid soap in a wall mounted dispenser, and single-use paper towels dispensed from a wall-mounted, touchless dispenser that are readily accessible to the practitioner.

- D. Each procedure area and decontamination and sterilization area shall have lined waste containers.
- E. Each procedure area and decontamination and sterilization area shall have a container for the disposal of sharps waste that meets the following requirements:
 - 1. The sharps waste container shall be portable, if portability is necessary to ensure that the sharps waste container is within arm's reach of the practitioner.
 - 2. The sharps waste container shall be labeled with the words "SHARPS WASTE" or with the international biohazard symbol and the word "BIOHAZARD".
 - 3. All sharps produced during the process of body art shall be disposed by either of the following methods:
 - a. Removal and disposal by a company, or removal and transportation through a mail-back system approved by the San Bernardino County Department of Environmental Health pursuant to Section 118025 of the Health and Safety Code.
 - b. As solid waste, after being disinfected by a method approved by the San Bernardino County Department of Environmental Health pursuant to Section 118215(a)(3)(A) of the Health and Safety Code.
- F. The health permit shall be posted in a conspicuous place at the body art facility.
- G. Certificates of registration for all practitioners performing body art in that facility shall be prominently displayed either near the health permit or at the individual practitioner's procedure area if each practitioner has a designated area.
- H. No animals, except Service Animals as defined by Chapter 5.68 of this Code, shall be allowed in the procedure area or the decontamination and sterilization area.

5.22.040 - Temporary body art facilities.

A practitioner registered in the City may practice in a temporary demonstration booth for no more than seven days in a 90-day period. The demonstration booth shall meet all of the following requirements:

- A. Provide a valid and current health permit issued by the San Bernardino County Department of Environmental Health, and a business license from the City.
- B. Provide body art services only inside a building that has hand washing facilities with hot and cold running water, soap, and single-use paper towels to which practitioners have direct access.
- C. Constructed with a partition of at least three feet in height separating the procedure area from the public.
- D. Used exclusively for performing body art.
- E. Equipped with adequate light available at the level where the practitioner is performing body art.
- F. For temporary body art events consisting of one demonstration booth, equipped with hand washing equipment that, at a minimum, consists of containerized liquid soap, single-use paper towels, a five-gallon or larger container of potable water accessible via spigot, and a wastewater collection and holding tank of corresponding size. Potable water shall be refilled and the holding tank evacuated at least every four procedures or every four hours, whichever occurs first.
- G. For temporary body art events consisting of two or more demonstration booths, practitioner hand wash areas shall be provided throughout the event. The hand wash areas shall be located within a booth with partitions at least three feet in height separating the hand wash area from the public. The area shall be equipped with a commercial, self-contained hand wash station that consists of containerized liquid soap, single-use paper towels, a storage capacity of five gallons or more of potable water, and a trash receptacle. The sponsor shall provide one hand wash area for every two demonstration booths at the event

- H. Animals, except Service Animals as defined by Chapter 5.68 of this Code, shall not be allowed within the confines of the demonstration booth.
- I. The name, telephone number, and directions to an emergency room near the temporary body art event shall be posted in a conspicuous location.
- J. Each practitioner working in a booth at a temporary body art event shall display his or her Practitioner Registration, issued by the San Bernardino County Department of Environmental Health, or keep the certificate in a folder that is available for inspection upon request of the enforcement officer or a client.

5.22.050 - License procedures.

- A. Upon payment of all fees and successful verifications of the qualifications of the applicant, a body art facility business license shall be issued to the applicant by the City. A body art facility business license shall be denied if the applicant has not met the requirements of this chapter and applicable laws.
- B. Any person denied a license pursuant to this chapter may appeal the denial in writing pursuant to the provisions of Section 5.04.150.
- C. All body art facility business licenses issued under this chapter are nontransferable, both as to location and as to the person holding the license.

5.20.070 - Prohibited conduct.

Body art work done in specified anatomical areas defined in Section 16.20.320(C) must be done in an enclosed area out of plain view of the other patrons in the facility.

5.22.090 - Inspection

Officers of the police department, the San Bernardino County Environmental Health Department, the building and safety division, the planning division, code enforcement, and the fire department shall have the right to enter any massage facility during regular business hours to make reasonable inspection to ensure compliance with the provisions of this chapter.

A body art practitioner whose certificate of registration has been suspended or revoked shall cease doing business until the certificate has been reinstated or a new one has been issued. Suspension of the registration of one practitioner in a body art facility does not affect the status of other practitioners in the facility unless the violation or violations are for conditions or equipment that affects the ability of all the practitioners in the facility to comply with the health and safety provisions of this chapter.

Chapter 5.24 - PEDDLING, SOLICITING AND HAWKING

Sections:

5.24.010 – License Required

Any person desiring to peddle goods, wares, or services, or solicit as defined by the Hesperia Municipal Code Section 1.04.050 shall obtain and maintain a valid business license for peddling or soliciting. This shall include vending of ice cream and mobile food truck operations as defined by this code.

5.24.020 – License Fee Exemptions.

The following persons are exempt from license fees.

- A. Veterans. Any person who was honorably discharged or honorably relieved from the armed services of the United States unless the merchandise includes alcoholic beverages.
- B. Religious, Scientific or Charitable Organizations. Organizations qualifying under this exemption must furnish proof of qualification as a 501(c)3 organization.

5.24.030 –Application .

In addition to the application requirements specified in Section 5.04.040, the following information shall be required:

- A. The supplier of the goods to be sold;
- B. A copy of the state sales tax permit (California Revenue and Taxation Code § 6066) for the applicant's activities attached to the application;
- C. A description of every type of merchandise or service that the applicant proposes to peddle or solicit;
- D. The location where the applicant proposes to peddle or solicit and the dates and time of the same;
- E. A copy of the permit for any food products that are regulated.
- F. A copy of any applicable state or county issued permits for food vending vehicles.

5.24.040 - License limitations.

The following shall be required of all applicants:

- A. A correct and complete application form;
- B. Payment of all required fees;
- C. The supplier of the personal property to be sold has been sufficiently identified as required by this chapter and there is no reasonable doubt as to the title or ownership of the personal property;
- E. The time and place of the proposed licensed activities is in accordance with the regulations set forth in this chapter.
- F. A valid LiveScan clearance issued by the Department of Justice (DOJ) prepared within the last 30 days.

5.24.050 - Hours of operation.

A license issued under this chapter shall authorize the licensee to peddle or solicit during the dates specified on the license and only during daylight hours.

Mobile food trucks shall not be prohibited from operating during hours outside daylight.

5.24.060 - Hawking prohibited.

Hawking, as defined in Section 1.04.050, is prohibited.

5.26 MOBILE FOOD VENDING, ICE CREAM TRUCKS, SIDEWALK VENDING

5.26.010 – License Required

Any person desiring to peddle goods, wares, or services as defined by the Hesperia Municipal Code Section 1.04.050 shall obtain and maintain a valid business license.

Any person desiring to operate a mobile food vending or sidewalk vending business shall also secure a permit for mobile food vending or sidewalk vending.

5.26.020 - Mobile food and ice cream vending vehicle operations.

Special requirements for mobile food and ice cream vending vehicle operations shall apply as follows:

- A. Equipment Requirements for Mobile Food Vending and Ice Cream Vending Operations. In addition to other equipment required by law, every mobile food vending vehicle and ice cream vending vehicle shall be equipped with:
 1. Signal lamps mounted at the same level and as high and as widely spaced laterally as practicable. These lamps shall be five to seven inches in diameter and shall display two alternately flashing amber lights visible at 500 feet to the front and rear in normal sunlight upon a straight level street. The light output of each indicator shall not be less than 5 candle power nor more than 15 candle power at any time;
 2. A convex mirror mounted on the front so the driver in his normal seating position can see the area in front of the truck obscured by the hood;
 3. An audible warning device to indicate vehicle backing automatically activated and audible at a distance of 100 feet to the direct rear of the vehicle.
- B. Use of Special Lights on Mobile Food Vending and Ice Cream Vending Vehicles.
 1. The driver of a mobile food vending or ice cream vending vehicle stopped on the street for the purpose of vending shall actuate the special amber flashing lights required by subsection (A)(1) of this section;
 2. These lights shall not be used when the truck is in motion nor at any time the truck is stopped for a purpose other than vending.
- C. Every operator of a mobile food vending vehicle or ice cream vending vehicle used for the purpose of retail sales of frozen dairy products shall provide, upon application:
 1. Photos of the sides, front, and rear of the truck
 2. Copies of applicable permits issued by the Department of Environmental Health.
- D. Renewal of License.

Each annual renewal of the license shall require that the operator of the mobile food vending vehicle provide:

 1. Copies of applicable permits issued by the San Bernardino County Department of Environmental Health.
- E. Vending Restrictions.
 1. A person shall vend only when the vehicle is lawfully parked or stopped.
 2. A person shall vend only from the side of the vehicle away from moving traffic and as near as possible to the curb or edge of the right-of-way.
 3. A person shall not vend to a person standing in the roadway.
 4. A person shall not stop on the left side of a one-way street to vend.
 5. A person shall not vend on a street unless there is a clear view of the mobile food vending vehicle for a distance of at least 200 feet in each direction.
- F. Backing Restricted. The vendor shall not back up the vehicle on a public street to make or attempt a sale.
- G. Unauthorized Riders Prohibited.
 1. The driver shall not permit any unauthorized person to ride in or on the vehicle.
 2. A person shall not ride in or on a mobile food vending machine unless employed by its owner or unless authorized in writing to do so by the owner or by receiving permission through the application process of this title.

3. All operators licensed to operate a mobile food truck or ice cream vending vehicle shall be at least 18 years of age

5.26.030- Sidewalk Vending.

Sidewalk vending includes selling or distributing food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk or other public pedestrian path or within a public park. A sidewalk vendor can be roaming or stationary. The following sidewalk vendors are not subject to the standards in this Subsection:

- A. A sidewalk vending pushcart owned or operated by any public agency;
- B. Persons delivering goods, wares, merchandise, fruits, vegetables, or foodstuffs upon order of, or by agreement with, a customer from a store or other fixed place of business or distribution;
- C. Vendors participating in farmers markets or other special events as allowed by the City;
- D. An event at a school facility or an assembly use facility, if the vendor is operating in partnership with the organization conducting the event and is located on the site of the event (i.e., not in the public right-of-way);
- E. Vendors that only sell, distribute, display, solicit, or offer sale of items that are inherently communicative and have nominal utility apart from its communication (e.g., newspapers, leaflets, pamphlets, buttons, etc.).

5.26.040 - Vending permit required. No sidewalk vendor shall operate without a sidewalk vending permit and a business license.

5.26.050 – Application. The application for a sidewalk vending permit shall be signed by the applicant and shall include at least all of the following information:

- A. The name and current mailing address of the applicant;
- B. A description of the type of food, beverage, or merchandise to be sold, as well as hours of operation, a description of the cart, and any additional information that will explain the proposed use;
- C. A description and photograph (including colors and any signs) of any stand to be used in the operation of the business;
- D. A certification by the sidewalk vendor that to his or her knowledge and belief, the information contained on the application is true;
- E. A copy of the vendors unexpired Sellers Permit.
- F. If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal;
- G. If operating in State right-of-way, the vendor shall provide evidence of the State's authorization;
- H. Proof of insurance policy, issued by an insurance company licensed to do business in the State, protecting the permittee and the City from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the permit. Such insurance shall name as additional insured the City and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the City.

5.26.060 – Vending locations prohibited.

Stationary sidewalk vending is prohibited in all residential zones of the City of Hesperia.

5.26.070 – License Issuance Not later than 60 days after the filing of a completed application for a vendor's permit, the applicant shall be notified of the decision on the issuance or denial of the permit.

- A. Fees shall be determined by council resolution and shall be paid prior to issuance of a permit.
- B. Locations for vending shall be approved by the Director.

1. In addition to any locational restrictions found in Section 5.26.060 vending locations may be further limited by the Director only if the limitation is directly related to objective health, safety or welfare concerns, including but not limited to:
 - a. the ability of the site to safely accommodate the use;
 - b. pedestrian safety.
2. Vending locations may change only upon written request by an applicant and approval by the Director.

5.26.080 - Term and Renewal. All permits are valid for one year unless revoked or suspended prior to expiration. An application to renew a permit shall be made not later than 90 days before the expiration of the current permit. A valid business license shall be applied for or renewed concurrently with the vendors permit each year.

5.26.090 - Vending cart requirements. No vending cart shall exceed four feet in width, eight feet in height, or eight feet in length.

5.26.100 - Safety requirements. All sidewalk vendors that prepare or sell food shall comply with the following requirements:

- A. All equipment installed in any part of the cart shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
- B. All utensils shall be securely stored in order to prevent their being thrown from the cart or vehicle in the event of a sudden stop, collision or overturn. A safety knife holder shall be provided to avoid loose storage of knives.
- C. Compressors, auxiliary engines, generators, batteries, battery chargers, gas-fueled water heaters, and similar equipment shall be installed so as to be hidden from view to the extent possible and be easily accessible.
- D. All vendors must possess a valid permit issued by the San Bernardino County Health Department, if the sidewalk vendor intends to sell food or any other item requiring a County Health Department permit.

5.26.110 - Display of permit. All permits shall be displayed in a visible and conspicuous location at all times during the operation of the vending business.

5.26.120 –Stationary Vending Operational Standards. It shall be prohibited for any sidewalk vendor to operate under any of the following conditions:

- A. Vend between 2:00 a.m. and 6:00 a.m. unless in conjunction with a special event;
- B. Leave any stand unattended;
- C. Store, park, or leave any stand overnight on any public street, sidewalk, or park;
- D. Sell food or beverages for immediate consumption unless there is a litter receptacle available for patrons' use;
- E. Leave any location without first disposing all trash or refuse remaining from sales conducted. Trash and refuse generated by the vending cart operations shall not be disposed of in public trash receptacles;
- F. Discharge solids or liquids to the street or a storm drain;
- G. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on, or under the stand;
- H. Set up, maintain, or permit the use of any additional table, crate, carton, rack, or any other device to increase the selling or display capacity of his/her stand where such terms have not been described by his or her application;
- I. Solicit or conduct business with persons in motor vehicles;
- J. Sell anything other than that which he or she is permitted to vend;
- K. Sound or permit the sounding of any device that produces a loud and raucous noise or any noise in violation of the City's noise ordinance, or use or operate any loud speaker,

public address system, radio, sound amplifier, or similar device to attract the attention of the public;

- L. Vend without the insurance coverage previously specified;
- M. Operate within 50 feet of a fire hydrant or 25 feet of a transit stop;
- N. Vend from the exposed street or alley and/or traffic side of the vending cart;
- O. Operate in a manner that does not maintain four feet of clear space on a public sidewalk;
- P. Operate a stationary vending cart in exclusively residential zones;
- Q. Operate a sidewalk vending cart within 500 feet of a certified farmers' market or swap meet during the operating hours of that certified farmers' market or swap meet;
- R. Operate a sidewalk vending cart within 500 feet of any public sidewalk, street, right-of-way, or other public property approved for commercial filming or a temporary event or festival;
- S. Operate in violation of any other generally applicable law;
- T. Display off-site signs. No signs are allowed, except those approved in the application which identify the name of the product or the name of the vendor and the posting of prices on the cart. Signs with intermittent, flashing, moving, or blinking light, or varying intensity of light or color, are not permitted.

5.26.130 - Mobile vendors.

This section regulates mobile vending other than in public sidewalks or parks. Mobile vending can promote the public interest by contributing to an active and attractive pedestrian environment. However, reasonable regulation of mobile vending is necessary to protect the public health, safety, and welfare. The purpose of this subsection is to set forth the conditions and requirements under which mobile vendors may be permitted to operate to protect the public health, safety, and welfare of the residents of and visitors to Hesperia.

5.26.140 - Applicability. Mobile vending activity may occur within a public or private open space not including a public sidewalk or park (e.g. parking lot, plaza, etc), or from a vehicle legally parked on a street, in all commercial, mixed-use, business park and industrial zones in compliance with the standards in this subsection. Mobile vending activity may also occur from a vehicle legally parked on the street in all residential zones, in compliance with the standards in this Subsection. The following mobile vendors are not subject to the standards in this subsection:

- A. A mobile vending vehicle or pushcart owned or operated by any public agency;
- B. Persons delivering goods, wares, merchandise, fruits, vegetables, or foodstuffs upon order of, or by agreement with, a customer from a store or other fixed place of business or distribution;
- C. Vendors participating in farmers markets or other special events as allowed by the City;
- D. An event at a school facility or an assembly use facility, if the vendor is operating in partnership with the organization conducting the event and is located on the site of the event (i.e., not in the public right-of-way);
- E. Vendors that only sell, display, distribute, solicit, or offer sale of items that are inherently communicative and have nominal utility apart from its communication (e.g., newspapers, leaflets, pamphlets, buttons, etc.).

5.26.150 – Mobile Vendor Application Additional Requirements. The application for a mobile vendor's permit shall be signed by the applicant and shall include, in addition to the requirements of Section 5.26.050, the following:

- A. The state vehicle license plate number and the vehicle identification number of the mobile vendor vehicle.
- B. If operating on private property or on a City-owned parking lot, plaza, or other City-owned area (other than a public sidewalk or park), the mobile vendor shall provide evidence of the property owner's written authorization.

- C. If operating in State right-of-way, the mobile vendor shall provide evidence of the State's authorization.
- D. For each person with a 10% or greater financial interest in the business that operates the mobile vendor vehicle, a list, signed under penalty of perjury, of each conviction of such person and whether such conviction was by verdict, plea of guilty, or plea of no contest. The list shall, for each conviction, set forth the date of arrest, the offense charged, and the offense of which the person was convicted. A person who acquires a 10% or greater financial interest in the business that operates the mobile vendor vehicle during the term of the permit issued pursuant to this Code shall immediately so notify the Director and comply with this Subsection.
- E. Valid permit issued by the San Bernardino County Environmental Health Department, if the sidewalk vendor intends to sell food or any other item requiring a County Health Department permit.
- F. Evidence of compliance with Health & Safety Code § 114315(a). Such evidence may include, but is not limited to, written permission from a private business owner for use of the business's toilet and hand washing facility, a printed or electronic map showing the location of a compliant public toilet and hand washing facility, or similar documented evidence of compliance.

5.26.160 – Mobile Vending Locations.

Mobile vending may take place within the commercial, mixed-use, business park, industrial, and/or residential zones, with individual locations approved by the Director.

- A. Vending locations shall be designated based on the ability of the site to safely accommodate the use.
- B. Vending locations may change only upon written request by an applicant and approval by the Director.
- C. All locations of vending stands shall be considered in relation to right-of-way configurations and pedestrian safety.

5.26.170 – Mobile Vending Operational standards. It shall be prohibited for any mobile vendor to operate under any of the following conditions:

- A. Vend between 2:00 a.m. and 6:00 a.m. unless in conjunction with a special event;
- B. Leave any stand or motor vehicle unattended;
- C. Store, park, or leave any stand overnight on any public street or sidewalk, or park any motor vehicle other than in a lawful parking place;
- D. Sell food or beverages for immediate consumption unless there is a litter receptacle available for patrons' use;
- E. Leave any location without first disposing all trash or refuse remaining from sales conducted. Trash and refuse generated by the vending cart operations shall not be disposed of in public trash receptacles;
- F. Discharge solids or liquids to the street or a storm drain;
- G. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on, or under the stand or vehicle;
- H. Set up, maintain, or permit the use of any additional table, crate, carton, rack, or any other device to increase the selling or display capacity of his/her stand where such terms have not been described by his or her application;
- I. Solicit or conduct business with persons in motor vehicles;
- J. Sell anything other than that which he or she is permitted to vend;
- K. Sound or permit the sounding of any device that produces a loud and raucous noise, or any noise in violation of the City's noise ordinance or use or operate any loud speaker, public address system, radio, sound amplifier, or similar device to attract the attention of the public;
- L. Vend without the insurance coverage previously specified;
- M. Operate within 50 feet of a fire hydrant or 25 feet of a transit stop;

- N. Operate within 25 feet of the outer edge of a driveway or vehicular entrance to public or private property in residential zones;
- O. Operate within 100 feet of the outer edge of a driveway or vehicular entrance to public or private property in commercial, business park, mixed use, or industrial zones;
- P. Vend from the exposed street or alley and/or traffic side of the vending cart or vehicle;
- Q. Vend while parked illegally;
- R. Vend from any street parking space other than a space parallel to the curb;
- S. Operate in a manner that does not maintain four feet of clear space on a public sidewalk;
- T. Operate in any manner or location that blocks any citizen or service entry or exit from any business or residence;
- U. Operate from any motor vehicle not licensed by the Department of Motor Vehicles.
- V. Display off-site signs. No signs are allowed, except those approved in the application which identify the name of the product or the name of the vendor and the posting of prices on the cart. Signs with intermittent, flashing, moving, blinking light, or varying intensity of light or color, are not permitted.

5.26.180 - Additional Operational Standards in Public Parks. In addition to the operational standards in Section 5.26.130 and Section 5.26.180 the following shall also be prohibited for any sidewalk vendor operating in a public park:

- A. Operate outside the hours of operation of the park;
- B. Operate more than six (6) feet from any walking or bicycling pathway in the park;
- C. Operate within 50 feet of any other sidewalk vendor in the park;
- D. Operate on, or within 25 feet of, any sports field or playground equipment area.
- E. Utilize any bench, table, barbeque pit, covered gathering area, or other publicly-owned structure or amenity in the park in any way as part of the sidewalk vending operation.
- F. Operate within 25 feet of any bench, table, barbeque pit, covered gathering area, or other publicly-owned structure or amenity in the park.

5.26.190 - Denial, suspension, and revocation. Any permit may be denied, suspended, or revoked for any of the following causes:

- A. Fraud or misrepresentation contained in the application for the permit.
- B. Fraud or misrepresentation made in the course of carrying on the business of vending.
- C. Conduct of the permitted business in such manner as to create a public nuisance, or constitute a danger to the public health, safety, or welfare.
- D. Conduct in violation of the provisions of this chapter.
- E. Denial, void, or revocation of the business license shall result in revocation of the vendor permit.

5.26.200 - Violation of sidewalk vending requirements. A violation of these sidewalk vending requirements, other than failure to possess a valid sidewalk vending permit, is punishable by the following:

- A. An administrative fine of one hundred dollars (\$100) for a first violation.
- B. An administrative fine of two hundred dollars (\$200) for a second violation within one year of the first violation.
- C. An administrative fine of five hundred dollars (\$500) for each additional violation within one year of the first violation.
- D. Rescission of a sidewalk vending permit for the term of that permit upon the fourth violation or subsequent violations.

5.26.210 - Vending without a permit. Vending without a sidewalk vending permit issued by the City of Hesperia is punishable by the following:

- A. An administrative fine of two hundred fifty dollars (\$250) for a first violation.
- B. An administrative fine of five hundred dollars (\$500) for a second violation within one year of the first violation.

- C. An administrative fine of one thousand dollars (\$1,000) for each additional violation within one year of the first violation.
- D. Upon proof of a valid permit issued by the City of Hesperia, any administrative fines imposed under this subsection for vending without possessing a copy of the permit shall be reduced to the administrative fines set forth in Section 5.26.200.

All fines imposed pursuant to sections 5.26.200 and 5.26.210 shall be subject to an ability-to-pay determination as described in California Government Code section 51039(f). Concurrently with issuing a citation for such fines to a person, the City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination.

Chapter 5.28 - POOL AND BILLIARD HALLS

5.28.010 - Prohibited activities.

The following activities shall be prohibited within pool and billiard halls and rooms:

- A. Gambling or possession of any gambling device;
- B. Operating a pool or billiard hall between the hours of 12:00 a.m. and 6:00 a.m.;
- C. To allow any person under the age of eighteen (18) to be present or remain in the billiard hall or pool room;

5.28.020 - Exemptions.

This chapter shall not apply to any organization having one or more billiard tables or pool tables on their private premises solely for the use of their members and guests, and where no fee is charged for the use of such billiard tables or pool tables and the use of such tables is not open to the public.

Chapter 5.32 - PRIVATE PATROL SERVICES AND PRIVATE PATROLPERSONS

Sections:

5.32.010 - Registration.

It is unlawful for any private patrol service to employ or have associated with it in the conduct of its business any private patrolperson who is not currently registered pursuant to Section 7581(e) of the California Business and Professions Code. Current registration shall be presented to any law enforcement or code enforcement officer upon request.

5.32.020 - Proof of registration.

Each applicant shall prove to the satisfaction of the City that he or she possesses a valid license under the Private Investigator Act of the State of California. A current copy of the state license shall be filed with the application.

Chapter 5.36 - TAXICABS

5.36.010 - Exemptions.

This chapter shall not apply to public transportation services being performed pursuant to a contract or franchise with the City or any other public entity in this state.

5.36.020 - License required.

It is unlawful for any person to engage in the business of operating or causing to be operated any taxicab service within the City, without having a license to do so under the provisions of this chapter.

5.36.030 - Application for taxicab service license.

Any person desiring to obtain a license to operate a taxicab service under this chapter shall submit a written application pursuant to Section 5.04.040 to the City. In addition to the information required by Section 5.04.040, the following information shall be provided:

- A. The number of vehicles to be operated under the permit;
- B. The make, type, year, manufacturer, vehicle license number, and passenger seating of the vehicles to be used by the applicant;
- C. The proposed color scheme, insignia or other distinguishable characteristics of the taxicab to be used, including the type of illuminated sign to be mounted on the top of the vehicle and legend thereon;
- D. Legal and registered ownership of the vehicles to be used by the applicant. It shall be the licensee's responsibility to notify the City of any changes in vehicles registered to their license;
- E. Prior experience of the applicant and each driver in the taxicab business, including any prior denial, revocation or suspension by any public agency of any taxicab service or taxicab driving permit, license or certificate for a period of five years prior to application;
- F. A valid LiveScan clearance issued by the Department of Justice (DOJ) prepared within the last thirty days.
- G. Written evidence satisfactory to the City that each driver employed by the applicant has complied, and currently complies, with the provisions of California Government Code Section 53075.5(b)(3), or any successor provision thereto, pertaining to pre-employment and periodic testing of drivers for controlled substances and alcohol, and with provisions therein pertaining to payment for drug and alcohol testing programs and related reporting requirements.
- H. This program shall include, but not be limited to:
 1. Drivers shall test negative for each of the controlled substances specified in Part 40 (commencing with Section 40.1) of Title 49 of the Code of Federal Regulations, before employment. Drivers shall test negative for these controlled substances and for alcohol as a condition of permit renewal or, if no periodic permit renewals are required, at such other times as the City shall designate. As used in this section, a negative test for alcohol means an alcohol screening test showing a breath alcohol concentration of less than 0.02 percent.
 2. Procedures shall be substantially as in Part 40 (commencing with Section 40.1) of Title 49 of the Code of Federal Regulations, except that the driver shall show a valid California driver's license at the time and place of testing, and except as provided otherwise in this section. Requirements for rehabilitation and for return-to-duty and followup testing and other requirements, except as provided otherwise in this section, shall be substantially as in Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations.
 3. A test in one jurisdiction shall be accepted as meeting the same requirement in any other jurisdiction. Any negative test result shall be accepted for one year as meeting a

requirement for periodic permit renewal testing or any other periodic testing in that jurisdiction or any other jurisdiction, if the driver has not tested positive subsequent to a negative result. However, an earlier negative result shall not be accepted as meeting the pre-employment testing requirement for any subsequent employment, or any testing requirements under the program other than periodic testing.

4. In the case of a self-employed independent driver, the test results shall be reported directly to the City, which shall notify the taxicab leasing company of record, if any, of positive results. In all other cases, the results shall be reported directly to the employing transportation operator, who may be required to notify the City of positive results.
5. All test results are confidential and shall not be released without the consent of the driver, except as authorized or required by law.
6. Self-employed independent drivers shall be responsible for compliance with, and shall pay all costs of, this program with regard to themselves. Employing transportation operators shall be responsible for compliance with, and shall pay all costs of, this program with respect to their employees and potential employees, except that an operator may require employees who test positive to pay the costs of rehabilitation and of return-to-duty and follow-up testing.
7. Upon the request of a driver applying for a permit, the City shall give the driver a list of the consortia certified pursuant to Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations that the City knows offer tests in or near the jurisdiction.

5.36.040 – Investigations

- A. Upon receipt of a complaint containing sufficient information to warrant conducting an investigation, the City shall investigate any business that advertises or operates taxicab transportation service for hire. Pursuant to this investigation, the City shall do all of the following:
 - B. Determine which businesses, if any, are required to have in effect a valid taxicab certificate, license, or permit as required by ordinance, but do not have that valid authority to operate.
 - C. Inform any business not having valid authority to operate that it is in violation of law.
 - D. Investigate whether the business has committed or is committing any violations of this code, or any other state or federal code, which they are required to follow.
- E. Within 60 days of informing the business pursuant to paragraph (b), institute civil or criminal proceedings, or both, pursuant to the Hesperia Municipal Code.

Chapter 5.44 - HOME OCCUPATIONS

Sections:

5.44.010 - Purpose.

The purpose of the home occupation provisions is to permit the conduct of a home-based business for supplemental income purposes in the residential districts. Home occupations are limited to those uses which may be conducted within a residential dwelling, without in any way changing the appearance or condition of the residence, or the surrounding neighborhood.

5.44.020 – Application

Any person desiring to obtain a license to operate a business as a home occupation shall submit a written application pursuant to Section 5.04.040 to the City. In addition to the information required by Section 5.04.040, the City shall prepare and mail, by first class postage, a notification to all contiguous property owners listing the name of the applicant, name of the business, address where the business shall be held, the home occupation regulations, and contact information pertaining to the filing of a complaint against the operator of a home occupation who is in violation of any provisions of this chapter. "Contiguous property" is defined as those properties that share a common boundary with the subject property, including across streets and within a 300 foot radius of the subject property.

5.44.030 - Mandatory conditions for operation.

Home occupations may be permitted on property used for residential purposes, based upon the following conditions:

- A. The use of the dwelling for such home occupation shall be clearly incidental and subordinate to its use for residential purposes by its inhabitants.
- B. No persons, other than members of the family who reside on the premises, shall be engaged in such activity on the site, with the exception of an employee at a cottage food establishment.
- C. There shall be no change in the outward appearance of the building or premises, or other visible evidence of the activity.
- D. There shall be no sales of products on the premises, except produce (fruit or vegetables) grown on the property, and the sales of products produced by a permitted cottage food establishment.
- E. The use shall not allow customers or clientele to visit dwellings. However, incidental uses such as music lessons, the sale of fruits and vegetables, and the sale of food produced by a cottage food establishment, may be permitted if the intensity of such use is approved by the City.
- F. A cottage food establishment shall submit a copy of a current and valid San Bernardino County Environmental Health permit, including renewals, such that the City has a current permit on file for the business at all times.
- G. No equipment or processes shall be used on the property that create noise, smoke, glare, fumes, odor, vibration, electrical, radio, or television, or wireless signal that interferes with or are disruptive to surrounding properties.
- H. All required accessory uses for the primary residential use shall be maintained in good and safe condition. The garage may be used as long as no more than 15% of the total area of the garage is utilized for the business if such use does not obstruct required parking. Any required permits for modifications shall be obtained before modifications are made.
- I. No more than 15% of the total square footage of the dwelling inclusive of the garage, or one room of the dwelling, whichever is less, shall be used for the home occupation.
- J. The use shall not involve storage of materials outside any structures.

- K. Use of the United States Postal Service in conjunction with the home occupation shall be limited to use of a post office box only.
- L. No signs shall be displayed in conjunction with the home occupation, and there shall be no advertising using the home address, either on or off site.
- M. The use shall not involve the use of commercial vehicles for delivery of materials to or from the premises, other than a vehicle not to exceed a capacity of one ton, owned by the operator of such home occupation.
- N. If an applicant is not the owner of the property where a home occupation is to be conducted, then a signed, notarized statement from the owner approving such use of the dwelling must be submitted with the application.

Chapter 5.48 - ADULT BUSINESSES

5.48.010 - Purpose

It is the purpose of this chapter to regulate adult businesses in order to promote the health, safety, and general welfare of the citizens of the City. The purpose of this chapter is not to impose a limitation or restriction on the content of any communicative materials, including adult materials. Similarly, it is not the intent of this chapter to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market.

5.48.020 - Adult business license required.

- A. Any person desiring to own, operate, commence, transact, or otherwise allow the operation of an adult business shall apply for and receive an adult business license pursuant to this chapter.
- B. It is unlawful for any person to operate an adult business or to enlarge such a business by a 25% or greater floor area without a valid adult business license for the particular type of business.
- C. An application for an adult business license must be completed on a form provided by the City and shall not be deemed complete unless all of the following information is provided. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business that is open to the public, including the percentage of floor space dedicated to adult merchandise. The sketch or diagram need not be professionally prepared but must be drawn to scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- D. The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with all applicable laws and regulations by all applicable State, County, and City departments. Such inspection shall be conducted by the City within two weeks of receipt of a complete application. The applicant shall be advised as to whether or not the premises are in compliance with all applicable laws and regulations within fourteen (14) days of such inspection. If the premises are found not to be in compliance, the applicant shall be served with a notice of noncompliance stating what specific actions must be taken to achieve compliance. The applicant shall have six months thereafter to achieve compliance pursuant to Section 5.48.060(B). No license shall be issued until compliance has been obtained. If the premises are not timely brought into compliance, the application shall be deemed denied.
- E. If a person who wishes to operate an adult business is an individual, he or she must sign the application for a license as applicant. If a person who wishes to operate an adult business is other than an individual, each individual who has a 10% or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 5.48.050 and each applicant shall be considered a licensee if a license is granted.
- F. Possession by an applicant of any other type of required license does not exempt such applicant from the requirement of obtaining an adult business license
- G. The applicant(s) shall furnish a LiveScan clearance issued by the Department of Justice (DOJ) prepared within 30 days of submission of a complete application.
- H. The application shall be signed by the applicant(s) and shall contain a declaration made under penalty of perjury that the information provided is true and correct. If the application is by any person who is not an individual, all individuals who have a 10% or greater interest in the business must sign such a declaration.

5.48.030 - Issuance of license.

- A. Except as provided in Section 5.48.060(B), the City shall issue a license to an applicant within thirty (30) days after receipt of a complete application and approved inspection, unless one or more of the following is found to be true:

1. An applicant is under eighteen (18) years of age;
 2. An applicant has failed to pay to City any taxes, fees, fines or penalties previously assessed or imposed in relation to an adult business within the five years preceding the application;
 3. An applicant has failed to provide information required by this chapter or has knowingly falsely answered a question or request for information on the application form. This shall include misleading or incomplete responses;
 4. An applicant has been convicted of a violation of a provision of this chapter within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect;
 5. The license fee required by this chapter has not been paid;
 6. The proposed establishment is in violation of or is not in compliance with Sections 5.48.070 or 5.48.080
 7. An applicant has, within the preceding five years, been convicted of, or is under indictment or is currently awaiting trial for a crime involving or constituting any violation of the following (including lesser offenses, and equivalent offenses under federal law or the laws of other states) :
 - a. Prostitution or solicitation of prostitution, (Penal Code 653.22)
 - b. Pandering or pimping, (Penal Code 266)
 - c. Obscenity as defined under California law,
 - d. Sale, distribution or display of harmful material to minors, (Penal Code 313.1)
 - e. Sexual assault, (Penal Code 243.4)
 - f. Running a house of prostitution;(Penal Code 315)
 - g. Any offense that requires registration as a Sex Offender (Penal Code 290)
 - h. Child Pornography (Penal Code 311.11)
- B. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.
- C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the adult business. The license shall be posted in a conspicuous place at or near the entrance to the adult business so that it may be easily read at any time.
- D. A licensee shall report, in writing, any material change in information provided in the application to the City within five days of such change.

5.48.040 - Fees.

- A. The license fee for an adult business license shall be as established by resolution of the city council.

5.48.050 - Inspection.

- A. An applicant or licensee shall permit representatives of any applicable State, County, or City departments to inspect the premises of the business for the purpose of ensuring compliance with all applicable laws, during normal business hours.
- B. A person who operates an adult business, or his agent or employee, commits an offense if he or she refuses to permit a lawful inspection of the premises by any City enforcement agent or any representative of the sheriff's department who is entering the premises to inspect pursuant to this chapter, or any other State, local, or other applicable laws at any time it is open for business.

5.48.060 - Expiration of license.

- A. Each license shall expire one year from the date of issuance and may be renewed only through successful completion of the application process provided in this chapter.
- B. In the event the City Manager denies a new license or renewal of a license, the applicant shall not be issued a license for one year from the date of denial; unless, subsequent to denial, the City Manager finds that the basis for denial of the license or renewal has been corrected or abated, in which event the applicant will be granted a license if at least ninety (90) days have elapsed since the date denial became final.
- C. In the event that the issues resulting in the denial of the license are not corrected or abated, the business must close by the conclusion of the appeal period, in the event no appeal is filed. Should an appeal be filed, and the violation is upheld, the business must close within 48 hours following the conclusion and decision of the appeal.

5.48.070 - Suspension of license.

- A. The City Manager may suspend a license, which suspension shall not become effective until expiration of the appeal period provided herein, or until an appeal has been denied, whichever is later, for a period not to exceed thirty (30) days if he or she determines that a licensee or an employee of a licensee has:
 - 1. Violated or is not in compliance with any applicable section of this chapter;
 - 2. Refused to allow an inspection of the business premises as authorized by this chapter;
 - 3. Served alcohol on the business premises without having all legally required licenses or permits;
 - 4. Failed to comply with, or has knowingly permitted any violation of, any provision of City's building, fire, electrical, plumbing or housing code after receipt of notice from City of such violation.
- B. Notwithstanding any other provision herein, an adult business license may be suspended in the event the City Manager determines that there is an immediate and serious threat or risk of harm to the public health, safety, or welfare. If the license is suspended due to a determination of immediate and serious threat or harm to the public health, safety, or welfare, a public hearing following suspension shall be conducted at the next regularly scheduled city council meeting to determine whether or not such public threat or risk of harm has been eliminated.

5.48.080 - Revocation of license.

- A. The City Manager may revoke a license if a cause of suspension in Section 5.48.070 occurs and the license has previously been suspended within the preceding twelve (12) months.
- B. The City Manager may revoke a license if he or she determines that:
 - 1. A licensee knowingly gave false or misleading information in the material submitted during the application process;
 - 2. A licensee or an employee has allowed possession, use, or sale of illegal controlled substances on the premises;
 - 3. A licensee or an employee has allowed prostitution on the premises;
 - 4. A licensee or an employee knowingly operated the adult business during a period of time when the licensee's license was suspended;
 - 5. A licensee has been convicted of an offense listed in Section 5.48.030(A)(7) for which the time period required in Section 5.48.030(A)(7) has not elapsed;

- 6. On two or more occasions within a twelve (12) month period, a licensee or employee committed an offense on the licensed premises, listed in Section 5.48.030(A)(7), for which a conviction has been obtained;
 - 7. A licensee or an employee has allowed any act of sexual intercourse, sodomy, oral copulation, or masturbation on the licensed premises.
- C. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
 - D. When the City Manager revokes a license, the revocation shall continue for one year and the licensee may not apply for another adult business license for one year from the date revocation became effective; unless, subsequent to revocation, it is found and substantiated by the City that the basis for the revocation has been corrected or abated, in which event the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under subsection (B)(5), an applicant may not be granted another license until the appropriate number of years required under Section 5.48.030(A)(7) has elapsed.
 - E. Any revocation shall not become effective until expiration of the appeal period provided herein, or until any appeal has been denied, whichever is later.

5.48.090 - Appeal.

If the City Manager denies the issuance or renewal of a license, or suspends or revokes a license and the suspension is not pursuant to Section 5.48.070(B), the license holder may appeal the revocation following the procedures of 5.04.150.

The filing of an appeal stays suspension or revocation until the city council makes a final decision.

5.48.100 - Transfer of license prohibited.

A licensee shall not transfer his or her license to another person or business, nor shall a licensee operate an adult business under the authority of a license at any place other than the address designated in the application and license. Any license purportedly transferred shall be deemed by law to be voluntarily surrendered and of no force or effect.

5.48.110 - Additional regulations applicable to nude modeling studios

- A. Nude model studios shall not employ, nor otherwise allow nude modeling by, any person under the age of eighteen (18) years.
- B. Except as otherwise provided by law, it is unlawful for any nude model studio to place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

5.48.120 - Adult theaters and Adult motion picture theaters.

Adult Theaters and Adult Motion Picture Theaters are prohibited in all zoning districts of the City of Hesperia.

5.48.130 - Adult motels.

Adult motels are prohibited in all zoning districts of the City of Hesperia.

Chapter 5.50 - DISPENSING AND DELIVERY OF MEDICAL CANNABIS

ADOPTED BY CITY COUNCIL VIA ORDINANCE NO 2017-16 and ORDINANCE 2018-01

5.50.100 - General operating standards and restrictions.

F. Insurance

4. Commercial automobile liability insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "Scheduled Auto", "Hired Auto" and "Non-Owned Auto" with limits of liability of not less than one million dollars (\$1,000,000.00) per accident for bodily and property damage.

([Ord. No. 2017-16](#), § 3(Exh. C), 9-19-17)

Chapter 5.52 - BLINDER RACKS

5.52.020 - Blinder newsracks.

No person shall display or exhibit in any public place or place open to the public, other than a location from which minors are excluded, any harmful matter, unless a device commonly known as a "blinder rack" is in place so that the lower two-thirds thereof is not exposed to public view. For the purposes of this section, "harmful matter" is as defined in California Penal Code Section 313 as currently in effect and as may be amended.

5.52.030 - Penalty for violation.

It is unlawful for any person to violate any provisions, or to fail to comply with any of the requirements, of this chapter. Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof may be punished by a fine not exceeding \$1,000, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. A person shall be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted by such person.

Chapter 5.56 - GARAGE SALES

5.56.020 - Permit required.

- A. No person shall sell or participate in the sale of personal property (excluding motor vehicles) to the general public by means of a garage sale, unless a garage sale permit is obtained.
- B. Motor vehicles may not be sold by means of a garage sale.
- C. The terms “garage sale,” “yard sale,” “estate sale,” “estate auction,” “rummage sale,” or any variation thereof, have the same meaning and intent under this code.

5.56.030 – Application

- A. Any person intending to conduct a garage sale to the general public shall file an application no more than fifteen (15) days prior to the date of such sale.
- B. The applicant shall state the date and location of the proposed sale and the name(s) of the person(s) who will be conducting the sale. The permit shall be issued by the Development Services Department for a period not to exceed three days. The permit may be summarily revoked by the City after written notice has been mailed or personally served to the applicant that a violation has occurred, or false information/representation is contained within the application. If the applicant provides satisfactory explanation of the violation, false information/representation, the City Manager may reactivate the permit.

5.56.040 - Number and time of garage sales.

- A. Lots With One Dwelling or Primary Sponsor (e.g., church).
 - 1. No person shall conduct more than four garage sales in a calendar year.
 - 2. A minimum of eleven (11) days shall elapse between lawfully conducted garage sales on the lot or parcel. A sale shall only be conducted between the hours of 8:00 a.m. and 8:00 p.m..
- B. Lots With More Than One Dwelling or Primary Sponsor. Lots or parcels having more than one dwelling unit or primary sponsor shall conduct garage sales as allowed by the following table.

Number of Garage Sales Per Lot or Parcel

No. of Units/Sponsors	No. of Garage Sales Per Year
1	4
2-10	6
11-50	8
51+	10

5.56.050 - Display of sale items.

Personal property offered for sale shall not be displayed or stored in adjoining public streets, alleys or rights-of-way but must remain on private property at all times. All articles shall be removed from the front or side yard before the close of the last day on which the garage sale is to be lawfully conducted.

5.56.060 - Prohibited Conduct

The intent of a “garage sale” is by definition an opportunity to sell personal property no longer useful to its rightful owner and available for purchase by the public at the approved garage sale site. Sale of bulk and pre-purchased new items is prohibited, as this constitutes an illegal activity. For instance, while a reasonable person may expect to have one or a few of any one item for sale, such as a car seat or television, it is not reasonable to expect that a person would own many of that item, such 25 car seats or 10 televisions and have them offered for sale.

If upon inspection it is apparent that the items for sale at the garage sale are not within a reasonable person’s expectations for new or used items for sale of personal property, and it appears that the intent of the sale is for a business to circumvent the provisions of this code and create a retail opportunity without an approved retail location, the sale shall be considered a public nuisance and subject to the enforcement procedures of Title 1 of this code.

Operation of a garage sale outside the provisions of this chapter and without a valid permit shall be considered a public nuisance and subject to the enforcement procedures of Title 1 of this code.

5.56.070 - Signs concerning garage sales.

Except as otherwise provided, signs advertising a garage sale shall be displayed only on the premises on which the sale is conducted and no sign shall exceed four square feet. Two off-site directional signs may be permitted, provided that written permission to erect or affix such signs is received from the property owners on whose property such signs are to be placed. The location of such signs shall be noted on the permit. Signs may be displayed only during the hours the sale is actively being conducted and shall be removed at the close of sale activities, or at nightfall, whichever first occurs, each day. No sign may be placed in any public right-of-way or on any telephone pole, street intersection sign, or utility pole. Each sign shall bear the permit number of the permit for the sale it advertises.

Chapter 5.60 - NON-PROFIT CAR WASHES

5.60.020 - Permit required.

No person shall conduct a non-profit car wash unless a permit is approved by the City.

5.60.030 - Non-profit car wash application and permit.

- A. Any person intending to conduct a non-profit car wash shall file an application for a permit not less than three days prior to the date of such car wash.
- B. The applicant shall state the date and location of the proposed car wash, the name(s) of the person(s) primarily responsible for conducting such car wash, and a description of the charitable nonprofit group or organization that will receive the proceeds.
- C. The permit may be summarily revoked if the applicant violates any provision of this chapter, or provides any false information/representation in the application. If the applicant provides satisfactory explanation of the violation or false information/representation, the permit may be reactivated.
- D. The applicant shall provide proof to the satisfaction of the City that the organization or group which shall receive the proceeds is non-profit and/or charitable in nature. Such proof may include a written determination by any duly authorized taxing agency of such non-profit or charitable status, or such non-profit or charitable status may be determined as a matter of law based upon statute.
- E. There shall be no fee for the permit.
- F. No permits may be issued or used during any period of time when a Stage 2 "threatened water supply shortage" or a Stage 3 "water shortage emergency" has been declared by the Board of Directors of the Hesperia Water District.

5.60.040 - Permit on site during car wash.

The valid permit shall be present on site during all times when the car wash is being conducted. The permit shall be produced upon request by any City official acting within his/her official capacity.

5.60.050 - Number and time of non-profit car washes.

- A. No person shall conduct more than six non-profit car washes in any calendar year.
- B. Each day or portion of a day on which a car wash is conducted shall count as one car wash.
- C. Non-profit car washes shall only be conducted between the hours of 8:00 a.m. and 8:00 p.m.

5.60.060 - Water conservation methods required.

- A. All water hoses shall have a shut-off nozzle attached so that the water will not run continuously.
- B. Vehicles must be washed from a bucket.
- C. If runoff becomes excessive, the permittees shall discontinue activities until the standing water subsides.

5.60.070 - Signs and solicitation.

- A. Notwithstanding any provisions to the contrary, signs advertising a non-profit car wash shall be displayed only on the premises on which the car wash is conducted and no sign shall exceed nine square feet. No signs may be placed on any sidewalks or within any public right of way.
- B. No solicitation may be done from any sidewalk or within any public right-of-way in a manner which impedes or otherwise endangers or interferes with the public's use thereof or becomes a distraction to drivers.

Chapter 5.64 - TELECOMMUNICATIONS REGULATIONS

Reserved

Chapter 5.68 - SERVICE ANIMALS

5.68.010 - Purpose.

The purpose of this chapter is to prevent discrimination against persons who require the use of a service animal, including service animal species other than dogs, in access to public accommodations in Hesperia, including businesses open to the public and all other areas open to the public.

5.68.020 - Definitions.

- A. Except as described in subdivision (B), the terms in this chapter are as defined in Title III of the Federal Americans with Disabilities Act (42 U.S.C. § 12181 et seq.), including but not limited to those definitions found in 42 U.S.C. §§ 12181, 12102, 12103, and section 36.104 of Title 28 of the Code of Federal Regulations (28 CFR 36.104).
- B. Notwithstanding subdivision (A), the definition of the term “service animal” in this chapter is: “any guide dog, signal dog, or other animal of any species, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, detecting intermittent medical conditions and alerting individuals of same, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”

5.68.030 - Access requirements.

- A. General. A public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.
- B. Exceptions. A public accommodation may ask an individual with a disability to remove a service animal from the premises if:
 1. The animal is out of control and the animal’s handler does not take effective action to control it; or
 2. The animal is not housebroken.
- C. If an animal is properly excluded. If a public accommodation properly excludes a service animal under subdivision (B), it shall give the individual with a disability the opportunity to obtain goods, services, and accommodations without having the service animal on the premises.
- D. Animal Under Handler’s Control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal’s safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler’s control (e.g., voice control, signals, or other effective means).
- E. Care or Supervision. A public accommodation is not responsible for the care or supervision of a service animal.
- F. Inquiries. A public accommodation shall not ask about the nature or extent of a person’s disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person’s

wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

- G. Access to Areas of a Public Accommodation. Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.
- H. Surcharges. A public accommodation shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public accommodation normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

5.68.040 - Interpretation.

This chapter is to be interpreted and applied consistent with the interpretation and application of Title III of the Americans with Disabilities Act (42 U.S.C. § 12181 et seq.) and the federal regulations implementing same, except with respect to instances in which the language in this chapter expressly differs from the language of the ADA.

5.68.050 - Defenses.

Defenses to an alleged violation of this chapter shall be those defenses established under Title III of the Americans with Disabilities Act (42 U.S.C. § 12181 et seq.), including but not limited to section 36.208 of title 28 of the Code of Federal Regulations, which provides that an individual and service animal need not be given access to a public accommodation when that access would pose a direct threat to the health or safety of others.

5.68.060 - Liability.

Any person who violates any of the provisions of this chapter or who aids or assists in the violation of any provisions of this chapter shall be liable as follows:

- A. For actual damages including compensatory damages for pain and suffering, or one thousand dollars (\$1,000.00), whichever is greater;
- B. For costs and attorney's fees;
- C. For any equitable relief to remedy the wrong to the individual whose rights were violated and to prevent or end any future act or practice which would violate this chapter;
- D. For civil, administrative, and/or criminal penalties under Chapter 1.12 of this code.

5.68.070 - Enforcement.

- A. Any aggrieved person may enforce this chapter in a civil action in any court with jurisdiction.
- B. An action for equitable relief under this chapter may be brought by any aggrieved person or by any aggrieved person or entity which will fairly and adequately represent the interests of the class of persons who require service animals because of a disability.
- C. In addition to the remedies above, violations of this chapter may be enforced by the City through the civil, administrative, and/or criminal enforcement provisions established in Chapter 1.12 of this code.

5.68.080 - Nonexclusive.

Nothing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

5.68.090 - Limitation on actions.

Actions by aggrieved persons or entities under this chapter must be filed within one year of the last occurrence of the alleged discriminatory acts.

Attachment 3

Exhibit B

16.08.015 – Adult ~~oriented~~ businesses.

"Adult ~~oriented~~ businesses" are: (1) any business which is conducted exclusively for the patronage of adults and from which minors are specifically excluded by law; provided, that any business licensed by the State Department of Alcoholic Beverage Control shall not be an adult-oriented business unless it complies with another definition within this section; and/or (2) any business, where employees or patrons expose "specified anatomical areas" or engage in "specified sexual activities;" and/or (3) any business or establishment which offers its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas."

B. These types of businesses shall not include the following: (1) any bona fide medical establishment operated by properly licensed and registered medical personnel with appropriate medical credentials for the treatment of patients; (2) any massage establishment, the clientele of which consists substantially of persons referred to the establishment in writing for massage therapy by physicians, surgeons, chiropractors or osteopaths duly licensed to practice their respective professions in the State of California; provided, that the massage establishment retains such written referrals in its records for a period of not less than three years, and makes such written references available for inspection by the county health officer or his designated representative at all times during the normal business hours of operation of the massage establishment; and (3) an athletic club, health club, school, gymnasium, state licensed cosmetology or barber establishment, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

C. Adult-oriented businesses shall include but shall not be limited to the following:

~~1. "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."~~

2. Adult bookstore. "Adult bookstore" means an establishment having as a substantial portion of its stock-in-trade, and offering for sale for any form of consideration, any one or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified anatomical areas;" or

b. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

3. Adult Cabaret. An "adult cabaret" means a cabaret which features topless and/or bottomless dancers, strippers, male or female impersonators, or similar entertainers.

4. Adult Theater. An "adult theater" means any place, building, enclosure or structure partially or entirely, temporarily or permanently used for dramatic or operatic presentations, motion pictures, or any picture projected from slides or films, vaudeville show, performances, or any place of public entertainment which are used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," for observation by patrons therein. Adult theaters specifically include places to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained, used or available for presenting material distinguished by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," for observation by patrons therein.

Attachment 3

Exhibit B

4. Sexual Novelty Store. A "sexual novelty store" means an establishment having as a substantial portion of its stock-in-trade goods which are replicas of, or which simulate, "specified anatomical areas," or goods which are designed to be placed on "specified anatomical areas," or to be used in conjunction with "specified sexual activities" to cause sexual excitement.
5. "Adult Video Store" means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
6. Films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas."

7. "Adult motel" means a hotel, motel or similar commercial establishment which:
 - a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
 - b. Offers a sleeping room for rent for a period of time that is less than ten hours; or
 - c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.
 - d. Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten consecutive hours.
8. "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction of "specified sexual activities," "specified anatomical areas," or persons in a state of nudity.
9. "Nude Dancing" means any dance, choreographed or not, in which the performers remove all or part of their clothing, a strip tease, lap dance, or individual dance. Nude Dancing shall also mean a form of erotic entertainment in which a dancer gradually undresses with or without music. Nude dancing shall include fan dancing, defined as a solo dance in which large fans are manipulated to suggest or reveal nakedness, and bubble dancing, defined as a dance similar in nature to a fan dance but includes the use of bubbles instead of fans.

Attachment 4

Exhibit C

1.04.050 - Definitions.

A. Definitions. As used in this code:

"Body art facility" means the specified building, section of a building or vehicle in which a practitioner performs, or demonstrates for the purpose of instruction, body art, including reception areas, the procedure area, and the decontamination and sterilization area. "Body art facility" does not include a facility that only pierces the ear with a disposable, single-use, pre-sterilized clasp and stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

"Gambling" means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under a person's control or influence, upon an agreement or understanding that the individual or someone else will receive something of value in the event of a certain outcome.

"Gambling Device" means an instrumentality, contrivance, or apparatus reasonably designed and intended for the playing of a game for a reward of money or something of value for the player in which chance is a substantial factor.

"Person" means and includes any individual, firm, association, organization, partnership, business trust, corporation or company, and any municipal, political or governmental corporation, district, body or agency other than the city.

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DATE: August 20, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Michael Blay, Assistant City Manager
Tina Bulgarelli, Administrative Analyst
SUBJECT: Adoption of Ordinance No. 2019-09 related to the formation of a local and housing appeals board

RECOMMENDED ACTION

It is recommended that the City Council introduce and place on first reading Ordinance No. 2019-09 repealing Ordinance 2018-05 and modifying Title 1 of the Hesperia Municipal Code related to the Local Appeals Board and Housing Appeals Board.

BACKGROUND

The California Building Code Section 1.8.8 requires the formation of a Local Appeals Board and a Housing Appeals Board to hear contest hearings related to orders, decisions, and determinations made by the City of Hesperia relative to the application and interpretation of the building code, and other regulations governing construction, use, maintenance, and change of occupancy relative to administrative citations and notices of public nuisance.

ISSUES/ANALYSIS

The Building and Safety Department and Code Enforcement are responsible for enforcing the Municipal Code, and by extension, the California Building Code. At times, the enforcement measures taken to abate violations related to sub-standard housing, illegal or unpermitted construction, or occupancy lead to the issuance of a Notice of Public Nuisance or Administrative Citation. Persons issued these notices have the right to appeal the notice and any fines or fees associated with it.

Administrative hearings afford the person the right to tell their version of events, present evidence contrary to the City showing the violation was not occurring at the time the notice was written, or provide evidence that the interpretation of the Code by the City is incorrect.

The California Building Code mandates a body of persons, known as a Local Appeals Board shall hear contest hearings that are related to notices issued for violations or questions of interpretation related to building construction, building code application, use, maintenance, or occupancy of buildings. The code also mandates that there shall be a Housing Appeals Board to hear matters related to alterations, repairs, demolition, and moving of buildings and structures.

The Local Appeals Board and the Housing Appeals Board can be the same body. In absence of a local and housing appeals board, the City Council must hear contest hearings related to these items.

Staff recommends adopting Ordinance No. 2019-09 repealing Ordinance No. 2018-05. Upon this action, the Planning Commission shall serve as the Housing Appeals Board and the Local Appeals Board.

The Planning Commission currently hears matters related to land use entitlement, including zoning, building projects and matters related to the development code. This body meets regularly at least once a month. Staff believes that assigning the Planning Commission to serve as the Local and Housing Appeals Board(s) will provide an efficient way to schedule hearings, as necessary. The Planning Commission is qualified to hear such matters as they already hear matters related to code interpretation, and land use entitlement.

FISCAL IMPACT

There is no fiscal impact associated with this item.

ALTERNATIVE(S)

1. Repeal Ordinance No. 2018-05, and do not adopt Ordinance No. 2019-09, by default appointing the City Council as the Local and Housing Appeals Board(s).
2. Take no action, leaving Ordinance No. 2018-05 intact, keeping the City Council Advisory Committee as the Local and Housing Appeals Board(s).
3. Amend Ordinance No. 2019-09, assigning the responsibility of the Local and Housing Appeals Board(s) to the Public Safety Committee.
4. Provide alternative direction to staff.

ATTACHMENT(S)

1. Ordinance No. 2019-09
2. Exhibit A – Chapter 1.12-Amended-Track Changes Copy
3. Exhibit B- Chapter 1.12-Amended-Clean Copy

ORDINANCE NO. 2019-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, REPEALING ORDINANCE 2018-05, AMENDING CHAPTER 1.04 AND 1.12 OF THE HESPERIA MUNICIPAL CODE, MODIFYING THE LOCAL APPEALS BOARD AND HOUSING APPEALS BOARD RELATED TO CONTEST HEARINGS.

WHEREAS, the City of Hesperia has the authority and responsibility to regulate building construction to protect the public health, safety, and welfare; and

WHEREAS, Title 15, Chapters 15.04 and 15.06 of the Hesperia Municipal Code were adopted for that purpose, and contain such building regulations and grading regulations for the City of Hesperia; and

WHEREAS, Title 1, Chapter 1.12 of the Hesperia Municipal Code contains language pertaining to the issuance of administrative citations, public nuisance notices, and contest hearings; and

WHEREAS, the California Government Code, Section 50022.2 authorizes cities to adopt the California Building Code (CBC) by reference; and

WHEREAS, Section 1.8.8.1 of the CBC requires a local agency to establish a process to hear and decide appeals of orders, decisions, and determinations made by enforcing agencies of the City of Hesperia relative to the application and interpretation of the California Building Code and other regulations governing construction, use, maintenance, and change of occupancy; and

WHEREAS, Section 1.8.8.1 of the CBC requires members of the appeals boards shall not be employees of the enforcing agency and shall be knowledgeable in the applicable building codes, regulations and ordinances; and

WHEREAS, upon rescinding Ordinance 2018-05, no appeals boards shall exist in the City; and

WHEREAS, the Planning Commission is a board of citizens, who have knowledge of the applicable building codes, ordinances and regulations, and are not employees of the City of Hesperia; and

WHEREAS, the Planning Commission meets on a regular basis and can serve as the Local Appeals Board and the Housing Appeals Board; and

WHEREAS, Section 1.8.8.3 of the CBC authorizes any person, firm or corporation adversely affected by a decision, order or determination by the City of Hesperia relating to the application of building standards published in the CBC, or any other applicable rule or regulation adopted by the Department of Housing and Community Development, or any lawfully enacted ordinance of the City of Hesperia, may appeal the issue for resolution to the Local Appeals Board or Housing Appeals Board, as appropriate.

WHEREAS, the City Council wishes to establish good and sufficient procedural due process for the confirmation of administrative fines, enforcement, and/or abatement costs, and for appeals by any affected party; and

WHEREAS, the Planning Commission shall be appointed to serve as the Local Appeals Board and the Housing Appeals Board; and

WHEREAS, on August 20, 2019 the City Council of the City of Hesperia conducted a duly noticed Public Hearing as required by Government Code Section 50022.3 and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE HESPERIA CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1. All of the facts set forth in the forgoing recitals are true, correct and are adopted as findings.

Section 2. Ordinance No. 2018-05 is hereby repealed, and the Planning Commission shall serve as the Local Appeals Board and Housing Appeals Board.

Section 2. Title 1, Chapter 1.04 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "B", attached hereto.

Section 3. Title 1, Chapter 1.12 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "B", attached hereto.

Section 7. This Ordinance shall take effect on September 20, 2019.

Section 8. The City Council of the City of Hesperia hereby declares that should any provision, section, paragraph, sentence, or word of this Ordinance hereby adopted be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by any reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, and words shall remain in full force and effect.

Section 12. The City Clerk shall certify to the adoption of the Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution 93-78.

ADOPTED AND APPROVED this 20th day of August, 2019

Larry Bird, Mayor

ATTEST _____
Melinda Sayre, City Clerk

ATTACHMENT 2

1.04.050 - Definitions.

A. Definitions. As used in this code:

"Administrative Board" means the Hesperia ~~Planning Commission~~~~City Council Advisory Committee~~, or other entity as designated by the City Council

"Committee" means the Hesperia City Council Advisory Committee as set forth in this code.

1.12.290 - Proceedings imposing fines only.

- A. Where the code violation or public nuisance is not of a continuing nature or does not lend itself to abatement by the city, then the city, in its discretion, may pursue the procedure provided in this section to impose, enforce and collect the fine and enforcement costs.
- B. The responsible person cited shall have thirty (30) days from the date of the administrative citation to pay the amount of the fine and enforcement costs to the city.
- C. The responsible person cited may contest issuance of the citation or issuance of a Notice of Public Nuisance by filing a notice of contest or appeal with the city clerk in accordance with the city's policy within fifteen (15) days from the date of the administrative citation or notice of public nuisance, together with the filing fee as adopted by resolution of the City Council. Contest hearings shall be conducted by the Administrative Board or hearing officer pursuant to section D below. The contest hearing shall be held not less than fifteen (15) days and not more than sixty (60) days from the date the notice of contest is filed, unless extended by agreement with the contesting party; provided, however, that no hearing to contest an administrative citation or notice of public nuisance shall be held unless the filing fee has been deposited in advance.
- D. Where the code violation or public nuisance is related to the application of building standards as set forth in California Building Code Section 1.8.8 as may be amended from time to time, the contest hearing shall be forwarded to the Administrative Board for consideration. A hearing officer shall hear all other contest hearings.
- E. The city shall provide the responsible person with written notice of the time and place of the contest hearing at least ten (10) days prior to the date of the hearing. If the enforcement officer submits an additional written report to the Administrative Board or hearing officer for consideration at the hearing, a copy of the report shall be served on the responsible person with the notice of hearing.
- F. The responsible person's failure to appear at the contest hearing shall constitute a forfeiture of any deposited amounts and be deemed a failure to exhaust the responsible person's administrative remedies. In such event, the full amount of the enforcement costs and fine shall be due immediately and the administrative citation shall be deemed a final administrative order for the purpose of California Government Code Section 53069.4. The final administrative order shall be served on the responsible person by mailing a copy of the order by certified mail postage prepaid to the responsible person at his last known address.
- G. The Administrative Board or hearing officer shall hear, receive and consider testimony and documentary evidence regarding the alleged code violation or public nuisance. The administrative citation or notice of public nuisance and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. The contesting responsible person shall be given the opportunity to testify at the hearing and to present documentary evidence concerning the administrative citation or notice of public nuisance, and to cross-examine the citing enforcement officer. The contesting responsible person may be subject to additional questioning by the Administrative Board or hearing officer, and any city legal representative. The hearing shall not be subject to the formal rules of evidence or discovery. The

Administrative Board or hearing officer may continue the hearing and request additional information from the enforcement officer or the responsible party prior to issuing a final administrative decision.

- H. After considering all of the testimony and evidence submitted at the contest hearing, the Administrative Board or hearing officer shall issue a written decision, based upon a preponderance of the evidence standard, whether to uphold, modify, or cancel the administrative citation or notice of public nuisance as provided in Subsection I. The amount of any fee and the amount of the enforcement costs and shall be listed in the decision along with the reason for the decision(s) made. The written decision shall be deemed a final administrative order for the purpose of California Government Code Section 53069.4. The final administrative order shall be served on the responsible person by mailing a copy of the order by certified mail, postage prepaid, to the responsible person at his last known address.
- I. If the Administrative Board or hearing officer determines after the hearing that there was no code violation or public nuisance in existence at the time the notice was issued, or that the interpretation of the applicable building standard has been determined incorrectly, as charged in the administrative citation or notice of public nuisance or that the amount of the fine or enforcement cost should be reduced, then the city shall amend the citation or notice to conform with the order to the Administrative Board or hearing officer decision.
- J. The city may collect any past due administrative citation fines, enforcement costs, and late payment charges by use of all available legal means, including the use of the lien procedures provided for under Article VIII of this chapter.

(Ord. 2001-6 Exh. A (part), 2001)

1.12.320 - Hesperia City Council Advisory Committee

A. The City Council Advisory Committee (hereinafter, "Committee") shall have no power or authority to bind or obligate the city or any officer or department thereof for any money, debt, undertaking or obligation of any kind in excess of the appropriations, which the city council may have made for the purpose of the committee in any fiscal year.

~~D. The committee is authorized to act as the local appeals board and housing appeals board under this chapter, and as required by California Building Code section 1.8.8, et seq., and to hold such hearings and to issue such orders as are appropriate under this chapter. All actions of the committee taken under this chapter shall be by the majority vote of a quorum of the committee members.~~

(Ord. 2001-6 Exh. A (part), 2001)

ATTACHMENT 3

1.04.050 - Definitions.

A. Definitions. As used in this code:

"Administrative Board" means the Hesperia Planning Commission, or other entity as designated by the City Council

"Committee" means the Hesperia City Council Advisory Committee as set forth in this code.

1.12.290 - Proceedings imposing fines only.

- A. Where the code violation or public nuisance is not of a continuing nature or does not lend itself to abatement by the city, then the city, in its discretion, may pursue the procedure provided in this section to impose, enforce and collect the fine and enforcement costs.
- B. The responsible person cited shall have thirty (30) days from the date of the administrative citation to pay the amount of the fine and enforcement costs to the city.
- C. The responsible person cited may contest issuance of the citation or issuance of a Notice of Public Nuisance by filing a notice of contest or appeal with the city clerk in accordance with the city's policy within fifteen (15) days from the date of the administrative citation or notice of public nuisance, together with the filing fee as adopted by resolution of the City Council. Contest hearings shall be conducted by the Administrative Board or hearing officer pursuant to section D below. The contest hearing shall be held not less than fifteen (15) days and not more than sixty (60) days from the date the notice of contest is filed, unless extended by agreement with the contesting party; provided, however, that no hearing to contest an administrative citation or notice of public nuisance shall be held unless the filing fee has been deposited in advance.
- D. Where the code violation or public nuisance is related to the application of building standards as set forth in California Building Code Section 1.8.8 as may be amended from time to time, the contest hearing shall be forwarded to the Administrative Board for consideration. A hearing officer shall hear all other contest hearings.
- E. The city shall provide the responsible person with written notice of the time and place of the contest hearing at least ten (10) days prior to the date of the hearing. If the enforcement officer submits an additional written report to the Administrative Board or hearing officer for consideration at the hearing, a copy of the report shall be served on the responsible person with the notice of hearing.
- F. The responsible person's failure to appear at the contest hearing shall constitute a forfeiture of any deposited amounts and be deemed a failure to exhaust the responsible person's administrative remedies. In such event, the full amount of the enforcement costs and fine shall be due immediately and the administrative citation shall be deemed a final administrative order for the purpose of California Government Code Section 53069.4. The final administrative order shall be served on the responsible person by mailing a copy of the order by certified mail postage prepaid to the responsible person at his last known address.
- G. The Administrative Board or hearing officer shall hear, receive and consider testimony and documentary evidence regarding the alleged code violation or public nuisance. The administrative citation or notice of public nuisance and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. The contesting responsible person shall be given the opportunity to testify at the hearing and to present documentary evidence concerning the administrative citation or notice of public nuisance, and to cross-examine the citing enforcement officer. The contesting responsible person may be subject to additional questioning by the Administrative Board or hearing officer, and any city legal representative. The hearing shall not be subject to the formal rules of evidence or discovery. The

ATTACHMENT 3

Administrative Board or hearing officer may continue the hearing and request additional information from the enforcement officer or the responsible party prior to issuing a final administrative decision.

- H. After considering all of the testimony and evidence submitted at the contest hearing, the Administrative Board or hearing officer shall issue a written decision, based upon a preponderance of the evidence standard, whether to uphold, modify, or cancel the administrative citation or notice of public nuisance as provided in Subsection I. The amount of any fee and the amount of the enforcement costs and shall be listed in the decision along with the reason for the decision(s) made. The written decision shall be deemed a final administrative order for the purpose of California Government Code Section 53069.4. The final administrative order shall be served on the responsible person by mailing a copy of the order by certified mail, postage prepaid, to the responsible person at his last known address.
- I. If the Administrative Board or hearing officer determines after the hearing that there was no code violation or public nuisance in existence at the time the notice was issued, or that the interpretation of the applicable building standard has been determined incorrectly, as charged in the administrative citation or notice of public nuisance or that the amount of the fine or enforcement cost should be reduced, then the city shall amend the citation or notice to conform with the order to the Administrative Board or hearing officer decision.
- J. The city may collect any past due administrative citation fines, enforcement costs, and late payment charges by use of all available legal means, including the use of the lien procedures provided for under Article VIII of this chapter.

(Ord. 2001-6 Exh. A (part), 2001)

1.12.320 - Hesperia City Council Advisory Committee

A. The City Council Advisory Committee (hereinafter, "Committee") shall have no power or authority to bind or obligate the city or any officer or department thereof for any money, debt, undertaking or obligation of any kind in excess of the appropriations, which the city council may have made for the purpose of the committee in any fiscal year.

(Ord. 2001-6 Exh. A (part), 2001)

City of Hesperia STAFF REPORT



DATE: August 20, 2019
TO: Mayor and City Council Members
FROM: Nils Bentsen, City Manager
BY: Rod Yahnke, Economic Development Manager
SUBJECT: Substantial Amendment to the Community Development Block Grant (CDBG) 2018-2019 Action Plan

RECOMMENDED ACTION

It is recommended that the City Council: 1) Conduct a public hearing and upon accepting public testimony, adopt Resolution No. 2019-038 including any modifications or amendments thereto 2) Approve a Substantial Amendment to the Community Development Block Grant (“CDBG”) 2018-2019 Annual Action Plan (“Action Plan”) by programming \$150,000 in unprogrammed dollars to the 2018-2019 Street Improvement Project (“Street Project”); and 3) Authorize the City Manager and/or Economic Development Manager to execute and transmit all necessary documents, including the Substantial Amendment to the Action Plan, and any additional amendments, to assure the City’s timely expenditure of CDBG funds.

BACKGROUND

The U.S. Department of Housing and Urban Development (“HUD”) requires all entitlement communities receiving CDBG funds to prepare and submit a Consolidated Plan (“Con Plan”) every five years to establish a unified, strategic vision for economic development, housing and community development activities. The City Council adopted the 2015-2019 Con Plan on April 7, 2015.

The Con Plan is carried out through Action Plans, which provide the activities and resources that will be used each year to accomplish the goals identified in the Con Plan. The City is required to submit an Action Plan to HUD each year of the five-year Con Plan period. The City Council adopted the 2018-2019 Action Plan on April 3, 2018 and staff submitted the Action Plan to HUD by the required deadline date in 2018.

Substantial Amendments to a Con Plan and/or Action Plan are required when a “substantial” change is proposed to funding levels, goals, or activities. In this case, the programming of \$150,000 in unprogrammed funds to the City’s 2018-2019 Street Improvement Project triggers a “substantial” change.

ISSUES/ANALYSIS

The City has previously awarded the Street Project to Match Corporation in May 2019. With a project cost estimated at \$1,142,000 and current budget of \$1,006,000, the project is in need of an additional \$150,000.

The Street Project will be paving existing dirt roads. The applicable streets must meet strict CDBG qualifications under the Low-Mod Area Benefit national objective, which will increase the safety of vehicular traffic, and reduce maintenance costs. Therefore, the streets that can be paved are somewhat limited to Low-Mod Benefit areas of the City.

The Street Project will provide funding for professional services including, but are not limited to design, engineering and labor compliance, as well as construction costs.

FISCAL IMPACT

City Council approved the Street Project budget on June 19, 2018. This budget included Six-Hundred and Six-Thousand Five-Hundred and Forty-Six dollars (\$606,546) for CIP Project Number 7150. City Council later approved the Substantial Amendment on September 18, 2018 reprogramming an additional Two-Hundred Thousand dollars (\$200,000) to the Street Project. Staff later administratively approved the minor amendment to the 2018-2019 Action Plan programming an additional One-Hundred and Ninety-Nine Thousand Four-Hundred and Fifty-Four dollars (\$199,454) to the Street Project. The above funding Substantial Amendment will add an additional One-Hundred and Fifty Thousand dollars (\$150,000) bringing the total Street Project budget to One-Million One-Hundred and Fifty-Six Thousand dollars (\$1,156,000). These funds will be added to the Street Project budget and will be memorialized when the first quarter budget amendment is presented to City Council.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Substantial Amendment to Action Plan
2. Resolution No. 2019-038

SUBSTANTIAL AMENDMENT TO THE 2018-2019 ANNUAL ACTION PLAN

A. EXECUTIVE SUMMARY

The U.S. Department of Housing and Urban Development (HUD) requires all entitlement communities receiving Community Development Block Grant (CDBG) funds, such as the City of Hesperia, to prepare and submit a Consolidated Plan every five years to establish a unified, strategic vision for economic development, housing and community development actions. The Consolidated Plan encompasses the analysis of local community needs and coordinates appropriate responses to those needs and priorities. The Hesperia City Council adopted the 2015-2019 Five Year Consolidated Plan ("Consolidated Plan") on April 7, 2015.

The Consolidated Plan is carried out through Annual Action Plans which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals identified in the Consolidated Plan. The City must submit an Annual Action Plan to HUD by no later than May 15 of each year during the five-year period (unless otherwise specified by HUD). The Hesperia City Council adopted the 2018-2019 Action Plan ("Action Plan") on April 3, 2018 and submitted the document to HUD before the required deadline date.

Per the City's Citizen Participation Plan (CPP), a Substantial Amendment to a Consolidated Plan and Action Plan is required when a "substantial" change is proposed as it relates to funding priorities, proposed activities, goals and objectives. This substantial amendment to the Consolidated Plan and Action Plan is necessary because the City has identified one (1) previously awarded activity that it wishes to allocate an additional \$150,000 in unprogrammed dollars.

B. CITIZEN PARTICIPATION

A Notice of Public Hearing and 30-day public review period was published in the Hesperia Resorter on July 18, 2019, informing the public of the proposed Substantial Amendment and inviting comments at the public hearing. On August 20, 2019, the Hesperia City Council will be hearing public comments regarding the Substantial Amendment. The public review period will begin on July 19, 2019 and will end on August 20, 2019. Citizens are able to review copies of the Substantial Amendment at the City's Economic Development Department, the Hesperia Public Library and the City Clerk's Office.

C. CHANGES TO THE 2018-2019 ANNUAL ACTION PLAN

The City is proposing to allocate an additional \$150,000 of unprogrammed funds to the 2018-2019 Street Improvement Project which proposes to construct new streets on existing dirt roads located in eligible CDBG Census Tracts/Block Groups. The proposed change will increase the project budget from \$1,006,000 to \$1,156,000.

ATTACHMENT 1

The following Table outlines the activity budgets that are being modified to reprogram funds to the proposed activity described in this Substantial Amendment:

Table 1: Proposed Activity Budget Modifications and Reprogrammed Activity Budgets

Program Year/ Activity Title	Existing Budget	New Budget
Unprogrammed		
Prior Year Unprogrammed Funds		
Prior Year Unprogrammed Funds	\$271,265	\$121,265
Subtotal	\$271,265	\$121,265
Reprogramming		
2018/19 Program Year Activity		
2018/19 Street Improvement Project	\$1,006,000*	\$1,156,000
TOTAL	\$1,277,265	\$1,277,265

*Initial project funding was \$606,546 as approved in the 2018-2019 Annual Action Plan

D. 2018-2019 PROPOSED ACTIVITY DETAIL

The following narrative provides activity descriptions, national objectives, and other required information for the proposed activity.

2018/2019 Street Improvement Project

This project is a continuation of the City's annual program to construct new pavement on existing dirt roads qualified under the CDBG Low-Mod Area Benefit national objective. The project will provide funding for professional services which include but are not limited to design, engineering and labor compliance services as well as construction costs for the construction of various dirt road paving of streets, all of which will be located in predominantly residential CDBG eligible Census Tract/Block Groups within the City's limits. The improvements will increase the safety of vehicular traffic and reduce maintenance costs.

E. PUBLIC COMMENTS

All public comments received during the 30-day public review period or at the public hearing will be incorporated into the overall Substantial Amendment submitted to HUD.

RESOLUTION NO. 2019-038

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, APPROVING SUBSTANTIAL AMENDMENT TO THE 2018-2019 ANNUAL ACTION PLAN AND AUTHORIZING THE CITY MANAGER AND/OR ECONOMIC DEVELOPMENT MANAGER TO EXECUTE AND TRANSMIT ALL NECESSARY DOCUMENTS TO HUD UPON COMPLETION OF THE PUBLIC REVIEW PERIOD

WHEREAS, the United States Department of Housing and Urban Development (“HUD”) requires the City to adopt and implement a Five-Year Consolidated Plan for the expenditure of the City’s annual allocation of Community Development Block Grant (“CDBG”) funds in support of projects and activities predominantly benefitting low- and moderate-income residents; and

WHEREAS, the City Council adopted the current 2015-2019 Five-Year Consolidated Plan (“Consolidated Plan”) on April 7, 2015; and

WHEREAS, the City Council substantially amended the current Consolidated Plan on November 1, 2016 and September 18, 2018; and

WHEREAS, the Consolidated Plan contains certain goals and accomplishments to be met during the five-year consolidated planning period through the expenditure of CDBG funds and other identified funding sources; and

WHEREAS, the Consolidated Plan is carried out through Annual Action Plans which provide the actions, activities, and the resources that will be used each year to accomplish the goals identified in the Consolidated Plan; and

WHEREAS, City Council adopted the 2018-2019 Annual Action Plan (“Annual Action Plan”) on April 3, 2018; and

WHEREAS, a Substantial Amendment to a Consolidated Plan and Annual Action Plan is required when a “substantial” change is proposed as it relates to funding priorities, proposed activities, goals and objectives; and

WHEREAS, City Council desires to program \$150,000 in unprogrammed funds to the 2018-2019 Street Improvement Project, thereby triggering a Substantial Amendment; and

WHEREAS, the City is in compliance with its Citizen Participation Plan which requires the City to conduct a public hearing and a 30-day public review period to receive public input when a Substantial Amendment to a Consolidated Plan and Annual Action Plan is proposed.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HESPERIA AS FOLLOWS:

- Section 1. The recitals above are true and correct and are adopted as findings.
- Section 2. The City Council approves the Substantial Amendment to the Annual Action Plan.
- Section 3. The City Manager and/or Economic Development Manager are hereby authorized to execute all necessary documents and any certifications to execute the Substantial Amendment to the Annual Action Plan.
- Section 4. The City Council further authorizes the City Manager and/or Economic Development Manager to approve any modifications and/or amendments to the Substantial Amendment to the Annual Action Plan if required to ensure approval by HUD.
- Section 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ADOPTED AND APPROVED this 20th day of August 2019.

Larry Bird, Mayor

ATTEST:

Melinda Sayre, City Clerk



DATE: August 20, 2019
TO: Mayor and City Council Members
FROM: Nils Bentsen, City Manager
BY: Casey Brooksher, Director of Finance
SUBJECT: Hesperia Golf Course Operations

RECOMMENDED ACTION

It is requested that the City Council provide staff guidance pertaining to the operations of the Hesperia Golf Course & Country Club (Golf Course) by considering and providing direction on the following options, as the current Golf Course operations contract is set to expire during September 2019:

1. Enter into a professional service agreement (PSA) with Donovan Bros. Golf, LLC (Donovan Bros.) for the Golf Course operations and conduct a Community Facilities District (CFD) feasibility study for homes that benefit from the Golf Course;
2. Repurpose the Golf Course;
3. Provide alternative direction.

BACKGROUND

The Golf Course is a 211 acre, 18-hole, course that was designed by William F. Bell Jr. When the course first opened in 1957, it was a tour stop for the PGA (Professional Golfers' Association). Until April 2010, the Golf Course was privately owned and operated.

Recent History & Operating Arrangement:

In April 2010, the former Hesperia Community Redevelopment Agency (RDA) purchased the Golf Course, while the City, through the General Fund, purchased the associated 678 acre feet of water rights. This allowed the City to gain water rights, as well as prevent the property from becoming blighted and run-down. Upon dissolution of the RDA on February 1, 2012, the Golf Course's ownership was then transferred to the City of Hesperia. It is important to note that 15.5 acres that is used for the driving range was not included in the purchase of the Golf Course. The City entered into a ten year, zero dollar lease on May 20, 2010.

At the time of purchase, the City conducted an extensive public outreach program in order for the community to submit input regarding the long-term use of the property. The outreach program consisted of public meetings, a community survey, and a feasibility study conducted by an outside consultant. The results of the outreach program indicated overwhelming support to continue to operate the regulated 18-hole golf course, and on August 16, 2011, the City Council voted to maintain the property as a golf course and negotiate with the Hesperia Recreation and Park District (Park District) for an agreement to operate and maintain the golf course.

The Park District began operating the golf course under an Interim Agreement on May 21, 2010. On February 6, 2011, an Extension of Term was approved by the City and Park District, extending the term of the agreement to January 1, 2015. The most recent Operating and License Agreement was executed on March 19, 2014 and is mutually agreed to expire during September 2019. With this agreement, the City agreed to credit specified management and operational deficits experienced by the Park District in their operation of the Golf Course, which have ranged from \$100,000 to \$121,603. These credits are to be applied toward the Park District's obligation outlined in the Reimbursement Agreement for Hesperia Civic Plaza Park dated June 21, 2011, which identified a 10-year repayment period wherein the Park District is to reimburse the former RDA, now the Successor Agency, for their portion of the construction costs. As such, the City's General Fund has annually made payments to the Successor Agency on behalf of the Park District for these credits, representing management and operational deficits incurred by the Park District in the operation of the Golf Course, as outlined in the Operating and License Agreement.

Table 1 details the City's historical annual cost (cash outlay) pertaining to the Golf Course.

Table 1	FY 2012-13*	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Park District Credit	\$ 213,053	\$ 100,000	\$ 121,603	\$ 114,751	\$ 89,730	\$ 100,000
Golf Course Well Repairs	0	61,198	27,268	37,756	6,032	4,420
Water Rights Related Costs	1,381	22,514	0	36,249	29,124	30,318
Total Historical Golf Course Costs	\$ 214,434	\$ 183,712	\$ 148,871	\$ 188,756	\$ 124,886	\$ 134,738

*Note - The \$213,053 credit shown in FY 2012-13 was a credit for operating losses that occurred in FY 2010-11 through FY 2012-13.

Current State of the Facility and Course:

At the time of purchase, the City was aware of deferred maintenance of the course and clubhouse from the previous owners. Much of the infrastructure is the same as it was when it was originally constructed in 1957. It was identified that the aesthetic lakes on the course needed to be repaired. The following is a listing of the major issues at the time of the City purchasing the course: the irrigation system needed to be overhauled and modernized; the clubhouse needed renovation, including a complete replacement of the roof; and repairs to the parking lot.

As mentioned, shortly after the purchase of the Golf Course, the State mandated the dissolution of all redevelopment agencies. This event, along with the lingering effect of the Great Recession limited the City's ability to address any of the deferred maintenance. In addition, since the time of purchase, new issues have arisen, such as the air conditioning units nearing end of life, as well as the failure of the beverage coolers in the bar.

Recent Infrastructure Improvements:

The Hesperia Water District is in the process of completing the Reclaimed Water Distribution System, which is 10 miles of pipeline that connects the Golf Course to the Hesperia Sub-regional Water Reclamation Plant. The District expects to receive recycled water during the current month (August 2019). It should be noted that while the Golf Course is the first intended recipient of recycled water, a number of lateral connections were installed to benefit the Hesperia Unified School District, Park District, Hesperia Christian School, and other city facilities. Additionally, the City installed new water features at the golf course to hold the recycled water.

Current Course Operations:

Knowing that the contract with the Park District was set to expire, a Request for Proposal (RFP) for the operation and maintenance of the golf course was issued March 14, 2019. Five respondents expressed interest in the RFP; however, of the five interested parties, three

respondents participated in the mandatory walk-through of the golf course facility. After the walk-through, the City ultimately received one proposal, from Donovan Bros. to operate the golf course. Additionally, the Park District was invited to submit a response. During June 2019, the Park District indicated that they were no longer interested in operating the Golf Course.

RFP Response:

Being the sole respondent to the RFP, the City entered into negotiations with Donovan Bros. The Company was formed in 1975 and has over 35 years of experience in the management and ownership of golf courses in the Southern California area. The group has experience working with varied types of golf property owners, providing them with insight into proper business practices and operational efficiencies in the management of golf courses. Donovan Bros. has familiarity with the Golf Course, as they provided management of the course in the early 2000s. The following is a list of golf courses that Donovan Bros. currently operates:

- Western Hills Country Club, Chino Hills CA
- Sierra Lakes Golf Club, Fontana CA
- General Old Golf Course, Riverside CA
- Arroyo Trabuco Golf Club, Mission Viejo CA
- Santa Anita Golf Course, Arcadia CA
- Costa Mesa Country Club, Costa Mesa CA
- Arroyo Seco Golf Course, South Pasadena CA
- The Links @ Riverlakes Ranch, Bakersfield CA
- Willowick Golf Course, Santa Ana CA
- Whispering Lakes Golf Course, Ontario CA

The proposal submitted by Donovan Bros. outlines immediate steps they recommend be taken in order to attract more players to the course, on a more frequent basis. Among the top recommendations is improving the course maintenance, with an objective of golfers seeing a dramatic improvement in the quality of the greens and the general upkeep within the first 45 days. This includes fertilizing, top-dress, and aerifying the greens to get them into better condition. They would also repair the mowers and turf equipment to enable a quality cut of the turf. Additionally, Donovan Bros. would focus on the food and beverage, development and rehab of the driving range, as well as increase the marketing efforts of the course.

ISSUES/ANALYSIS

In order for the Golf Course to continue operating, significant capital improvements to the course are needed. Additionally, the City will experience increased operating expenses. The following is a detailed breakdown of the new costs associated with operating the Golf Course.

Capital Improvements (\$250,000):

The two major areas that need to be addressed in the near future are the irrigation system and roof repair. It is estimated that the improvements to the irrigation system of the Golf Course will cost approximately \$168,000. Donovan Bros. indicated in their proposal that the irrigation system is currently not in good working order, antiquated, and requires manual watering.

The roof repair and HVAC replacements is estimated to cost \$82,000. Currently, the roof has a number of leaks and is in poor condition, as the roof is over 60-years old. This repair would remove all of the existing roofing material, and repair and replace any damage to the sub roof. The roofing repair would protect the inside of the clubhouse from sustaining any further damage to the walls.

Reclaimed Water & Leasing of Water Rights:

FY 2019-20 will be the first year that recycled water will be used at the Golf Course, which is expected to cost \$390,000 and increase to \$409,500 in FY 2020-21. Prior to the availability of reclaimed water, the golf course used 678 acre-feet of base annual production (BAP), which currently equates to 407 acre-feet of BAP after the current ramp-down provisions. By using the water rights, the City effectively did not pay to water the golf course.

With the new costs of recycled water, a portion of the 407 acre-feet of BAP can be leased to generate General Fund revenue. In FY 2021-22, it is estimated that the City could lease the BAP at \$631 an acre-foot. Assuming 350 acre-foot of the 407 acre-feet of BAP is available to be leased, the City could expect to receive approximately \$220,000 in revenue.

Donovan Bros. Operating Costs:

The Donovan Bros. proposal identifies a management fee of \$72,000 for years 1 through 5. Additionally, the City would be required to cover any and all operating losses during the length of the contract. Based upon Donovan Bros. projections, Year 1 losses would be \$397,242 and decrease to \$182,026 by year five.

Outside of the operational losses and management fees, Donovan Bros. identified startup costs of \$320,300. These costs will go toward course equipment replacements, such as mowers, aerifier, and utility vehicles. In addition, this will allow Donovan Bros. capital for purchasing inventory for the pro shop and bar, as well as refurbishments to the landscaping and driving range. Inclusive of the management fee, estimated operating loss, as well as capital and startup costs, the City could expect to subsidize the golf course by \$1.2 million in Year 1, \$1.0 million in Year 2, and an average of \$750,000 for Years 3 through 5.

The following table (Table 2) details the estimated cost of Donovan Bros. agreement for operating the Golf Course, as well as paying for necessary capital costs and recycled water.

Table 2	2019-20	2020-21	2021-22	2022-23	2023-24
	Total	Total	Total	Total	Total
Revenue	\$ 671,769	\$ 725,800	\$ 760,500	\$ 794,800	\$ 854,500
Expenses	1,069,011	1,036,526	1,036,526	1,036,526	1,036,526
Net Income (Loss)	(397,242)	(310,726)	(276,026)	(241,726)	(182,026)
Cost of Operations to City					
Replenish Loss	397,242	310,726	276,026	241,726	182,026
Management Fee	72,000	72,000	72,000	72,000	72,000
Recycled Water	390,000	409,500	429,975	451,474	474,047
Total Annual City Operations Cost	859,242	792,226	778,001	765,200	728,073
Other Costs Cost					
Irrigation - Startup	168,000	0	0	0	0
Roof Repair & HVAC Replacement	82,000				
Startup Costs	59,000	261,300	0	0	0
Total Capital Cost	309,000	261,300	0	0	0
Total City Cost	\$ 1,168,242	\$ 1,053,526	\$ 778,001	\$ 765,200	\$ 728,073

Comparison to Other Locally Owned Golf Courses:

Both the City of Victorville and Town of Apple Valley own golf courses that are operated by a separate third party vendor. It is important to note that each of the three golf courses are unique to the community in which they are located and offer different amenities. For example, Apple Valley Golf Course contains tennis courts, while Green Tree Golf Course (Victorville) is located near the Interstate 15 in a more urbanized setting.

Additionally, the cost for water is handled separately by each course. With the Apple Valley Golf Course, the Town of Apple Valley utilizes the water rights originally purchased with the golf course. This means that water costs are minimal, as all water is pumped from the aquifer. With the Green Tree Golf Course, all water usage is charged to the golf course by the Victorville Water District and is reflected in the costs of golf course operations. For a comparison of the annual losses experienced by each golf course, Table 3 shows the General Fund cost to each City.

Table 3

Apple Valley	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19 Revised	FY 2019-20 Budget
	General Fund Subsidy	\$ 349,968	\$ 333,748	\$ 436,601	\$ 450,000

Victorville	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19 Budget	FY 2019-20 Budget
	Subsidy	\$ 564,709	\$ 553,905	\$ 521,427	\$ 578,246
Capital Transfer	214,115	0	0	0	0
Total General Fund Subsidy	\$ 778,824	\$ 553,905	\$ 521,427	\$ 578,246	\$ 481,557

Request for City Council Recommendation:

With the Golf Course operations contract with the Park District nearing expiration in September 2019, there are three options for the City Council's consideration. Option 1 is to continue operating the Golf Course and award Donovan Bros. the PSA, while conducting a feasibility study for a CFD to assist with funding the course. Option 2 is to repurpose the Golf Course to save City funds. Option 3 is to provide staff with alternative direction.

Option 1:

As outlined, it is anticipated that the FY 2019-20 Golf Course costs will be approximately \$1.2 million. Currently, the FY 2019-20 Budget contains approximately \$400,000 for Golf Course costs: \$300,000 for recycled water (the budget assumed that VVWRA would flow recycled water during October 2019) and \$100,000 for capital retention. To proceed with Donovan Bros., it is anticipated that General Fund reserves of \$800,000 would need to be allocated to the Golf Course. Furthermore, over the next five years, the Golf Course is expected to cost the General Fund over \$725,000 per year. This amount could be partially offset by the leasing of water rights. Table 4 shows the total potential cost to the General Fund over the next five years.

	2019-20 Total	2020-21 Total	2021-22 Total	2022-23 Total	2023-24 Total
Table 4					
Cost of Operations to City	\$ 1,168,242	\$ 1,053,526	\$ 778,001	\$ 765,200	\$ 728,073
Leasing Water Rights					
Assumed Base Annual Production	N/A	203 AF	350 AF	350 AF	350 AF
Lease Rate per Acre Foot	N/A	\$ 601	\$ 631	\$ 663	\$ 696
Total Potential Revenue	N/A	\$ 122,003	\$ 220,850	\$ 232,050	\$ 243,600
Total City Cost with Lease Revenue Offset	\$ 1,168,242	\$ 931,523	\$ 557,151	\$ 533,150	\$ 484,473

It should be noted that costs identified in both Table 2 and Table 3 only identify the immediate need to replace the Golf Course roof and irrigation system. The tables do not identify a funding mechanism for the other deferred maintenance items (parking lot, updating the club house, air conditioning units, or replacement of the beverage coolers). Currently, there are no cost estimates for the other deferred items.

Should the City Council select Option 1, it is recommended that a CFD feasibility study be conducted to explore the potential of providing a funding mechanism for Golf Course operation and enhancements by the citizens who receive a direct benefit of living near the Golf Course. While the feasibility study will look into this issue in greater detail, an informal view of available data shows that houses near the Golf Course tend to have higher property values than those houses within the same area, but are without similar proximity. For example, a 2,400 square foot home with a view of the Golf Course has an estimated property value of \$365,000, while a similar home near E Avenue has a value of \$337,000. Without such a study and the formation of the potential CFD, it will prove difficult to maintain the Golf Course in future years, without depleting all General Fund reserves.

Additionally, the City will need to address the feasibility of continuing to use the driving range, as the zero-dollar lease is set to expire May 20, 2020. If the lessor does not continue their current terms, the City would have to pay additional costs to provide a driving range or decide to forego that amenity.

Option 2:

With this option, the Golf Course would be repurposed and cease operation solely as a golf course. This option would require capital investment in FY 2019-20 to repurpose the Golf Course. Additionally, there could be other costs associated with this option, such as lease buyouts for current golf course equipment, including 72 golf carts. After FY 2019-20, the costs will decrease as the City will no longer be required to fund Golf Course operations. To determine the costs of repurposing, a design study would need to be conducted.

FISCAL IMPACT

The following is a brief recap of the fiscal impact to Option 1. This recap shows the estimated operating cost, as well as the potential offset of leased water rights.

	2019-20	2020-21	2021-22	2022-23	2023-24
	Total	Total	Total	Total	Total
Option 1 Recap					
Cost of Operations to City	\$ 1,168,242	\$ 1,053,526	\$ 778,001	\$ 765,200	\$ 728,073
Leasing Water Rights					
Assumed Base Annual Production	N/A	203 AF	350 AF	350 AF	350 AF
Lease Rate per Acre Foot	N/A	\$ 601	\$ 631	\$ 663	\$ 696
Total Potential Revenue	N/A	\$ 122,003	\$ 220,850	\$ 232,050	\$ 243,600
Total City Cost with Lease Revenue Offset	\$ 1,168,242	\$ 931,523	\$ 557,151	\$ 533,150	\$ 484,473

Should Option 1 be selected, it is anticipated that a FY 2019-20 Year-End Budget Amendment of approximately \$800,000 will be needed from the General Fund. Furthermore, without additional golf course related revenue, it is expected General Fund reserves will be needed beginning in FY 2020-21 to cover the operational deficits.

With Option 2, the City will be required to spend funds on repurposing the Golf Course in FY 2019-20; however, the related costs in each fiscal year thereafter would decrease. A design study would need to be conducted to determine the FY 2019-20 cost of repurposing the golf course.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

None.

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DATE: August 20, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Rachel Molina, Assistant to the City Manager
Dan Sousa, Community Relations Specialist
SUBJECT: Advance Disposal Rate Structure

RECOMMENDED ACTION

It is recommended that the City Council provide direction to staff on whether to conduct a Proposition 218 Public Hearing related to new maximum rates for solid waste and recycling services in the City of Hesperia and allow for rate adjustments pertaining to equipment purchased by City's waste hauler in response to State of California mandates.

BACKGROUND

Due to legislation passed by California's Department of Resources Recycling and Recovery (CalRecycle), Advance Disposal has had to comply with increasingly complex recycling initiatives aimed at curtailing disposal of traditional recyclables, in addition to organic materials, as part of compliance with California law.

In October 2014 Governor Brown signed AB 1826 Chesbro (Chapter 727, Statutes of 2014), requiring businesses to recycle their organic waste on and after April 1, 2016, depending on the amount of waste they generate per week. This law also requires that on and after January 1, 2016, local jurisdictions across the state implement an organic waste recycling program to divert organic waste generated by businesses, including multifamily residential dwellings that consist of five or more units. Organic waste means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste. This law phases in the mandatory recycling of commercial organics over time, while also offering an exemption process for rural counties. In particular, the minimum threshold of organic waste generation by businesses decreases over time, which means an increasingly greater proportion of the commercial sector will be required to comply.

Additionally, in September 2016, Governor Brown signed into law SB 1383 (Lara, Chapter 395, Statutes of 2016), establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP) in various sectors of California's economy. As it pertains to CalRecycle, SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The law grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that not less than 20 percent of currently disposed edible food is recovered for human consumption by 2025.

ISSUES/ANALYSIS

In order to continue to meet the requirements of AB 1826 and to prepare for future legislation, such as SB 1383, Advance Disposal has begun implementation of new, innovative equipment in the form of a TORXX kinectic pulverizer. By processing organics and fines material through the TORXX kinectic pulverizer, Advance Disposal will improve the quality of the material by pulverizing glass and other small contaminants. Once the material has been processed, it will continue to be considered a pre-processed material for composting thereby satisfying the State’s recycling requirements.

Advance Disposal has already competed for and secured grant funding from CalRecycle in the amount of \$2,481,250 to help cover the cost of this new equipment, leaving a remaining total cost of \$948,750. In order to cover the remaining cost of this new equipment in an effort to meet the State’s new diversion and recycling requirements a proposed trash rate increase will include the costs to purchase and install as well as the projected costs to operate and maintain this new equipment.

Hesperia maintains a low monthly rate as compared to local municipalities as shown in the Table A:

Table A

2019 Multi-Jurisdictional Rate Comparison (Residential)				
City of Adelanto	Town of Apple Valley	City of Hesperia	Spring Valley Lake	City of Victorville
\$28.51	\$27.52	\$28.89	\$22.56	\$32.27 *rate includes hazardous waste fee and storm drain fee

Table B outlines the proposed maximum residential rates as modified by the organics recycling increase. If approved, the maximum regular residential monthly rate will increase from \$28.89 to \$31.84. The full rate structure in Attachment 1 outlines the new maximum residential rates as modified by the organics recycling increase.

Table B

Current Rate	Residential Solid Waste Service Monthly Rate				
	Year One	Year Two	Year Three	Year Four	Year Five
\$28.89	\$29.48	\$30.07	30.66	\$31.25	\$31.84

Additionally, commercial and multi-family properties would also be adjusted to account for the new rate structure, as shown in Table C. If approved, the maximum regular monthly rate for commercial solid waste will increase from \$183.59 to \$196.84.

Table C

Current Rate	Commercial Solid Waste Service Monthly Rate				
	Year One	Year Two	Year Three	Year Four	Year Five
\$183.59	\$186.24	\$188.89	\$191.54	\$194.19	\$196.84

Should staff be given the direction to proceed the rate adjustment, a Proposition 218 hearing would be initiated to allow for rate adjustments annually for up to five years.

FISCAL IMPACT

In the event the City is unable to adequately address AB 1826 or SB 1383 requirements with the implementation of this equipment, CalRecycle maintains the authority to institute a jurisdictional fine (in accordance with PRC 41813) of up to \$10,000 per day due to noncompliance.

ALTERNATIVE(S)

1. The Council may provide alternative direction to staff.

ATTACHMENT(S)

1. Attachment 1 - Rate Structure: Total Rate

ATTACHMENT 1 - RATE STRUCTURE: TOTAL RATE

CODE	SERVICE TYPE	Current Base Rate	MRF Expansion Rate	Total Current Rate	Total Rate Year 1	Total Rate Year 2	Total Rate Year 3	Total Rate Year 4	Total Rate Year 5	
RESIDENTIAL RATES										
95GTRRES	Regular Residential Service (2 carts)	26.77	2.12	28.89	29.48	30.07	30.66	31.25	31.84	
LOWVOLUME	Low Volume Service (1 cart)	24.54	2.12	26.66	27.20	27.74	28.29	28.83	29.37	
HARDSHIP	Hardship Service	16.37	1.33	17.70	18.06	18.42	18.78	19.14	19.50	
DUPLEX	Duplex Multi-Family (carts)	52.54	4.16	56.70	57.86	59.01	60.17	61.32	62.48	
TRIPLEX	Triplex Multi-Family (carts)	78.40	6.20	84.60	86.32	88.04	89.77	91.49	93.21	
FOURPLEX	Fourplex Multi-Family (carts)	104.20	8.23	112.43	114.72	117.01	119.30	121.59	123.88	
LGITEM	Bulky Item Pickup	39.60	-	39.60	39.60	39.60	39.60	39.60	39.60	
	(over 4 pickups or 8 items per year)									
	Green Waste Pickup	39.60	3.22	42.82	43.69	44.56	45.44	46.31	47.18	
	(over 4 pickups per year)									
DAMAGE	Burnt or Damaged Carts	58.83	-	58.83	58.83	58.83	58.83	58.83	58.83	
95GTRADDL	Additional Tan 95 Gallon Barrel	3.47	-	3.47	3.54	3.61	3.69	3.76	3.83	
RESREDEL	Redelivery Fee (for non-payment)	28.63	-	28.63	28.63	28.63	28.63	28.63	28.63	
SPECLSERV	Special Pick-up (at customer request or frequent missed)	28.63	-	28.63	28.63	28.63	28.63	28.63	28.63	

COMMERCIAL RATES

3.0 Cubic Yards										
1) One Service Weekly										
03FLTR	a) Uncompacted	170.14	13.45	183.59	186.24	188.89	191.54	194.19	196.84	
03CPTR	b) Compacted	249.72	19.70	269.42	273.31	277.19	281.08	284.97	288.86	